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

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

**Date of Report (Date of Earliest Event Reported): January 3, 2019**

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**CALLAWAY GOLF COMPANY**  
(Exact Name of Registrant as Specified in its Charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**1-10962**  
(Commission  
File No.)

**95-3797580**  
(I.R.S. Employer  
Identification No.)

**2180 Rutherford Road  
Carlsbad, California 92008-7328**  
(Address of Principal Executive Offices, Including Zip Code)

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**(760) 931-1771**  
(Registrant's Telephone Number, Including Area Code)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

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

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**Item 1.01      Entry into a Material Definitive Agreement.*****Amendment to Jack Wolfskin Purchase Agreement***

On January 3, 2019, Callaway Golf Company (“Callaway”), Paw Luxco III S.à.r.l. (the “Seller”) and Callaway Germany Holdco GmbH (a wholly owned subsidiary of Callaway formerly known as Mainsee 1185. V V GmbH) (the “Purchaser”) entered into an SPA Amendment, Waiver and Locked Box Deed (the “Amendment”) related to the Share Sale and Purchase Agreement by and among Callaway, the Seller and the Purchaser, dated as of November 29, 2018 (the “Purchase Agreement”), in respect of Callaway’s agreement to acquire the Jack Wolfskin business. Pursuant to the Amendment, the parties agreed to amend or waive certain notification periods, pre-closing covenants and conditions under the Purchase Agreement in order to effectuate the closing on January 4, 2019. The parties also agreed to a “locked box” mechanism, which provides for the calculation of certain purchase price adjustment inputs and the economic transfer of the Jack Wolfskin business from the Seller to the Purchaser as of January 1, 2019.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendment, which is filed as Exhibit 2.1 to this Current Report on Form 8-K and is incorporated herein by reference.

***Term Loan Credit Agreement***

To pay the purchase price under the Purchase Agreement, on January 4, 2019, Callaway entered into a Credit Agreement (the “Credit Agreement”), by and among Callaway, the lenders party thereto from time to time (the “Term Lenders”) and Bank of America, N.A., as administrative agent.

The Credit Agreement provides for a Term Loan B facility in an aggregate principal amount up to \$480 million (the “Term Loan Facility”), which was issued less \$9.6 million in original issue discount. Such amount may be increased pursuant to incremental facilities in the form of additional tranches of term loans or new commitments, up to a maximum incremental amount of \$225 million, or an unlimited amount subject to compliance with a first lien net leverage ratio of 2.25 to 1.00.

Loans under the Term Loan Facility bear interest at a rate per annum equal to either, at Callaway’s option, the LIBOR rate or the base rate, plus 4.50% or 3.50%, respectively.

The Credit Agreement contains customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on incurrence of additional debt, liens, dividends and other restricted payments, asset sales, investments, mergers, acquisitions and affiliate transactions. Events of default permitting acceleration under the Credit Agreement include, among others, nonpayment of principal or interest, covenant defaults, material breaches of representations and warranties, bankruptcy and insolvency events, certain cross defaults or a change of control.

All obligations of Callaway under the Term Loan Facility are jointly and severally guaranteed by its domestic subsidiaries, subject to certain customary exceptions (the “Guarantors”). The obligations and guaranties under the Term Loan Facility are secured by a security interest in substantially all assets of Callaway and the Guarantors, with priority of the security interest of the Term Lenders and the ABL Lenders (as defined below) subject to the terms of a customary intercreditor agreement.

The foregoing description of the Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Credit Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

***Amendment to ABL Loan Agreement***

In connection with its entry into the Purchase Agreement and the Credit Agreement, on January, 4, 2019, Callaway entered into a Second Amendment to Third Amended and Restated Loan and Security Agreement (the “Second Amendment”), by and among Callaway, the other borrowers party thereto, the other obligors party thereto, the lenders party thereto (the “ABL Lenders”) and Bank of America, N.A., as administrative agent, which amends

the Third Amended and Restated Loan Agreement, dated as of November 20, 2017 (the “ABL Loan Agreement”), by and among Callaway, the other borrowers party thereto, the other obligors party thereto, the ABL Lenders and Bank of America, N.A., as administrative agent. The Second Amendment amends the ABL Loan Agreement to expand the security interest granted to the ABL Lenders to match the security interest granted to the Term Lenders, with priority of the security interest of the Term Lenders and the ABL Lenders subject to the terms of a customary intercreditor agreement.

The foregoing description of the Second Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Second Amendment, which is filed as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

On January 4, 2019, pursuant to the terms and conditions of the Purchase Agreement and the Amendment, the Purchaser acquired all of the outstanding shares of capital stock of JW Stargazer Holding GmbH, which owns the various entities constituting the Jack Wolfskin business (the “Closing”). At the Closing, the Purchaser paid to the Seller an aggregate purchase price of €418.0 million in cash, or approximately \$476 million assuming a 1.140 Euro to U.S. Dollar conversion rate, subject to a working capital adjustment.

Callaway and the Seller agreed to customary warranties and covenants in the Purchase Agreement. Callaway has obtained warranty and indemnity insurance to cover, subject to certain limitations, losses resulting from breaches of the Seller’s warranties made in the Purchase Agreement.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Purchase Agreement, which is filed as Exhibit 2.1 to the Current Report on Form 8-K filed by Callaway with the Securities and Exchange Commission on November 30, 2018, and is incorporated herein by reference.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth above under Item 1.01 under the headings “Term Loan Credit Agreement” and “Amendment to ABL Loan Agreement” is incorporated by reference.

**Item 7.01 Regulation FD Disclosure.\***

On January 4, 2019, Callaway issued a press release captioned “Callaway Golf Company Completes Acquisition of Jack Wolfskin, a Premium Outdoor Apparel Brand, for €418 Million.” A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by this reference.

**Item 9.01 Financial Statements and Exhibits.**

(a) Financial Statements of the Business Acquired.

Financial statements, to the extent required by this Item 9.01, will be filed by amendment to this Current Report on Form 8-K within seventy-one (71) calendar days from the date that this Current Report on Form 8-K is required to be filed.

(b) Pro Forma Financial Information.

Pro forma financial information, to the extent required by this Item 9.01, will be filed by amendment to this Current Report on Form 8-K within seventy-one (71) calendar days from the date that this Current Report on Form 8-K is required to be filed.

(d) Exhibits.

Exhibit 2.1	<a href="#"><u>SPA Amendment, Waiver and Locked Box Deed, dated as of January 3, 2019, by and among Callaway Golf Company, Callaway Germany Holdco GmbH and Paw Luxco III S.à.r.l.**</u></a>
Exhibit 10.1	<a href="#"><u>Credit Agreement, dated as of January 4, 2019, by and among Callaway Golf Company, the lenders party thereto from time to time and Bank of America, N.A., as administrative agent.</u></a>
Exhibit 10.2	<a href="#"><u>Second Amendment to Third Amended and Restated Loan and Security Agreement, dated as of January 4, 2019, by and among Callaway Golf Company, the other borrowers party thereto, the other obligors party thereto, the lenders party thereto and Bank of America, N.A., as administrative agent.</u></a>

The following exhibit is being furnished herewith:

Exhibit 99.1	<a href="#"><u>Press Release, dated January 4, 2019, captioned “Callaway Golf Company Completes Acquisition of Jack Wolfskin, a Premium Outdoor Apparel Brand, for €418 Million.”</u></a>
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- \* The information furnished under Item 7.01 and Item 9.01 of this Current Report on Form 8-K, including Exhibit 99.1, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference into any registration statement or filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such filing.
- \*\* Certain schedules referenced in the Amendment have been omitted in accordance with Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished supplementally to the Securities and Exchange Commission upon request.

**SIGNATURES**

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

Date: January 4, 2019

**CALLAWAY GOLF COMPANY**

By: /s/ Brian P. Lynch

Brian P. Lynch

Senior Vice President, Chief Financial Officer, General Counsel and  
Corporate Secretary

**Dated: 3 January 2019**

**Paw Luxco III S.à r.l.**  
(as the Seller)

and

**Callaway Germany HoldCo GmbH**  
(as the Purchaser)

and

**Callaway Golf Company**  
(as the Guarantor)

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**SPA Amendment, Waiver and Locked Box Deed**

related to

**the Share Sale and Purchase Agreement relating to  
JW Stargazer Holding GmbH**

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**LATHAM & WATKINS**

12670 High Bluff Drive  
San Diego, California 92130  
Tel: +1.858.523.5400  
[www.lw.com](http://www.lw.com)

Contact: Craig Garner

## TABLE OF CONTENTS

<b>1.</b>	<b>Interpretation</b>	<b>1</b>
<b>2.</b>	<b>SPA amendments, modifications and waivers</b>	<b>2</b>
<b>3.</b>	<b>Locked Box Concept</b>	<b>4</b>
<b>4.</b>	<b>Miscellaneous</b>	<b>5</b>
<b>SCHEDULE 1</b>		<b>6</b>

**This Deed** is made on 3 January 2019

- (1) Paw Luxco III S.à r.l., a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg, having its registered office at 2-4, rue Eugène Ruppert, L-2453 Luxembourg, registered with the Luxembourg Trade and Companies Register (*Register de Commerce et des Sociétés*) under registration number B 159.480 (the “**Seller**”);
- (2) Callaway Germany Holdco GmbH (formerly Mainsee 1185. V V GmbH), a limited liability company incorporated under the laws of Germany, having its registered office in Frankfurt am Main, Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Frankfurt am Main, under HRB 113311 (the “**Purchaser**”); and
- (3) Callaway Golf Company, a company incorporated in the State of Delaware whose registered office is at 2180 Rutherford Road, Carlsbad, California 92008, United States of America (the “**Guarantor**”).

The Seller, the Purchaser and the Guarantor are collectively referred to as the “**Parties**”, each a “**Party**”.

**Whereas:**

- (A) On 29 November 2018 the Parties entered into a share sale and purchase agreement relating to the sale and purchase of all shares in JW Stargazer Holding GmbH (the “**SPA**”). Capitalized terms defined in the SPA shall have the same meaning in this SPA amendment, waiver and locked box deed (the “**Deed**”), unless otherwise defined herein.
- (B) The Purchaser has requested, and the Seller has accepted the request, to proceed to an earlier Closing than was provided for under the SPA and so accordingly the Parties wish to amend, modify or waive certain terms of the SPA to enable an earlier Closing.
- (C) In addition, the SPA provides for a Purchase Price, certain elements of which are to be determined as of the Effective Time.
- (D) The Parties now wish to agree that the Effective Time for the purpose of the SPA shall be 1 January 2019, 00:00 (midnight) (Central European Time). Therefore, the Parties wish to agree on certain locked box protection mechanisms for the time period between the Effective Time and the Closing Date in order to preserve the Group for the Purchaser.

**It is agreed as follows:**

**1. INTERPRETATION**

- 1.1 The headings and sub-headings in this Deed are inserted for convenience only and shall not affect the construction of this Deed.
- 1.2 Each of the schedules and exhibits to this Deed shall form part of this Deed.

1.3 References to this Deed include this Deed as amended or varied in accordance with its terms.

## 2. SPA AMENDMENTS, MODIFICATIONS AND WAIVERS

The Parties hereby agree that, in accordance with Clause 13.5 of the SPA, certain terms of the SPA shall be amended, modified or waived (as applicable) in accordance with the below:

### 2.1 Effective Time

- (a) Clause 1.1 of the SPA is amended by the replacement of the definition of "**Effective Time**" with the following definition:  
"**Effective Time**" means 1 January 2019, 00:00 (midnight) (Central European Time);".
- (b) The definition of "**Transaction Expenses**" in Clause 1.1 of the SPA shall be amended as follows: "...in each case to the extent not paid prior to the Closing Effective Time or otherwise taken into account in Third Party Indebtedness or Working Capital".
- (c) The computation of the Purchase Price and the Closing Statement shall be as of the Effective Time in accordance with the terms of Schedule 3 of the SPA.
- (d) The reference to "Closing" in paragraph 3.1(b) of Schedule 7 shall be read as being a reference to the "Effective Time" (as amended pursuant to the terms of this Deed).

### 2.2 Conditions Precedent

The Parties hereby agree to waive the Condition set out in Clause 4.1.4 of the SPA and accordingly the Purchaser agrees that the Seller (and relevant Group Companies) shall not be required to provide the audited financial statements of the Group Companies for the fiscal year ended 30 September 2018. The Seller acknowledges that all fees, costs and expenses incurred or reasonably expected to be incurred following the Closing in connection with the completion of such audited financial statements shall be included as a liability of the Seller in the Closing Statement provided that in no event shall the aggregate liability of the Seller in respect of the foregoing exceed EUR 260,000 excluding amounts paid prior to the Effective Time or accrued in the Closing Statement.

### 2.3 Pre-Closing Obligations

- (a) The Purchaser acknowledges and agrees to the Group not protesting the decision of the German Federal Tax Court regarding a challenge by JW STARGAZER Holding GmbH of the results of a tax audit completed in 2011 (for the years 2002-2008) with regard to a specific tax model (KGaA Model).
- (b) In respect of Clause 5.3.4 of the SPA, the Purchaser acknowledges that all material consents may not be obtained prior to Closing.
- (c) In respect of Clause 5.4.2 of the SPA, the Purchaser agrees that the Seller has provided the OpCo Facilities Repayment Notice and notified the Purchaser of the OpCo Facilities Repayment Amount and the OpCo Facilities Repayment Account notwithstanding any earlier requirement to do so.
- (d) In respect of Clause 5.4.3 of the SPA, the Purchaser agrees that the Seller has provided the OpCo Release Agreement together with the OpCo Facilities Repayment Notice and any other documents necessary pursuant to Clause 5.4.3 of the SPA notwithstanding any earlier requirement to do so.

## 2.4 Closing

- (a) Pursuant to Clause 6.1 of the SPA, the Parties agree that Closing shall take place on 4 January 2019, or on such other date as may be agreed between the Purchaser and the Seller in writing, notwithstanding the requirement for the last day of the calendar month or for the notification of fulfillment or waiver of the Conditions to be made at least three (3) Business Days prior to Closing.
- (b) The Purchaser acknowledges that it has received the notifications from the Seller pursuant to Clauses 6.3.2(d) and 6.4.1 of the SPA (copies of which are appended to this Deed), notwithstanding any requirement for these to be provided a certain number of Business Days prior to Closing.

## 2.5 PN7

- (a) The Purchaser undertakes that it shall not withhold or deduct any amount from the Purchase Price in respect of the Transaction potentially being taxable in accordance with PN7.
- (b) The Seller undertakes that it shall retain in its account, free and clear of any and all Encumbrances, the sum of EUR 10,000,000 (the "**Tax Escrow Amount**") until the expiration of the Tax Escrow Period (as defined below), and shall apply the Tax Escrow Amount to pay any Tax assessed by the relevant Tax Authority in accordance with and within the time period prescribed by applicable Tax laws and instructions from the relevant PRC PN7 Taxation Bureau. The Seller shall not declare, make or pay any dividend (including any deemed dividend) or distribution of, or otherwise transfer, assign or encumber in any manner whatsoever, the Tax Escrow Amount to or for the benefit of any person or entity (including any Seller Affiliate) during the Tax Escrow Period, or agree or commit to take any of the foregoing actions prior to the expiry of the Tax Escrow Period. The Seller shall as soon as reasonably practicable respond to any inquiries, investigations and/or requests for information, clarification or otherwise from the PRC PN7 Taxation Bureau in relation to the Transaction during the Tax Escrow Period. For the purposes of this Clause 2.5(b), "**Tax Escrow Period**" means the period commencing on Closing and ending on the earlier of (i) written confirmation (which may include, without limitation, a photograph or copy of the PRC PN7 Taxation Bureau's internal records or meeting minutes issued by EY China documenting the verbal confirmation provided by the PRC PN7 Taxation Bureau (or other Tax Authority) in charge) on the assessment conclusion of the PRC PN7 Taxation Bureau as to whether the Transaction is taxable in accordance with PN7 or (ii) the date falling six (6) months after Closing; provided that (A) if the PRC PN7 Taxation Bureau makes any inquiries, investigations or other requests in relation to the Transaction during the Tax Escrow Period, the Tax Escrow Period shall be extended until the Seller has fully responded to and addressed such inquiries, investigations or other requests and (B) if the PRC PN7 Taxation Bureau makes any claim or assessment during the Tax Escrow Period that the Transaction is taxable in accordance with PN7, the Tax Escrow Period shall be extended to such time as the Seller makes full payment of any applicable Tax (including interest and penalties) assessed by the relevant Tax Authority (provided, for the avoidance of doubt, that the Seller shall always be permitted to use any proportion of the Tax Escrow Amount during the Tax Escrow Period to pay any applicable Tax (including interest and penalties) assessed by the relevant Tax Authority) or there is written confirmation (which may include, without limitation, a photograph or copy of the PRC PN7 Taxation Bureau's internal records or meeting minutes issued by EY China documenting the verbal confirmation provided by the PRC PN7 Taxation Bureau (or other Tax Authority) in charge) on the assessment conclusion of the Tax Authority that the Tax is not due. The Seller shall as soon as reasonably practicable provide the Purchaser with copies of all communications to or from the Tax Authority as regards

### 3. LOCKED BOX CONCEPT

#### 3.1 Definitions

(a) **"Leakage"** means:

- (i) the declaration, making or payment of any dividend (including deemed dividend) or distribution of profits or assets, or any payments *in lieu* of any dividend or distribution, declared, paid or made, or agreed to be declared, paid or made, or any repurchase, redemption, repayment or return of share or loan capital or any other relevant securities paid or agreed to be paid, in each case by any member of the Group to any member of the Seller's Group;
- (ii) the payment of any management, shareholder, monitoring or other fees, charges or compensation of a similar nature paid or agreed to be paid by any member of the Group to or for the benefit of any member of the Seller's Group;
- (iii) any repayment of shareholder loans, Shareholder Debt or Third Party Indebtedness or any increase of or agreement to charge any interest on any shareholder loans, Shareholder Debt or Third Party Indebtedness or the agreement to charge any prepayment penalties;
- (iv) any payment by a member of the Group to a member of the Seller's Group;
- (v) the waiver of, or agreement to waive (whether conditional or not), by any member of the Group, any amount or other liability owed to that member of the Group by any member of the Seller's Group;
- (vi) the assumption of any liability, obligation or indemnity by any member of the Group in favor of, or any assets, rights, values or benefits transferred to or for the sole benefit of, any member of the Seller's Group;
- (vii) any agreement or commitment or commitment to agree to any of the above; and
- (viii) any Tax becoming payable by any Group Company (and which is not already specifically provided for in any of clauses 3.1(a)(i) to 3.1(a)(vii) inclusive above) as a result of any such matters less any Reliefs (other than a Purchaser's Relief) and Recoverable VAT; for purposes of this clause the term "after the Closing Date" in the definition of "Purchaser's Relief" shall be read as "on or after the Effective Time",

but does not include any Permitted Leakage.

(b) **"Permitted Leakage"** means any payment set out in Schedule 1 or any other payment made with the prior written consent, or at the written request, of the Purchaser.

- 3.2 The Seller undertakes to the Purchaser to procure that no Leakage will occur between the Effective Time and Closing (both inclusive), provided that the Seller shall have no liability to the Purchaser under this Clause 3.2 if the Closing does not occur.
- 3.3 The Seller shall indemnify the Purchaser on demand on a euro for euro basis for the total amount of any Leakage. To the extent that any Leakage has occurred and the Purchaser has made a

claim pursuant to Clause 3.4 hereof, the Purchaser may deduct the amount of such Leakage from the Purchase Price (including by deducting such Leakage amounts from any amounts owed at Closing pursuant to Clause 6.3.1 of the SPA or by recovering any such Leakage amounts from the Escrow Account in connection with any adjustment to the Purchase Price in accordance with Clause 7.4 of the SPA) on a euro for euro basis.

- 3.4 Any claim by the Purchaser pursuant to this Clause 3 must be made in writing to the Seller within one hundred and twenty (120) days following the Closing Date setting out the Purchaser's calculation of the Leakage amount and the Seller shall cease to be under any liability to the Purchaser under this Clause 3 in respect of all and any such claims not so notified to the Seller.
- 3.5 None of the limitations of liability contained in Schedule 6 of the SPA shall apply to any claim by the Purchaser pursuant to this Clause 3.

#### **4. MISCELLANEOUS**

- 4.1 This Deed is a Transaction Document for the purposes of the SPA.
- 4.2 Clauses 12 and 13 of the SPA (other than to the extent Clause 13.12.6 of the SPA has been modified by Clause 2.5 of this Deed) shall apply to this Deed *mutatis mutandis*.
- 4.3 Except as amended by this Deed, the SPA shall remain in full force and effect.
- 4.4 This Deed may be and shall be effective when each Party has executed a counterpart. Each counterpart shall constitute an original of this Deed, but all the counterparts shall together constitute one and the same instrument.

This Deed is entered into by the Parties as a deed and is delivered and takes effect on the date written at the beginning of this Deed.

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## SCHEDULE 1

### 1. PERMITTED LEAKAGE

- 1.1 Payment of transaction costs, transaction or retention or change of control bonuses or payments to employees in connection with the sale of the Shares to the extent that such transaction costs or payments are accrued for and reflected in the calculation of Third Party Indebtedness, Transaction Expenses or Working Capital as liabilities of the Seller;
- 1.2 Any item included as a liability of the Seller in the Closing Statement in the amount set out therein;
- 1.3 Payment of EUR 5,959,170.57 by (or on behalf of) the Company to the Seller at (or immediately prior to) Closing in connection with repayment of Shareholder Debt; and
- 1.4 Any payment or incurrence of any amount of Tax in respect of any matter set out in paragraphs 1.1 to 1.3 above if and to the extent such Tax is included as a liability of the Seller in the Closing Statement or accrued for and reflected in the calculation of Third Party Indebtedness, Transaction Expenses or Working Capital as a liability of the Seller.

/s/ Richard Cotter

and /s/ Catherine Trapani

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Class A Director

Class B Director

EXECUTED as a deed by Outdoor Holdings GP

SA

Acting as sole corporate manager

For and on behalf of Paw Luxco III S.à.r.l.

**EXECUTED and delivered**  
**as a deed** by Patrick S. Burke  
Managing Director of  
Callaway Germany Holdco GmbH  
in the presence of:

)  
)  
)  
)/s/ Patrick S. Burke

/s/ Brian P. Lynch  
Brian P. Lynch  
c/o Callway Golf Company  
2180 Rutherford Road  
Carlsbad, California 92008

Signature of Witness  
Name of Witness  
Address of Witness

Occupation of Witness

Senior Vice President, Chief  
Financial Officer, General  
Counsel and Corporate Secretary  
of Callaway Golf Company

**EXECUTED and delivered** )  
**as a deed** by Brian P. Lynch )  
Senior Vice President, Chief Financial )  
Officer, General Counsel and Corporate )  
Secretary of Callaway Golf Company )  
in the presence of: )  
  )    /s/ Brian P. Lynch  
  )

/s/ Patrick S. Burke \_\_\_\_\_  
Patrick S. Burke  
c/o Callway Golf Company  
2180 Rutherford Road  
Carlsbad, California 92008

Signature of Witness  
Name of Witness  
Address of Witness

Managing Director of  
Callaway Germany Holdco GmbH

Occupation of Witness

EXECUTION VERSION

CREDIT AGREEMENT

Dated as of January 4, 2019

among

CALLAWAY GOLF COMPANY,

as the Borrower,

BANK OF AMERICA, N.A.,  
as Administrative Agent,

MUFG UNION BANK, N.A.

SUNTRUST ROBINSON HUMPHREY, INC.,

as Co-Syndication Agents,

and

The Other Lenders Party Hereto

BANK OF AMERICA, N.A.,

JPMORGAN CHASE BANK, N.A.

MUFG UNION BANK, N.A.

SUNTRUST ROBINSON HUMPHREY, INC.

as Joint Lead Arrangers and Joint Bookrunners

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## TABLE OF CONTENTS

<u>Section</u>		<u>Page</u>
<b>ARTICLE I.</b>	<b>DEFINITIONS AND ACCOUNTING TERMS</b>	1
1.01	Defined Terms	1
1.02	Other Interpretive Provisions	39
1.03	Accounting Terms	40
1.04	Rounding	41
1.05	Times of Day	41
1.06	[Reserved]	41
1.07	Currency Equivalents Generally	41
1.08	Interest Rates	41
1.09	Limited Condition Acquisitions	41
1.10	Pro Forma Calculations	42
<b>ARTICLE II.</b>	<b>THE COMMITMENTS AND CREDIT EXTENSIONS</b>	43
2.01	The Loans	43
2.02	Borrowings, Conversions and Continuations of Loans	43
2.03	[Reserved]	45
2.04	[Reserved]	45
2.05	Prepayments	45
2.06	Termination or Reduction of Commitments	48
2.07	Repayment of Loans	48
2.08	Interest	48
2.09	Fees	48
2.10	Computation of Interest and Fees	49
2.11	Evidence of Debt	49
2.12	Payments Generally; Administrative Agent's Clawback	49
2.13	Sharing of Payments by Lenders	51
2.14	Amend and Extend Transactions	52
2.15	Increase in Commitments	53
2.16	Refinancing Amendments	56
2.17	MIRE Event	57
<b>ARTICLE III.</b>	<b>TAXES, YIELD PROTECTION AND ILLEGALITY</b>	57
3.01	Taxes	57
3.02	Illegality	61
3.03	Inability to Determine Rates	62
3.04	Increased Costs; Reserves on Eurodollar Rate Loans	64
3.05	Compensation for Losses	65
3.06	Mitigation Obligations; Replacement of Lenders	66
3.07	Survival	66

<b>ARTICLE IV. CONDITIONS PRECEDENT TO BORROWINGS</b>	<b>66</b>
4.01 Conditions of Initial Borrowing	67
4.02 Conditions to All Borrowings	69
<b>ARTICLE V. REPRESENTATIONS AND WARRANTIES</b>	<b>70</b>
5.01 Existence, Qualification and Power; Compliance with Applicable Laws	70
5.02 Authorization; No Contravention	70
5.03 Governmental Authorization; Other Consents	71
5.04 Binding Effect	71
5.05 Financial Statements; No Material Adverse Effect	71
5.06 Litigation	72
5.07 No Default	72
5.08 Ownership of Property; Liens	72
5.09 Environmental Compliance	72
5.10 Insurance	72
5.11 Taxes	72
5.12 ERISA Compliance	73
5.13 Subsidiaries; Equity Interests; Loan Parties	74
5.14 Margin Regulations; Investment Company Act	74
5.15 Disclosure	74
5.16 Compliance with Laws	74
5.17 Intellectual Property; Licenses, Etc	75
5.18 Solvency	75
5.19 [Reserved]	75
5.20 Labor Matters	75
5.21 OFAC	75
5.22 Anti-Corruption Laws	75
5.23 USA PATRIOT Act	75
5.24 Beneficial Ownership Certificate	75
5.25 Liens; Security Interests in the Collateral	76
<b>ARTICLE VI. AFFIRMATIVE COVENANTS</b>	<b>76</b>
6.01 Financial Statements	76
6.02 Certificates; Other Information	77
6.03 Notices	79
6.04 Payment of Obligations	80
6.05 Preservation of Existence, Etc	80
6.06 Maintenance of Properties	80
6.07 Maintenance of Insurance	80
6.08 Compliance with Laws	81
6.09 Books and Records	81
6.10 Inspection Rights	81
6.11 Use of Proceeds	82
6.12 Additional Guarantors and Collateral	82

6.13	Further Assurances	84
6.16	Maintenance of Ratings	85
6.17	Conference Calls	85
6.18	Post-Closing Requirements	85
<b>ARTICLE VII. NEGATIVE COVENANTS</b>		<b>85</b>
7.01	Liens	85
7.02	Indebtedness	87
7.03	Investments	90
7.04	Fundamental Changes	91
7.05	Dispositions	92
7.06	Restricted Payments	93
7.07	Change in Nature of Business	94
7.08	Transactions with Affiliates	94
7.09	Burdensome Agreements	95
7.10	Organization Documents	95
7.11	Tax Consolidation	95
7.12	Accounting Changes	95
7.13	Activities of uPlay	95
7.14	[Reserved]	96
<b>ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES</b>		<b>96</b>
8.01	Events of Default	96
8.02	Remedies upon Event of Default	98
8.03	Application of Funds	98
<b>ARTICLE IX. ADMINISTRATIVE AGENT</b>		<b>99</b>
9.01	Appointment and Authority	99
9.02	Rights as a Lender	100
9.03	Exculpatory Provisions	100
9.04	Reliance by Administrative Agent	101
9.05	Delegation of Duties	101
9.06	Resignation of Administrative Agent	102
9.07	Non-Reliance on Administrative Agent and Other Lenders	103
9.08	No Other Duties, Etc	103
9.09	Administrative Agent May File Proofs of Claim; Credit Bidding	103
9.10	Collateral and Guaranty Matters	104
9.11	Secured Cash Management Agreements and Secured Hedge Agreements	105
9.12	Certain ERISA Matters	106
<b>ARTICLE X. MISCELLANEOUS</b>		<b>107</b>
10.01	Amendments, Etc	107
10.02	Notices; Effectiveness; Electronic Communications	109
10.03	No Waiver; Cumulative Remedies; Enforcement	111

10.04	Expenses; Indemnity; Damage Waiver	111
10.05	Payments Set Aside	113
10.06	Successors and Assigns	114
10.07	Treatment of Certain Information; Confidentiality	120
10.08	Right of Setoff	121
10.09	Interest Rate Limitation	121
10.10	Counterparts; Integration; Effectiveness	121
10.11	Survival of Representations and Warranties	122
10.12	Severability	122
10.13	Replacement of Lenders	122
10.14	Governing Law; Jurisdiction; Etc	123
10.15	Waiver of Jury Trial	124
10.16	No Advisory or Fiduciary Responsibility	124
10.17	Electronic Execution of Assignments and Certain Other Documents	125
10.18	USA PATRIOT Act	125
10.19	Acknowledgement and Consent to Bail-In of EEA Financial Institutions	125

## SCHEDULES

2.01	Commitments and Applicable Percentages
5.08(b)(i)	Material Real Property
5.09	Environmental Matters
5.12	ERISA Matters
5.13	Subsidiaries and Other Equity Investments; Loan Parties
5.17	Intellectual Property Matters
5.20	Labor Matters
6.12	Guarantors
6.18	Post-Closing Requirements
7.01	Existing Liens
7.02	Existing Indebtedness
7.03	Existing Investments
10.02	Administrative Agent's Office, Certain Addresses for Notices

## EXHIBITS

### *Form of*

A	Committed Loan Notice
B	Form of Term Note
C	Assignment and Assumption
D	Administrative Questionnaire
E	Guaranty
F	Security Agreement
G	Perfection Certificate
H-1	U.S. Tax Compliance Certificate

H-2	U.S. Tax Compliance Certificate
H-3	U.S. Tax Compliance Certificate
H-4	U.S. Tax Compliance Certificate
I	Solvency Certificate
J	Auction Procedures
K	Affiliate Assignment Agreement
L	ABL Intercreditor Agreement
M	Compliance Certificate

## CREDIT AGREEMENT

This CREDIT AGREEMENT (“**Agreement**”) is entered into as of January 4, 2019, among CALLAWAY GOLF COMPANY (the “**Borrower**”), a Delaware corporation, each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”), and BANK OF AMERICA, N.A., as Administrative Agent.

### PRELIMINARY STATEMENTS:

Pursuant to that certain Share Sale and Purchase Agreement, dated as of November 29, 2018 (together with all exhibits, annexes and schedules thereto, as amended, restated, supplemented or otherwise modified from time to time, the “**Purchase Agreement**”), by and among the Borrower, Mainsee 1185. V V GmbH and Paw Luxco III S.à.r.l., a private limited liability company (société à responsabilité limitée) incorporated under the laws of the Grand Duchy of Luxembourg, the Borrower intends to acquire (the “**Closing Date Acquisition**”) all of the issued and outstanding shares of issued share capital of JW Stargazer Holding GmbH (the “**Acquired Business**”).

To effect the Closing Date Acquisition, the Borrower will consummate the transactions contemplated by the Purchase Agreement.

Immediately prior to the consummation of the Closing Date Acquisition, the Borrower has requested from the Lenders a credit extension in the form of a term B loan facility in an aggregate principal amount up to \$480,000,000, and the Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

Immediately following the initial funding of the Term Loans, a portion of the proceeds of the Term Loans will be used to finance the Closing Date Acquisition and the fees and expenses incurred in connection with the Transaction and for working capital and general corporate purposes.

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

### **ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS**

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

“ABL Agent” means Bank of America, N.A., as administrative agent under the ABL Credit Agreement or any successor thereto acting in such capacity.

“ABL Credit Agreement” means that the Third Amended and Restated Loan and Security Agreement, dated as of November 20, 2017, as amended by the First Amendment to Third Amended and Restated Loan and Security Agreement, dated as of November 29, 2018, among the Borrower, Callaway Golf Sales Company, a California corporation, Callaway Golf Ball Operations, Inc., a Delaware corporation, OGIO International Inc., a Utah corporation, Travis

Mathew Retail, LLC, a California limited liability company, travisMathew, LLC, a California limited liability company, Callaway Golf Canada Ltd., a Canada corporation, Callaway Golf Europe Ltd., a company organized under the laws of England (registered number 02756321), the other obligors from time to time party thereto, the financial institutions from time to time party thereto as lenders, and as further amended, supplemented, restated, amended and restated, extended or otherwise modified from time to time.

“ABL Intercreditor Agreement” means that certain ABL Intercreditor Agreement, dated as of the Closing Date, as amended, supplemented, restated, amended and restated, extended or otherwise modified from time to time, by and among the Administrative Agent, the ABL Agent and the other parties thereto from time to time, substantially in the form of Exhibit L.

“ABL Loan Documents” has the meaning assigned to the term “Loan Documents” (or similar term) in the ABL Credit Agreement.

“ABL Priority Collateral” has the meaning assigned to such term in the ABL Intercreditor Agreement.

“Acquired Business” has the meaning specified in the Preliminary Statements.

“Act” has the meaning specified in Section 10.18.

“Additional Commitment Lender” has the meaning specified in Section 2.14(c).

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“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 to the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit D or any other form approved by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Affiliate Assignment Agreement” means an Assignment and Assumption substantially in the form of Exhibit K, with such amendments or modifications as may be approved by Administrative Agent.

“Agency Fee Letter” means the letter agreement, dated November 29, 2018, between the Borrower and the Administrative Agent.

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” means this Credit Agreement.

**All-in Yield** means, as to any Loans (or other Indebtedness, if applicable), the yield thereon to Lenders (or other lenders, as applicable) providing such Loans (or other Indebtedness, if applicable) in the primary syndication thereof, whether in the form of interest rate, margin, original issue discount, upfront fees, rate floors or otherwise; *provided*, that original issue discount and upfront fees shall be equated to interest rate in a manner consistent with generally accepted financial practice based on an assumed four year average life (or, if less, the stated life to maturity at the time of the incurrence of such Loans or other Indebtedness, if applicable); *provided, further*, that “All-in Yield” shall not include arrangement, commitment, underwriting, structuring or similar fees (regardless of whether paid in whole or in part to any or all lenders), other fees not paid generally to all lenders of such Loans (or other Indebtedness, if applicable) and customary consent fees for an amendment paid generally to consenting lenders; and provided, further, any Indebtedness that is fixed rate Indebtedness shall, for the purpose of determining the “All-In Yield,” be swapped to a floating rate on a customary match maturity basis.

**Anti-Corruption Laws** means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

**Anti-Terrorism Laws** means any laws relating to terrorism or money laundering, including the Patriot Act.

**Applicable Law** means, as to any Person, all applicable Laws binding upon such Person or to which such a Person is subject.

**Applicable Percentage** with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by (i) on or prior to the Closing Date, such Term Lender’s Commitment at such time, and (ii) thereafter, the principal amount of such Term Lender’s Term Loans at such time. The initial Applicable Percentage of each Lender in respect of the Term Facility 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 3.50% per annum for Base Rate Loans and 4.50% per annum for Eurodollar Rate Loans.

**Approved Fund** means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**Asset Acquisition** means (1) an Investment by the Borrower or any Subsidiary in any other Person if, as a result of such Investment, such Person shall become a Subsidiary, or shall be merged with or into the Borrower or any Subsidiary or (2) the acquisition by the Borrower or any Subsidiary of all or substantially all of the assets or equity interests of any other Person or any division or line of business of any other Person.

**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 Administrative Agent, in substantially the form of

Exhibit C or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

**“Attributable Indebtedness”** means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease and (c) all Synthetic Debt of such Person.

**“Auction”** has the meaning specified in Section 10.06(f).

**“Auction Manager”** means (a) either the Administrative Agent or any of its respective Affiliates or (b) any other financial institution or advisor agreed by the Borrower and the Administrative Agent (whether or not an affiliate of the Administrative Agent) to act as an arranger in connection with any repurchases pursuant to Section 10.06(f).

**“Auction Procedures”** has the meaning specified in Exhibit J.

**“Audited Financial Statements”** means (A) with respect to the fiscal years ending December 31, 2015, December 31, 2016 and December 31, 2017, the consolidated balance sheets of the Borrower and its Subsidiaries (excluding the Acquired Business) and (B) with respect to the fiscal years ending September 30, 2015, September 30, 2016 and September 30, 2017, the consolidated balance sheets of the Acquired Business, in each case, as of the end of such fiscal year and related consolidated statements of operations, cash flows and shareholders’ equity.

**“Available Amount”** means at any time (the “Reference Time”) an amount equal to, without duplication:

- (a) an amount equal to 50% of the Consolidated Net Income of the Borrower for the period (taken as one accounting period) from January 1, 2019 to the end of the Borrower’s most recently ended fiscal quarter for which financial statements have been delivered pursuant to Section 6.01 at the Reference Time, or, in case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit; plus
- (b) the net cash proceeds of any sale of Qualified Equity Interests by, or capital contribution to the common equity of, the Borrower and not utilized as the basis for any other Restricted Payment, Investment or prepayment of Indebtedness hereunder; minus
- (c) the cumulative amount of Restricted Payments made with the Available Amount from and after the Closing Date and on or prior to such time; minus
- (d) the cumulative amount of Investments made with the Available Amount from and after the Closing Date and on or prior to such time (net of any dividends, distributions, profits, returns or similar amounts in respect of any such Investments (not to exceed the original amount of such Investments)).

**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 Product** means any of the following products, services or facilities extended to the Borrower or any Restricted Subsidiary by a Lender or any of its Affiliates: (a) products under a Cash Management Agreement; (b) products under Swap Contracts; (c) commercial credit card and merchant card services; (d) purchase cards (including so-called “procurement cards” or “P-cards”), and (e) other banking products or services as may be requested by the Borrower or any Restricted Subsidiary unless otherwise agreed in writing between the Borrower or such Restricted Subsidiary and the provider of such products or services.

**Bank Product Debt** means Indebtedness and other obligations of the Borrower or any Restricted Subsidiary relating to Bank Products.

**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”, and (c) the Eurodollar Rate 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 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 Term Loan that bears interest based on the Base Rate.

**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”.

**Bona Fide Debt Fund** means any fund or investment vehicle that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and other similar extensions of credit in the ordinary course.

**Borrower** has the meaning specified in the introductory paragraph hereto.

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

**Borrowing** means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01.

**Borrowing Base** means, as of any date, an amount equal to (v) (i) as of the date of determination, 90% of the net book value of accounts receivable of the Borrower and its Restricted Subsidiaries plus (w) as of the applicable date of determination, 75% of the net book value of inventory of the Borrower and its Restricted Subsidiaries plus (x) as of the applicable date of determination, 80% of the fair market value of the owned real estate of the Borrower and its Restricted Subsidiaries that is not Term Loan Collateral (as defined in the ABL Intercreditor Agreement) and that is pledged on a first-priority basis under the ABL Credit Agreement plus (y) 50% of the net orderly liquidation value of the trademarks owned by the Borrower and its Restricted Subsidiaries that are pledged on a first-priority basis under the ABL Credit Agreement plus (z) 100% of the amount of cash pledged under the ABL Credit Agreement as of the applicable date of determination, in each case, as of the date of the most recent balance sheet included in the then most recent financial statements delivered pursuant to this Credit Agreement (with accounts receivable and inventory calculated on the basis that all Investments, Asset Acquisitions, Dispositions, mergers, consolidations and disposed operations that have been made by the Borrower and its Restricted Subsidiaries prior to or substantially contemporaneous with the date of any calculation shall be included or excluded, as the case may be, on a pro forma basis with such calculations made in good faith by a Responsible Officer of the Borrower).

**Business Day** means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

**Capital Expenditures** means, all liabilities incurred or expenditures made by the Borrower or a Restricted Subsidiary for the acquisition of fixed assets, or any improvements, replacements, substitutions or additions thereto with a useful life of more than one year.

**Capitalized Lease** means any lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

**Cash Equivalents** (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the United States government, maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by Bank of America or a commercial bank organized under the laws of the United States (or any state or district of the United States), rated A-1 (or better) by

S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) entered into with any bank described in clause (b); (d) commercial paper issued by Bank of America or rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within nine months of the date of acquisition; and (e) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least \$500,000,000 and has the highest rating obtainable from either Moody's or S&P.

**Cash Management Agreement** means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

**Cash Management Bank** means any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

**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.

**CERCLA** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

**CFC** means a Person that is a controlled foreign corporation under Section 957 of the Code.

**Change in Law** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, 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; 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 or in the implementation thereof 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, issued or implemented.

**Change of Control** means the earliest to occur of (a) an event or series of events by which 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) 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 35% or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right), (b) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole, to any Person, (c) the occurrence of any “Change of Control” (or any comparable term) in any document pertaining to the ABL Credit Agreement, including any refinancings thereof or (d) the adoption of a plan relating to the liquidation or dissolution of the Borrower.

“Class” (a) when used in reference to any Loans or Borrowing, refers to whether such Loans or the Loans comprising such Borrowing, are Term Loans, Incremental Term Loans established as a new Class of Loans, Extended Term Loans established as a new Class of Loans or Refinancing Term Loans established as a new Class of Loans, (b) when used in reference to any Commitments, refers to whether such Commitment is in respect of a commitment to make Term Loans, Incremental Term Loans of a given Class, Extended Term Loans of a given Class or Refinancing Term Loans of a given Class, and (c) when used in reference to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Incremental Term Loans, Extended Term Loans or Refinancing Term Loans that have different terms and conditions shall be construed to be in different Classes.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“Closing Date Acquisition” has the meaning specified in the Preliminary Statements.

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Collateral” means all of the “Collateral” and “Mortgaged Property” or “Trust Property” or other similar term referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Security Agreement, the ABL Intercreditor Agreement, the Intellectual Property Security Agreements, the Mortgages, each of the collateral assignments, control agreements, Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means, as to each Term Lender, its obligation to make Term Loans to the Borrower pursuant to Section 2.01 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 under the caption “Commitment” or opposite such caption 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 as increased, extended or replaced as provided in Section 2.14, 2.15 and 2.16).

**“Committed Loan Notice”** means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which 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.

**“Compliance Certificate”** means a certificate substantially in the form of Exhibit M.

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

**“Consolidated EBITDA”** means, for any period, for the Borrower and its Restricted Subsidiaries on a consolidated basis, an amount equal to the sum of (without duplication) (a) Consolidated Net Income for such period plus (b) the following to the extent deducted in calculating such Consolidated Net Income: (i) interest expense for such period, (ii) the provision for federal, state, local and foreign taxes based on income, profits or capital payable or accrued for such period, including, without limitation, franchise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations, (iii) the amount of depreciation and amortization expense for such period (including amortization of intangible assets and deferred financing fees or costs), (iv) extraordinary or non-recurring charges, expenses or losses, (v) other non-cash charges, expenses or losses, (vi) non-cash stock option and other equity-based compensation expenses, (vii) fees and expenses relating to the Transaction, (viii) any net loss for such period attributable to the early extinguishment of Indebtedness or to hedging obligations or other derivative instruments, (ix) any net loss from disposed, abandoned or discontinued operations, (x) the non-cash portion of straight-line rent expense to the extent not representing a future cash charge and (xi) fees and expenses incurred or any amortization thereof in connection with any acquisition, investment, recapitalization, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument (in each case, including 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, to the extent not otherwise prohibited hereunder plus (c) the amount of pro forma cost savings and synergies (net of actual amounts realized) that are reasonably identifiable and factually supportable (in the good faith determination of the Borrower) related to any Pro Forma Transaction that is expected to be realized within twelve (12) months after the consummation of such Pro Forma Transaction, in each case net of the amount of actual benefits realized during such period from such Investment or asset disposition, provided that the aggregate amount added to Consolidated EBITDA for any period pursuant to this clause

(c) shall not exceed twenty percent (20%) of Consolidated EBITDA for such period (calculated prior to giving effect to this clause (c)), minus (d) the following to the extent added in calculating such Consolidated Net Income: (i) extraordinary or non-recurring income or gains; (ii) any net gain for such period attributable to the early extinguishment of Indebtedness or to hedging obligations or other derivative instruments; and (iii) any net gain from disposed, abandoned or discontinued operations. Consolidated EBITDA shall be calculated on a pro forma basis to the extent set forth in Section 1.10 to give effect to, among other things, any Permitted Acquisition.

**“Consolidated Net Income”** means, at any date of determination, the net income (or loss) of the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) the net income of any Restricted Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Restricted Subsidiary during such Measurement Period, except that the 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 (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Restricted Subsidiary, except that the Borrower’s equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Borrower or a Restricted Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Restricted Subsidiary, such Restricted Subsidiary is not precluded from further distributing such amount to the Borrower as described in clause (b) of this proviso).

**“Consolidated Tangible Assets”** means as of any date of determination, the Consolidated Total Assets of the Borrower and its Restricted Subsidiaries minus consolidated intangible assets of the Borrower and its Restricted Subsidiaries, all determined in accordance with GAAP.

**“Consolidated Total Assets”** means as of any date of determination, the consolidated total assets of the Borrower and its Restricted Subsidiaries as of such date, determined in accordance with GAAP.

**“Consolidated Total Net Leverage Ratio”** means, as of any date of determination, the ratio of (a) Funded Debt as of such date, less Unrestricted Cash of the Borrower and its Restricted Subsidiaries to (b) Consolidated EBITDA of the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period. For purposes of calculation of the Consolidated Total Net Leverage Ratio, not less than \$100,000,000 of Funded Debt will be deemed to be outstanding under the ABL Credit Agreement on each date of determination regardless of the actual amount outstanding thereunder on such date of determination.

**“Consolidated Working Capital”** means, at any date, the excess of (a) the sum of all amounts (other than cash and Cash Equivalents) that would, in conformity with GAAP, be set forth opposite the caption “total current assets” (or any like caption) on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries at such date over (b) the sum of all amounts that

would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries on such date, including deferred revenue but excluding, without duplication, (i) the current portion of any Funded Debt, (ii) the current portion of accrued interest and (iii) the current portion of current and deferred income taxes; provided that for the purposes of calculating increases or decreases of Consolidated Working Capital in the definition of "Excess Cash Flow", any changes in current assets or current liabilities shall be excluded to the extent arising as a result of (x) the effect of fluctuations in the amount of recognized assets or liabilities under Swap Contracts, (y) any reclassification of assets or liabilities between current and noncurrent in accordance with GAAP (other than as a result of the passage of time) and (z) the effects of acquisition method accounting.

**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.

**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.

**Declined Prepayment Amount** has the meaning set forth in Section 2.05(b)(vii).

**Declining Term Lender** has the meaning set forth in Section 2.05(b)(vii).

**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 when used with respect to Obligations, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans under the Term Facility plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum.

**Delaware LLC** means any limited liability company organized or formed under the laws of the State of Delaware.

**Delaware Divided LLC** means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

**Delaware LLC Division** means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Designated Non-Cash Consideration” means the Fair Market Value of non-cash consideration received by the Borrower or any of its Restricted Subsidiaries in connection with a Disposition, less the amount of cash received in connection with a subsequent disposition of or collection on such Designated Non-Cash Consideration.

“Designation” has the meaning assigned to such term in the definition of “Unrestricted Subsidiary.”

“Designation Amount” has the meaning assigned to such term in the definition of “Unrestricted Subsidiary.”

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property 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 and including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division.

“Disqualified Equity Interests” of any Person means any class of Equity Interests of such Person that, by its terms, or by the terms of any related agreement or of any security into which it is convertible, puttable or exchangeable, is, or upon the happening of any event or the passage of time would be, required to be redeemed by such Person, whether or not at the option of the holder thereof, or matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, in whole or in part, in each case on or prior to the date that is 91 days after the Maturity Date; provided, however, that any class of Equity Interests of such Person that, by its terms, authorizes such Person to satisfy in full its obligations with respect to the payment of dividends or upon maturity, redemption (pursuant to a sinking fund or otherwise) or repurchase thereof or otherwise by the delivery of Equity Interests that are not Disqualified Equity Interests, and that is not convertible, puttable or exchangeable for Disqualified Equity Interests or Indebtedness, will not be deemed to be Disqualified Equity Interests so long as such Person satisfies its obligations with respect thereto solely by the delivery of Equity Interests that are not Disqualified Equity Interests; provided, further, however, that any Equity Interests that would not constitute Disqualified Equity Interests but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the Borrower to redeem such Equity Interests upon the occurrence of a change of control, asset sale or casualty or condemnation event occurring prior to the 91st day after the Maturity Date shall not constitute Disqualified Equity Interests if such Equity Interests specifically provide that the Borrower will not redeem any such Equity Interests pursuant to such provisions prior to the Obligations (other than contingent obligations not yet accrued and payable) having been paid in full.

“Disqualified Institution” means (i) those Persons who are bona fide competitors of the Borrower and its subsidiaries that have been identified in writing by the Borrower to the Lead Arrangers prior November 29, 2018, and (ii) in the case of clause (i), any of their Affiliates (other

than Bona Fide Debt Funds) that are either (x) identified in writing by the Borrower from time to time or (y) clearly identifiable solely on the basis of such Affiliates' names; *provided*, that the Borrower may after the Closing Date, supplement in writing to the Administrative Agent from time to time the list of bona fide competitors of the Borrower and its Subsidiaries pursuant to clause (i) above; *provided, further*, that any such additional designation (or identification of an Affiliate pursuant to clause (ii)(x) above) shall not apply retroactively to any prior allocation, assignment or participation.

“Dollar” 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.

“DQ List” has the meaning specified in Section 10.06(g)(iv).

“ECF Percentage” shall mean (i) with respect to any fiscal year at the end of which the Senior Secured Net Leverage Ratio is greater than 1.75 to 1.00, 50%; (ii) with respect to any fiscal year at the end of which the Senior Secured Net Leverage Ratio is less than or equal to 1.75 to 1.00 and greater than 1.25 to 1.00, 25% and (iii) with respect to any fiscal year at the end of which the Senior Secured Net Leverage Ratio is less than or equal to 1.25 to 1.00, 0%.

“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 delegatee) 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 10.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)). For the avoidance of doubt, any Disqualified Institution is subject to Section 10.06(g).

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetland, flora and fauna.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws (including common law), regulations, standards, ordinances, rules, judgments, interpretations, orders, decrees, permits, agreements or governmental restrictions relating to pollution or the protection of the Environment or human health (to the extent related to exposure to hazardous materials), including those relating to the manufacture, generation, handling, transport, storage,

treatment, Release or threat of Release of Hazardous Materials, air emissions and discharges to waste or public systems.

**“Environmental Liability”** means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, directly or indirectly 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) 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 Release”** means a release as defined in CERCLA or under any other Environmental Law.

**“Equity Interests”** means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

**“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 the 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; (b) the withdrawal of the 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 the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent or in reorganization (within the meaning of Title IV of ERISA); (d) the filing of a notice of intent to terminate or the treatment of a Pension 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; (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 plan in endangered or critical status within the meaning of Sections 430 or 432 of the Code or Sections 303 or 305 of ERISA; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; or (i) a failure by the

Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

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

**"Eurodollar Rate"** means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate 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 Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day; and

(c) if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

**"Eurodollar Rate Loan"** means a Term Loan that bears interest at a rate based on clause (a) of the definition of the Eurodollar Rate.

**"Event of Default"** has the meaning specified in Section 8.01.

**"Excess Cash Flow"** means, for any Excess Cash Flow Period, an amount equal to the excess of:

(a) the sum, without duplication, of:

- (i) Consolidated Net Income of the Borrower for such period,
- (ii) an amount equal to the amount of all noncash charges to the extent deducted in arriving at such Consolidated Net Income,
- (iii) decreases in Consolidated Working Capital and long-term account receivables for such period (other than any such decreases arising from acquisitions by the Borrower and its Restricted Subsidiaries completed during such period),
- (iv) the amount by which tax expense deducted in determining such Consolidated Net Income for such period exceeded taxes (including penalties and interest) paid in cash or tax reserves set aside or payable (without duplication) by the Borrower and its Restricted Subsidiaries in such period, and

(iv) an amount equal to the aggregate net noncash loss on the sale, lease, transfer or other disposition of assets by the Borrower and its Restricted Subsidiaries during such period (other than sales in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income; over

(b) the sum, without duplication, of:

(i) an amount equal to the amount of all noncash credits included in arriving at such Consolidated Net Income,

(ii) without duplication of amounts deducted in arriving at such Consolidated Net Income or pursuant to subclause (b)(xi) below in prior periods, the amount of Capital Expenditures made in cash during such period, except to the extent that such Capital Expenditures were financed with the proceeds of Indebtedness of the Borrower or its Restricted Subsidiaries (other than under any revolving credit facility),

(iii) the aggregate amount of all principal payments of Indebtedness of the Borrower and its Restricted Subsidiaries (including (x) the principal component of payments in respect of Capitalized Leases and (y) the amount of any scheduled repayment of Term Loans, but excluding all other prepayments of Term Loans (other than pursuant to Section 2.05(b)(ii) to the extent required due to a Disposition or Casualty Event that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase), and (z) all prepayments in respect of any revolving credit facility (other than the ABL Credit Agreement), but only to the extent there is an equivalent permanent reduction in commitments thereunder), except to the extent financed with the proceeds of other Indebtedness (other than under any revolving credit facility) of the Borrower or its Restricted Subsidiaries,

(iv) an amount equal to the aggregate net noncash gain on the sale, lease, transfer or other disposition of assets by the Borrower and its Restricted Subsidiaries during such period (other than sales in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

(v) increases in Consolidated Working Capital and long-term account receivables for such period (other than any such increases arising from acquisitions of a Person or business unit by the Borrower and its Restricted Subsidiaries during such period),

(vi) cash payments by the Borrower and the Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and the Restricted Subsidiaries other than Indebtedness,

(vii) without duplication of amounts deducted pursuant to subclause (b)(xi) below in prior periods, the amount of Investments and acquisitions (including earn-out payments) made during such period to the extent permitted under Section 7.03 (excluding Investments in (x) Cash Equivalents, (y)

Investment Grade Securities and (z) the Borrower or any of its Restricted Subsidiaries), except to the extent that such Investments and acquisitions were financed with the proceeds of Indebtedness (other than under any revolving credit facility) of the Borrower or its Restricted Subsidiaries,

(viii) the amount of Restricted Payments made in cash during such period to the extent permitted under clauses (d), (e), (f), (g) and (j) of Section 7.06, to the extent that such Restricted Payments were financed with internally generated cash flow of the Borrower and its Restricted Subsidiaries,

(ix) the aggregate amount of expenditures actually made by the Borrower and the Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period,

(x) 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 that are required to be made in connection with any prepayment of Indebtedness,

(xi) without duplication of amounts deducted in arriving at such Consolidated Net Income or deducted from Excess Cash Flow in prior periods, (A) the aggregate consideration required to be paid in cash by the Borrower or any of its Restricted Subsidiaries pursuant to binding contracts, letters of intent or purchase orders (the "Contract Consideration") entered into prior to or during such period relating to acquisitions or Capital Expenditures and (B) at the option of the Borrower, to the extent set forth in a certificate of a Responsible Officer delivered to the Administrative Agent prior to the relevant Excess Cash Flow Application Date, the aggregate amount of cash that is reasonably expected to be paid in respect of planned cash Capital Expenditures by the Borrower or any of its Restricted Subsidiaries ("Planned Capital Expenditures"), in each case to be consummated or made during the period of four consecutive fiscal quarters of the Borrower following the end of such period; provided that to the extent the aggregate amount of internally generated cash flow of the Borrower and its Restricted Subsidiaries actually utilized to finance such acquisitions, Capital Expenditures or Planned Capital Expenditures during such period of four consecutive fiscal quarters is less than the Contract Consideration or Planned Capital Expenditures, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters,

(xii) the amount of cash taxes paid in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period, and

(xiii) an amount equal to the aggregate net cash losses on the sale, lease, transfer or other disposition of assets by the Borrower and its Restricted

Subsidiaries during such period (other than sales in the ordinary course of business) to the extent deducted in determining Consolidated Net Income.

“Excess Cash Flow Application Date” has the meaning assigned to such term in Section 2.05(b)(i).

“Excess Cash Flow Period” means each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2019.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.11 and any other “keepwell, support or other agreement” for the benefit of such Guarantor and any and all guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means 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, 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) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender pursuant to a law in effect on the date on which (i) such Lender becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Extended Term Loans” means any Class of Term Loans the maturity of which shall have been extended pursuant to Section 2.14.

“Extending Lender” has the meaning specified in Section 2.14(e).

“Extension” has the meaning set forth in Section 2.14(a).

“Extension Amendment” means an amendment to this Agreement (which may, at the option of the Administrative Agent and the Borrower, be in the form of an amendment and restatement of this Agreement) among the Loan Parties, the applicable Extending Lenders and the Administrative Agent.

“Extension Offer” has the meaning specified in Section 2.14(a).

“Fair Market Value” means, with respect to any asset, as determined by the Borrower, the price (after taking into account any liabilities relating to such assets) that would be negotiated in an arm’s-length transaction for cash between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“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) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1).

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means the letter agreement, dated December 7, 2018, among the Borrower and the Lead Arrangers.

“First Lien Net Leverage Ratio” means, as of any date of determination, the ratio of (a) Funded Debt that is secured by any Lien on any assets or property of the Borrower on a pari passu or senior basis to the Liens securing the Obligations as of such date, less Unrestricted Cash of the Borrower and its Restricted Subsidiaries to (b) Consolidated EBITDA of the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period. For purposes of calculation of the First Lien Net Leverage Ratio, not less than \$100,000,000 of Funded Debt that is secured by a Lien on the assets or property of the Borrower on a pari passu or senior basis to the Liens securing the Obligations will be deemed to be outstanding under the ABL Credit Agreement on each date of determination regardless of the actual amount outstanding thereunder on such date of determination.

“Flood Documentation” means with respect to each improved Mortgaged Property, (i) a completed “life-of-loan” Federal Emergency Management Agency standard flood hazard determination (to the extent an improved Mortgaged Property has a building or mobile home located in a Special Flood Hazard Area, together with a notice about Special Flood Hazard Area

status and flood disaster assistance duly executed by the applicable Loan Party relating thereto) and (ii) a copy of, or a certificate as to coverage under, and a declaration page relating to, the insurance policies, along with a copy of the underlying policies (if requested by the Administrative Agent) required by Section 5.10 and the applicable provisions of the Collateral Documents, the property policy shall (A) be endorsed or otherwise amended to include a “standard” lender’s loss payable or mortgagee endorsement (as applicable), (B) the general liability policy shall name the Administrative Agent, on behalf of the Secured Parties, as additional insured, (C) sufficiently identify the property located in a Special Flood Hazard Area, the applicable flood zone designation and the flood insurance coverage and deductible relating thereto and (D) be otherwise in form and substance reasonably satisfactory to the Administrative Agent, subject to the provisions of Section 5.05.

**Flood Insurance Laws** means, collectively, (i) National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

**Foreign Lender** means a Lender that is not a U.S. Person.

**Foreign Plan** means any employee benefit plan or arrangement (a) maintained or contributed to by any Loan Party or Restricted Subsidiary that is not subject to the laws of the United States; or (b) mandated by a government other than the United States for employees of any Loan Party or Restricted Subsidiary.

**Foreign Subsidiary** means any Subsidiary other than a Domestic Subsidiary.

**FRB** means the Board of Governors of the Federal Reserve System of the United States.

**Fund** means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

**Funded Debt** means as of any date of determination, all Indebtedness for borrowed money of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP.

**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, however, that the term “Guarantee” shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee 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 guaranteee Person in good faith. The term **“Guarantee”** as a verb has a corresponding meaning.

**“Guarantors”** means, collectively, (a) the Restricted Subsidiaries of the Borrower listed on Schedule 6.12 and each other Restricted Subsidiary of the Borrower that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 6.12 and (b) with respect to (i) Obligations owing by any Loan Party (other than the Borrower) under any Secured Hedge Agreement or any Secured Cash Management Agreement and (ii) the payment and performance by each Specified Loan Party of its obligations under its Guaranty with respect to all Swap Obligations, the Borrower.

**“Guaranty”** means, collectively, the Guaranty made by the Guarantors in favor of the Secured Parties, substantially in the form of Exhibit E, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12.

**“Hazardous Materials”** means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants including petroleum or petroleum distillates, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other

substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person that, at the time it enters into a Swap Contract permitted under Article VI or VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract.

“HMT” has the meaning assigned to such term in the definition of “Sanction(s).”

“Immaterial Subsidiary” means at any time, any Subsidiary of the Borrower that is not a Material Subsidiary.

“Impacted Loans” has the meaning assigned to such term in Section 3.03(a).

“Increase Effective Date” has the meaning assigned to such term in Section 2.15.

“Increase Joinder” has the meaning assigned to such term in Section 2.15(b).

“Incremental Commitments” has the meaning assigned to such term in Section 2.15.

“Incremental Term Loan Maturity Date” has the meaning assigned to such term in Section 2.15(b)(iii).

“Incremental Term Loans” means any loans made pursuant to any Incremental Commitments.

“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) 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 and accrued expenses arising in the ordinary course of business);
- (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;

(f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person 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 specified in [Section 10.04\(b\)](#).

**“Information”** has the meaning specified in [Section 10.07](#).

**“Intellectual Property”** has the meaning specified in the Collateral Documents.

**“Intellectual Property Claim”** means any claim or assertion (whether in writing, by suit or otherwise) that the Borrower or any of its Restricted Subsidiary’s ownership, manufacture, use, marketing, sale or distribution of any inventory, equipment, intellectual property or other Property violates another Person’s intellectual property.

**“Intellectual Property Security Agreement”** has the meaning specified in [Section 4.01\(a\)\(vi\)](#).

**“Interest Payment Date”** means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Term Loan and the Maturity Date of the Term Facility; provided, however, 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, the last Business Day of each March, June, September and December and the Maturity Date of the Term Facility.

**“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, two, three or six months thereafter (in each case, subject to availability), as selected by the Borrower in its Committed Loan Notice, or such other period that

is twelve months or less requested by the Borrower and consented to by all the Term Lenders; 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, in the case of a Eurodollar Rate Loan, 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 pertaining to a Eurodollar Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
- (iii) no Interest Period shall extend beyond the Maturity Date.

**Investment** means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person. 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.

**Investment Grade Securities** means (a) securities issued or directly and fully guaranteed or insured by the government of the United States of America or any agency or instrumentality thereof (other than Cash Equivalents), (b) debt securities or debt instruments with a rating of BBB- or higher by S&P or Baa3 or higher by Moody's or the equivalent of such rating by such rating organization, or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any other nationally recognized securities rating agency, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its subsidiaries, (c) investments in any fund that invests exclusively in investments of the type described in clauses (a) and (b), which fund may also hold immaterial amounts of cash pending investment or distribution and (d) corresponding instruments in countries other than the United States of America customarily utilized for high quality investments, in each case, consistent with the Borrower's cash management and investment practices.

**IRS** means the United States Internal Revenue Service.

**Junior Debt** means Indebtedness for borrowed money, other than Indebtedness incurred under or pursuant to the ABL Credit Agreement, that is (x) unsecured, or (y) by its terms subordinated or junior in right of payment or security to the Obligations.

**Junior Debt Restricted Payment** means, any payment or other distribution (whether in cash, securities or other property), directly or indirectly made by the Borrower or any of its Restricted Subsidiaries, of or in respect of principal of or interest on any Junior Debt (or any refinancing thereof permitted under Section 7.02); provided, that the following shall not constitute a Junior Debt Restricted Payment:

- (a) any Permitted Refinancing;
- (b) payments of regularly scheduled interest and fees due thereunder, other non-principal payments thereunder, any mandatory prepayments of principal, interest and fees thereunder, scheduled payments thereon necessary to avoid the Junior Debt from constituting “applicable high yield discount obligations” within the meaning of Section 163(i)(l) of the Internal Revenue Code, and principal on the scheduled maturity date of any Junior Debt;
- (c) payments or distributions in respect of all or any portion of the Junior Debt with the proceeds from the substantially concurrent issuance, sale or exchange by the Borrower of Qualified Equity Interests; provided that such net cash proceeds are not included in any determination of the Available Amount; or
- (d) the conversion of any Junior Debt to Qualified Equity Interests of the Borrower; provided that such amounts are not included in any determination of the Available Amount.

“Latest Maturity Date” means, at any date of determination, the latest maturity date in respect of any Class of Term Loans, in each case then in effect on such date of determination.

“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.

“LCA Election” has the meaning specified in Section 1.09.

“LCA Test Date” has the meaning specified in Section 1.09.

“Lead Arrangers” means Bank of America, N.A., an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, JPMorgan Chase Bank, N.A., MUFG Union Bank, N.A. and SunTrust Robinson Humphrey, Inc., in their capacities as joint lead arrangers and bookrunners.

“Lender” has the meaning specified in the introductory paragraph hereto.

“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, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“LIBOR” has the meaning specified in the definition of Eurodollar Rate.

“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available

source providing such quotations as may be designated by the Administrative Agent from time to time).

**“LIBOR Successor Rate”** has the meaning specified in **Section 3.03(c)**.

**“LIBOR Successor Rate Conforming Changes”** has the meaning specified in **Section 3.03(c)**.

**“Lien”** means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, easement, right-of-way or other encumbrance on title to real property, 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 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).

**“Limited Condition Acquisition”** means any acquisition by the Borrower or one or more of its Restricted Subsidiaries permitted under this Agreement whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

**“Loan”** means an extension of credit by a Lender to the Borrower under **Article II** in the form of a Term Loan.

**“Loan Documents”** means this Agreement, including schedules and exhibits hereto, each Term Note, the Guaranty, the Collateral Documents and any amendments, modifications or supplements hereto or to any other Loan Document or waivers hereof or to any other Loan Document.

**“Loan Parties”** means, collectively, the Borrower and each Guarantor.

**“London Banking Day”** means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

**“Material Adverse Effect”** means (a) a material adverse effect upon, the results of operations, business, properties or financial condition of the Borrower and its Restricted Subsidiaries taken as a whole; or (b) a material adverse effect on (i) the ability of any Loan Party to perform its payment Obligations under any Loan Document to which it is a party or (ii) the rights and remedies available to, or conferred upon, the Administrative Agent and the Lenders, taken as a whole, under any Loan Documents.

**“Material Real Property”** means any fee-owned real property that is owned by any Loan Party with a fair market value in excess of \$15,000,000 (at the Closing Date or, with respect to fee-owned real property acquired after the Closing Date, at the time of acquisition, in each case, as reasonably estimated by the Borrower in good faith), other than the property located at 2180 Rutherford Road, Carlsbad, CA 92008.

**“Material Subsidiary”** means at any time, any Restricted Subsidiary of the Borrower (a) in which the aggregate Investments made by the Borrower and its Restricted Subsidiaries (excluding

Investments in the nature of intercompany receivables payable by such Restricted Subsidiary arising in the ordinary course of business for the sale of inventory and provision of services but, in the case of Investments in a Foreign Subsidiary, including Investments in Subsidiaries of such Foreign Subsidiary other than any such receivables) exceed \$20,000,000 or (b) that had net annual sales during the four fiscal quarters most recently ended (calculated on a pro forma basis after giving effect to any Asset Acquisition made during such period) of \$50,000,000 or more.

“Maturity Date” means January 4, 2026; provided, however, that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Maximum Incremental Amount” means the sum of (a) \$225,000,000 minus the aggregate principal amount of Incremental Term Loans and Permitted Alternative Incremental Facilities Debt previously established or incurred in reliance on this clause (a), plus (b) an unlimited amount so long as, in the case of this clause (b) only, on a pro forma basis (without giving effect to the application of proceeds therefrom and treating all Incremental Term Loans and Permitted Alternative Incremental Facilities Debt as secured by *pari passu* Liens on the Collateral whether or not actually secured), the First Lien Net Leverage Ratio would not exceed 2.25 to 1.00 (it being understood that the Borrower shall be deemed to have used amounts under clause (b) (to the extent compliant herewith) prior to utilization of amounts under clause (a)).

“Measurement Period” means, at any date of determination, the most recently completed four fiscal quarters of the Borrower or, if fewer than four consecutive fiscal quarters of the Borrower have been completed since the Closing Date, the fiscal quarters of the Borrower that have been completed since the Closing Date.

“MFN Protection” has the meaning specified in Section 2.15(b)(v).

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgages” shall mean the mortgages, deeds of trust, deeds to secure debt, leasehold mortgages, leasehold deeds of trust or leasehold deeds to secure debt and other similar security documents delivered pursuant to Section 6.12.

“Mortgage Policy” has the meaning specified in Section 6.12(c)(iii).

“Mortgaged Properties” shall mean, initially, the owned real properties of the Loan Parties specified on Schedule 5.08(b)(i), and, thereafter, shall include each other Material Real Property with respect to which a Mortgage is granted pursuant to Section 6.12.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the 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 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.

**“Net Cash Proceeds”** means:

(a) with respect to any Disposition or Casualty Event by the Borrower or any of its Restricted Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction or event (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction or event, including payments required under the ABL Credit Agreement with respect to ABL Priority Collateral (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by the Borrower or such Restricted Subsidiary in connection with such transaction or event and (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction or event as a result of any gain recognized in connection therewith; provided that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition or Casualty Event, the aggregate amount of such excess shall constitute Net Cash Proceeds; and

(b) with respect to the sale or issuance of any Equity Interest by the Borrower or any of its Restricted Subsidiaries, or the incurrence or issuance of any Indebtedness by the Borrower or any of its Restricted Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by the Borrower or such Restricted Subsidiary in connection therewith.

**“Non-Consenting Lender”** means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01 and (b) has been approved by the Required Lenders.

**“Non-Extending Lender”** has the meaning specified in Section 2.14(c).

**“Obligations”** means all 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, Secured Cash Management Agreement or Secured Hedge Agreement, in each case 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 and other amounts that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees, expenses and other amounts are allowed or allowable claims in such proceeding; provided that, without limiting the foregoing, the Obligations include (a) the obligation to pay principal, interest, charges, expenses, fees, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of the Loan Parties to reimburse any amount in respect of any of the foregoing that the Administrative Agent or any Lender, in each case in its sole discretion, may elect to pay or advance on behalf of the Loan Parties; provided further that the Obligations shall exclude any Excluded Swap Obligations.

“OFAC” means the Office of Foreign Assets Control of the U.S. Treasury Department.

“Off-Balance Sheet Liabilities” means, with respect to any Person, the (a) monetary obligations of such Person under a so-called synthetic lease, off-balance sheet or tax retention lease, if such obligations are considered indebtedness for borrowed money for tax purposes but such lease is classified as an operating lease under GAAP, but in any case excluding any obligations (i) that are liabilities of any such Person as lessee under any operating lease so long as the terms of such operating lease do not require any payment by or on behalf of such Person at termination of such operating lease pursuant to a required purchase by or on behalf of such Person of the property or assets subject to such operating lease or (ii) under any arrangement pursuant to which such Person guarantees or otherwise assures any other Person of the value of the property or assets subject to such operating lease and (b) the monetary obligations under any sale and leaseback transaction which does not create a liability on the consolidated balance sheet of such Person.

“Organization Documents” means, (a) with respect to any corporation, the charter or 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 or limited liability agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

“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.

“Outstanding Amount” means on any date, the aggregate outstanding principal amount of Term Loans after giving effect to any borrowings and prepayments or repayments of Term Loans occurring on such date.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

**Pension Funding Rules**" means the rules of the Code and ERISA regarding minimum funding standards with respect to Pension Plans and set forth in Sections 412 and 430 of the Code and Sections 302 and 303 of ERISA.

**Pension Plan**" means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower or any ERISA Affiliate or with respect to which the Borrower or any ERISA Affiliate has any liability and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

**Perfection Certificate**" shall mean a certificate in the form of Exhibit G or any other form approved by the Administrative Agent, as the same shall be supplemented from time to time by a supplement thereto in form reasonably acceptable to the Administrative Agent.

**Permitted Acquisition**" means any Asset Acquisition by the Borrower or any of its Restricted Subsidiaries where:

(a) the Board of Directors or authorized management committee of the Borrower or of the applicable Restricted Subsidiary and of the Person whose assets or Equity Interests are being acquired has approved such Asset Acquisition;

(b) the business acquired in connection with such Asset Acquisition is engaged in one or more of the leisure goods, products and services businesses generally or any business activities that are substantially similar, related, incidental or complementary thereto;

(c) both before and after giving effect to such Asset Acquisition and the Loans (if any) requested to be made in connection therewith, each of the representations and warranties in the Loan Documents is true and correct in all material (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) respects (except (i) any such representation or warranty which relates to a specified prior date and (ii) to the extent the Administrative Agent has been notified in writing by the Borrower that any representation or warranty is not correct and the Required Lenders have explicitly waived in writing compliance with such representation or warranty) and no Default or Event of Default exists, will exist, or would result therefrom;

(d) after giving effect to the Asset Acquisition, the Borrower and its Restricted Subsidiaries will continue to be in compliance with the covenants in this Agreement, determined on a pro forma basis;

(e) the purchase consideration with cash or other assets of the Borrower or any of the Guarantors payable in respect of all Permitted Acquisitions (including Asset Acquisitions and including deferred payment obligations) of entities that are not or do not become Guarantors and assets that do not become Collateral, together with all Investments in Restricted Subsidiaries that are not Loan Parties pursuant to Section 7.03(c)(ii), shall not exceed \$200,000,000 if after giving effect thereto, (i) the First Lien Net Leverage Ratio is not equal to or less than 2.75 to 1.00 or (ii) the Consolidated Total Net Leverage Ratio is not equal to or less than 3.50 to 1.00 (clauses (i) and (ii) collectively, the "**Permitted Acquisition Leverage Condition**"); and

(f) within 30 days of the closing of such Asset Acquisition (or such longer period as the Administrative Agent may agree in its reasonable discretion), any Person required to become a Guarantor or to execute or to deliver any Loan Document will do so in accordance with the requirements of this Agreement.

“Permitted Alternative Incremental Facilities Debt” has the meaning set forth in Section 7.02(q).

“Permitted Liens” has the meaning assigned to such term in Section 7.01.

“Permitted Refinancing” means, with respect to any Indebtedness, any refinancing thereof; provided, however, that: (a) no Event of Default shall have occurred and be continuing or would arise therefrom; (b) any such refinancing Indebtedness shall (i) not have a stated maturity or weighted average life that is shorter than that of the Indebtedness being refinanced (provided that the stated maturity or weighted average life may be shorter if the stated maturity of any principal payment (including any amortization payments) is not earlier than the earlier of (1) the stated maturity in effect prior to such refinancing or (2) 91 days after the Latest Maturity Date then in effect at the time of issuance), (ii) if the Indebtedness being refinanced is subordinated by its terms or by the terms of any agreement or instrument relating to such Indebtedness, be at least as subordinate to the Obligations as the Indebtedness being refinanced (and (x) unsecured if the refinanced Indebtedness is unsecured or (y) secured by Liens expressly junior in priority to the Liens securing the Obligations, if the refinanced Indebtedness is secured by Liens expressly junior in priority to the Liens securing the Obligations) and (iii) be in a principal amount that does not exceed the principal amount so refinanced, plus accrued interest, plus any premium or other payment required to be paid in connection with such refinancing, plus, in either case, the amount of fees and reasonable expenses of the Borrower or any of its Restricted Subsidiaries incurred in connection with such refinancing; and (c) the sole obligor on such refinancing Indebtedness shall be the Borrower or the original obligor on such Indebtedness being refinanced; provided, however, that any guarantor of the Indebtedness being refinanced shall be permitted to guarantee the refinancing Indebtedness.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.02.

“Pro Forma Financial Statements” means a summary pro forma balance sheet and related statement of operations of the Borrower, the Acquired Business and their respective Subsidiaries for the latest four-quarter period ending with the latest fiscal period covered by the Audited Financial Statements prepared in good faith on the basis of the assumptions stated therein, which assumptions are fair in light of the then existing conditions, all prepared in accordance with GAAP.

**“Pro Forma Transaction”** means (a) the Transaction, (b) any incurrence or repayment of Indebtedness (other than for working capital purposes or in the ordinary course of business), the making of any Restricted Payment pursuant to Sections 7.06(e) or (i), any Junior Debt Restricted Payment, any Investment that results in a Person becoming a Subsidiary or resulting from the designation of any Subsidiary as an Unrestricted Subsidiary, any Permitted Acquisition or any Disposition that results in a Subsidiary ceasing to be a Subsidiary or any Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or any Disposition of a business unit, line of business or division of the Borrower or a Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise and (c) any restructuring or cost saving, operational change or business rationalization initiative or other initiative.

**“Properly Contested”** means with respect to any obligation of any Person, (a) the obligation is subject to a bona fide dispute regarding amount or such Person’s liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not have a Material Adverse Effect; (e) no Lien is imposed on assets of such Person or its Affiliates in an aggregate amount in excess of \$1,000,000 for all such Liens, unless bonded and stayed to the reasonable satisfaction of Administrative Agent; and (f) if the obligation results from entry of a judgment or other order in an aggregate amount in excess of \$1,000,000 for all such obligations, such judgment or order is stayed pending appeal or other judicial review.

**“Property”** means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

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

**“Public Lender”** has the meaning specified in **Section 6.02**.

**“Purchase Agreement”** has the meaning specified in the Preliminary Statements.

**“Qualified Equity Interests”** of any Person means Equity Interests of such Person other than Disqualified Equity Interests. Unless otherwise specified, Qualified Equity Interests refer to Qualified Equity Interests of the Borrower.

**“Real Estate”** means all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon.

**“Recipient”** means the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

**“Refinancing Amendment”** has the meaning set forth in Section 2.16(c).

**“Refinancing Effective Date”** has the meaning set forth in Section 2.16(a).

**“Refinancing Term Loans”** has the meaning set forth in Section 2.16(a).

“Register” has the meaning specified in Section 10.06(c).

“Regulation U” means Regulation U of the FRB, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, consultants, service providers and representatives of such Person and of such Person’s Affiliates.

“Release” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment, or into, from or through any building, structure or facility.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the 30 day notice period has been waived.

“Repricing Event” means (i) any prepayment or repayment of the Term Facility (or any Incremental Term Loans) with the proceeds of, or any conversion of such Loans into, any new or replacement tranche of term loans bearing interest at an All-in Yield less than the All-in Yield applicable to the Term Facility (or such Incremental Term Loans), other than such prepayments or repayments in connection with (x) a Change of Control of the Borrower or (z) a Transformative Acquisition, and (ii) any amendment to the Term Facility (or any Incremental Term Loans) that, directly or indirectly, reduces the All-in Yield applicable to the Term Facility (or such Incremental Term Loans).

“Request for Borrowing” means with respect to a Borrowing, conversion or continuation of Term Loans, a Committed Loan Notice.

“Required Class Lenders” means, at any time with respect to any Class of Loans or Commitments, Lenders having Term Loan Exposure with respect to such Class representing more than 50% of the Term Loan Exposure of all Lenders of such Class.

“Required Lenders” means, at any time, the Term Lenders holding more than 50% of the Term Facility on such date.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

**“Restricted Payment”** means (a) 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 Restricted Subsidiaries, (b) 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 any 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 or (c) any Junior Debt Restricted Payment.

**“Restricted Subsidiary”** means any Subsidiary of the Borrower other than Unrestricted Subsidiaries. Each Subsidiary of the Borrower that is a Guarantor shall constitute a Restricted Subsidiary at all times. Each Subsidiary of the Borrower that is a borrower under the ABL Credit Agreement shall constitute a Restricted Subsidiary at all times.

**“Revocation”** has the meaning assigned to such term in the definition of “Unrestricted Subsidiary.”

**“S&P”** means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global Inc., and any successor thereto.

**“Sanction(s)”** means any sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

**“SEC”** means the 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 any Loan Party and any Cash Management Bank unless the obligations thereunder are secured under the ABL Loan Documents.

**“Secured Hedge Agreement”** means any Swap Contract permitted under Article VI or VII that is entered into by and between any Loan Party and any Hedge Bank unless the obligations thereunder are secured under the ABL Loan Documents.

**“Secured Parties”** means, collectively, the Administrative Agent, the Lenders, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

**“Security Agreement”** has the meaning specified in Section 4.01(a)(iii).

**“Security Agreement Supplement”** has the meaning specified in Section 1.1(c) of the Security Agreement.

**“Senior Secured Net Leverage Ratio”** means, as of any date of determination, the ratio of (a) Funded Debt that is secured by any Lien on any assets or property of the Borrower as of such

date, less Unrestricted Cash of the Borrower and its Restricted Subsidiaries to (b) Consolidated EBITDA of the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period. For purposes of calculation of the Senior Secured Net Leverage Ratio, not less than \$100,000,000 of Funded Debt that is secured by a Lien on the assets or property of the Borrower will be deemed to be outstanding under the ABL Credit Agreement on each date of determination regardless of the actual amount outstanding thereunder on such date of determination.

**Solvent** and **Solvency** mean, with respect to the Borrower and its Subsidiaries on any date of determination, that on such date (i) the fair value of the assets of the Borrower and its Subsidiaries on a consolidated basis, at a fair valuation, exceeds the debts and liabilities, direct, subordinated, contingent or otherwise, of the Borrower and its Subsidiaries on a consolidated basis; (ii) the present fair saleable value of the property of the Borrower and its Subsidiaries on a consolidated basis is greater than the amount required to pay the probable liability of the Borrower and its Subsidiaries on a consolidated basis on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) the Borrower and its Subsidiaries on a consolidated basis are able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) the Borrower and its subsidiaries on a consolidated basis do not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted following the Closing Date.

**Special Flood Hazard Area** has the meaning set forth in Section 6.12(c).

**Specified Loan Party** means any Loan Party that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.11).

**Specified Representations** means Section 5.01 (solely with respect to the corporate status and corporate power and authority to enter into the Loan Documents), Section 5.02, Section 5.03, Section 5.04, Section 5.14, Section 5.18, Section 5.21, Section 5.22, Section 5.23, Section 5.24 and Section 5.25.

**Subsidiary** of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

**Survey** has the meaning assigned to such term in Section 6.12(c)(iii).

**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 Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of “Indebtedness” or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), 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 Facility” means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Commitments at such time and (b) thereafter, the aggregate principal amount of the Term Loans of all Term Lenders outstanding at such time.

**Term Lender** means at any time, (a) on or prior to the Closing Date, any Lender that has a Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Term Loans at such time.

**Term Loan** means an advance made by any Term Lender under the Term Facility.

**Term Loan Closing Fee** has the meaning set forth in Section 2.09(b).

**Term Loan Exposure** means, as to any Term Lender at any time, the aggregate Outstanding Amount at such time of its Term Loans; provided that at any time prior to the making of the Term Loans, the Term Loan Exposure of any Term Lender shall be equal to such Term Lender's Commitment.

**Term Note** means a promissory note made by the Borrower in favor of a Term Lender, evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit B.

**Threshold Amount** means \$45,000,000.

**Title Insurer** has the meaning assigned to such term in Section 6.12(c)(iii).

**Top Golf** means Topgolf International, Inc., a Delaware corporation.

**Top Golf Proceeds** means cash proceeds received by the Borrower in connection with any: (a) sale of all or a portion of the Equity Interests of Top Golf owned by the Borrower, or (b) dividend received by the Borrower from Top Golf on account of the Borrower's ownership interest in Top Golf; provided that the Borrower elects to designate such proceeds as Top Golf Proceeds by at least five (5) Business Days (or such lesser time as approved by the Administrative Agent in its sole discretion) prior written notice (such notice, the "Top Golf Proceeds Notice") to the Administrative Agent of the occurrence of such transaction which will give rise to such cash proceeds.

**Transaction** means the Closing Date Acquisition, the entering into and funding of the Term Facility and all related transactions.

**Transformative Acquisition** means any Asset Acquisition or other Investment by the Borrower or any Restricted Subsidiary, whether by purchase, merger or otherwise, that (i) is not permitted by the terms of this Agreement immediately prior to the consummation of such Asset Acquisition or other Investment or (ii) if permitted by the terms of this Agreement immediately prior to the consummation of such Asset Acquisition or other Investment, the terms of the Loan Documents would not provide the Borrower and its Restricted Subsidiaries with adequate flexibility for the continuation or expansion of their combined operations following such consummation, as determined by the Borrower acting in good faith.

**Type** means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

**UCC** means the Uniform Commercial Code as in effect in the State of New York provided that, if perfection or the effect of perfection or non-perfection or the priority of any

security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “**UCC**” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“**Unfunded Pension Liability**” mean the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unrestricted Cash**” means, as of any date, all unrestricted cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries and all cash and Cash Equivalents restricted solely in favor of or pursuant to any Loan Document (and, to the extent also restricted in favor of or pursuant to any Loan Document, other Indebtedness).

“**Unrestricted Subsidiary**” means (a) any subsidiary of the Borrower that is designated as an Unrestricted Subsidiary by the Borrower after the Closing Date in a written notice to the Administrative Agent and (b) any subsidiary of any subsidiary described in clause (a) above or this clause (b); provided that no Event of Default shall have occurred and be continuing at the time of or after giving effect to the designation of a subsidiary as an Unrestricted Subsidiary (a “**Designation**”); provided, further, that no subsidiary shall be designated as an Unrestricted Subsidiary unless (x) such subsidiary is not party to any transaction with the Borrower or any Restricted Subsidiary unless the terms of such transaction complies with Section 7.08 and (y) no Investments may be made in any such Subsidiary by the Borrower or any Restricted Subsidiary except to the extent permitted under Section 7.03 (it being understood that, if a subsidiary is designated as an Unrestricted Subsidiary after the Closing Date, the aggregate Fair Market Value of all outstanding Investments owned by the Borrower and its Restricted Subsidiaries in the Subsidiary so designated shall be deemed to be an Investment made as of the time of such designation and shall be subject to the limits set forth in Section 7.03). It is understood that, other than with respect to the net income of any Unrestricted Subsidiary to the extent such income has actually been distributed in cash to the Borrower or any Restricted Subsidiary during the applicable period, Unrestricted Subsidiaries shall be disregarded for the purposes of any calculation pursuant to this Agreement relating to financial matters with respect to the Borrower.

The Borrower may revoke the designation of a Subsidiary as an Unrestricted Subsidiary pursuant to a written notice to the Administrative Agent so long as, after giving pro forma effect to such revocation no Event of Default shall be in existence (a “**Revocation**”). Upon any Revocation, such Unrestricted Subsidiary shall constitute a Restricted Subsidiary for all purposes of this Agreement and the Borrower shall comply with Section 6.12 if such subsidiary is a Domestic Subsidiary that is a Material Subsidiary. In the case of any Revocation, if the designation of such subsidiary as an Unrestricted Subsidiary caused the available basket amount referred to in Section 7.03 to be utilized by an amount equal to the aggregate Fair Market Value of all outstanding Investments owned by the Borrower and its Restricted Subsidiaries in the subsidiary so designated (the amount so utilized, the “**Designation Amount**”), then, effective upon such Revocation, such available basket amount shall be increased by the lesser of (i) the Designation

Amount and (ii) the aggregate Fair Market Value of all outstanding Investments owned by the Borrower and its Restricted Subsidiaries in such subsidiary at the time of such Revocation. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary in accordance with this definition shall constitute the incurrence by such Restricted Subsidiary at the time of designation of any Indebtedness or Liens of such Restricted Subsidiary outstanding at such time (to the extent assumed).

**“uPlay”** means uPlay, Inc., a Delaware corporation.

**“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 specified in Section 3.01(g)(ii)(B)(3).

**“Write-Down and Conversion Powers”** means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law, rule or regulation shall, unless otherwise specified, refer to such law, rule 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 to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

1.03 Accounting Terms. (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding any other provision contained herein, all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the FASB on February 25, 2016 of an Accounting Standards Update (the “ASU”) shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Leases in the financial statements. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(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 Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the 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, (A) such ratio or requirement shall continue to be computed in accordance with GAAP 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 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, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

1.04 Rounding. Any financial ratios required to be maintained by the Borrower 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 [Reserved].

1.07 Currency Equivalents Generally. Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.07, the “Spot Rate” for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

1.08 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 comparable or successor rate thereto.

1.09 Limited Condition Acquisitions. Notwithstanding anything in this Agreement or any Loan Document to the contrary, when (i) calculating any applicable ratio or basket amount in connection with incurrence of Indebtedness, the creation of Liens or the making of an Investment (including any Asset Acquisition), or (ii) 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 and/or that representations and warranties be true and correct, in the case of each of clauses (i) and (ii) in connection with a Limited Condition Acquisition, the date of determination of such ratio, of whether any Default or Event of Default (other than an Event of Default pursuant

to Sections 7.01(a), (b) or (g)) has occurred, is continuing or would result from therefrom and whether the representations and warranties are true and correct shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "**LCA Election**"), be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "**LCA Test Date**"). If on a pro forma basis after giving effect to such Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) such ratios and other provisions are calculated as if such Limited Condition Acquisition or other transactions had occurred as of the first day of the most recent four fiscal quarter period ending prior to such LCA Test Date for which financial statements have been or were required to be delivered pursuant to Section 6.01(a) or (b) (or, prior to the delivery of any such financial statements, the latest financial statements referred to in Section 5.05), the Borrower could have taken such action on the relevant LCA Test Date in compliance with the applicable ratios or other provisions, such provisions shall be deemed to have been complied with, unless an Event of Default pursuant to Sections 7.01(a), (b) or (g) shall be continuing on the date such Limited Condition Acquisition is consummated. 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 Consolidated EBITDA) or other provisions at or prior to the consummation of the relevant Limited Condition Acquisition, such ratios and other provisions will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Acquisition is permitted hereunder and (ii) such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Acquisition, unless on such date an Event of Default pursuant to Sections 7.01(a), (b) or (g) shall be continuing. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket availability with respect to any other Limited Condition Acquisition on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated, and be required to be satisfied, on a pro forma basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated.

1.10 Pro Forma Calculations. (a) Notwithstanding anything to the contrary herein, Consolidated EBITDA, the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio and the Consolidated Total Net Leverage Ratio shall be calculated in the manner prescribed by this Section 1.10.

(b) For purposes of calculating Consolidated EBITDA for any Measurement Period, the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio and the Consolidated Total Net Leverage Ratio, (i) the transaction or event with respect to which the calculation of any such amount or ratio is to be made pursuant to this Agreement, as applicable (and the incurrence or repayment of any Indebtedness in connection therewith), and (ii) all other Pro Forma Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (x) during the applicable Measurement Period or (y) subsequent to such Measurement Period and prior to or simultaneously with the event with respect to which the calculation of any such amount or ratio is being made, in each case shall be given effect to on a pro forma basis assuming

that all such events or transactions referred to in clauses (i) or (ii) (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Pro Forma Transaction) had occurred on the first day of the applicable Measurement Period. If since the beginning of any applicable Measurement Period any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Subsidiaries since the beginning of such Measurement Period shall have made any Pro Forma Transaction that would have required adjustment pursuant to this Section 1.10, then Consolidated EBITDA, the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio and the Consolidated Total Net Leverage Ratio shall be calculated to give pro forma effect thereto in accordance with this Section 1.10.

(c) Whenever pro forma effect is to be given to a Pro Forma Transaction, the pro forma calculations shall be made in good faith by a Responsible Officer of the Borrower and shall include, without duplication, adjustments for the Consolidated EBITDA (as determined in good faith by the Borrower) represented by any Person or line of business acquired or disposed of.

(d) In the event that the Borrower or any Subsidiary (i) incurs (including by assumption or guarantee) or (ii) repays, redeems, defeases, retires, extinguishes or is released from, or is otherwise no longer obligated in respect of (each, a “Repayment”), any Indebtedness included in the calculation of the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio or the Consolidated Total Net Leverage Ratio, as the case may be (in each case, other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (x) during the applicable Measurement Period or (y) subsequent to the end of the applicable Measurement Period and prior to or simultaneously with the event with respect to which the calculation of any such ratio is being made, then the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio or the Consolidated Total Net Leverage Ratio shall be calculated giving pro forma effect to such incurrence or Repayment of Indebtedness, to the extent required, as if the same had occurred on the first day of the applicable Test Period.

## ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 The Loans. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a single loan to the Borrower on the Closing Date in an amount not to exceed such Term Lender’s Commitment. The Borrowing shall consist of Term Loans made simultaneously by the Term Lenders in accordance with their respective Commitments. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurodollar Rate Loans as further provided herein.

2.02 Borrowings, Conversions and Continuations of Loans. (a) Each 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 (A) telephone, or (B) a Committed Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such Committed Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of,

conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a 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) the Type of Loans to be borrowed or to which existing Term Loans are to be converted and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Term Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the 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 month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of Term Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Borrowing, each Term Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Borrowing, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the 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 Administrative Agent by the Borrower.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate.

(e) After giving effect to all Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than ten Interest Periods in effect in respect of the Term Facility.

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

2.03 [Reserved].

2.04 [Reserved]

2.05 Prepayments.

(a) Optional. Subject to the last sentence of this Section 2.05(a), the Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans in whole or in part without premium or penalty; provided that (A) such notice must be in a form acceptable to the Administrative Agent and be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the Term Facility). If such notice is given by the Borrower, 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 on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Term Loans (of any Class) pursuant to this Section 2.05(a) shall be applied to the principal repayment installments thereof in direct order of maturity, and each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentage in respect of the Term Facility. If any Repricing Event occurs prior to the date occurring 12 months after the Closing Date, the Borrower agrees to pay to the Administrative Agent, for the ratable account of each Term Lender with Term Loans that are subject to such Repricing Event (including any Term Lender which is replaced pursuant to Section 3.06 as a result of its refusal to consent to an amendment giving rise to such Repricing Event), a fee in an amount equal to 1.00% of the aggregate principal amount of the Term Loans subject to such Repricing Event. Such fees shall be earned, due and payable upon the date of the occurrence of such Repricing Event.

(b) Mandatory.

(i) Beginning with the fiscal year ending on December 31, 2019, within five Business Days after financial statements have been delivered pursuant to Section 6.01(a) and the related Compliance Certificate has been delivered pursuant to Section 6.02(a) (the "Excess Cash Flow Application Date"), the Borrower shall prepay an aggregate principal

amount of Loans equal to the excess (if any) of (A) the ECF Percentage of Excess Cash Flow for the fiscal year covered by such financial statements over (B) to the extent not financed using the proceeds of long-term Indebtedness, (x) the aggregate principal amount of Term Loans prepaid pursuant to Section 2.05(a) (such prepayments to be applied as set forth in clause (iv) below) plus (y) the aggregate principal amount of voluntary prepayments under the ABL Credit Agreement (to the extent commitments under the ABL Credit Agreement are permanently reduced by the amount of such prepayments at the time of such prepayment).

(ii) If (1) the Borrower or any of its Restricted Subsidiaries Disposes of any property (other than any Disposition of any property permitted by Section 7.05(b), (c), (d), (e), and (f) or any Disposition of ABL Priority Collateral) or (2) any Casualty Event (other than in respect of ABL Priority Collateral) occurs, in each case, which results in the realization by such Person of Net Cash Proceeds, the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds promptly upon receipt thereof by such Person (such prepayments to be applied as set forth in clause (iv) below). Notwithstanding the foregoing, the Borrower may deliver within 45 days of the date of receipt of such Net Cash Proceeds a certificate to the Administrative Agent setting forth that portion of such Net Cash Proceeds that the Lead Borrower and/or its Restricted Subsidiaries, as the case may be, intends to, so long as no Default shall have occurred and be continuing, the Borrower or such Restricted Subsidiary may reinvest all or any portion of such Net Cash Proceeds in operating assets so long as within 365 days (or within 180 days following the end of such 365 day period if any portion of such proceeds are not so used within such 365 day period but are contractually committed within such 365 day period to be used) after the receipt of such Net Cash Proceeds, such purchase shall have been consummated (as certified by the Borrower in writing to the Administrative Agent); and provided further, however, that any Net Cash Proceeds not subject to such definitive agreement or so reinvested shall be immediately applied to the prepayment of the Loans as set forth in this Section 2.05(b)(ii).

(iii) Upon the incurrence or issuance by the Borrower or any of its Restricted Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.02 (other than Refinancing Term Loans)), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by the Borrower or such Restricted Subsidiary (such prepayments to be applied as set forth in clause (iv) below).

(iv) Each prepayment of Loans pursuant to the foregoing provisions of this Section 2.05(b) shall be applied, to Term Loans in direct order of maturity.

(v) Notwithstanding any of the other provisions of clause (i) or (ii) of this Section 2.05(b), so long as no Default under Section 8.01(a) or Section 8.01(f), or Event of Default shall have occurred and be continuing, if, on any date on which a prepayment would otherwise be required to be made pursuant to clause (i) or (ii) of this Section 2.05(b), the aggregate amount of Net Cash Proceeds required by such clause to be applied to prepay Loans on such date is less than or equal to \$10,000,000, the Borrower may defer such

prepayment until the first date on which the aggregate amount of Net Cash Proceeds or other amounts otherwise required under clause (i) or (ii) of this Section 2.05(b) to be applied to prepay Loans exceeds \$10,000,000. Upon the occurrence of a Default under Section 8.01(a) or Section 8.01(f), or an Event of Default during any such deferral period, the Borrower shall immediately prepay the Loans in the amount of all Net Cash Proceeds received by the Borrower and other amounts, as applicable, that are required to be applied to prepay Loans under this Section 2.05(b) (without giving effect to the first sentence of this clause (v)) but which have not previously been so applied.

(vi) 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(b) at least five (5) 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 amount of such prepayment. The Administrative Agent will promptly notify each Term Lender of the contents of any such prepayment notice and of such Term Lender's ratable portion of such prepayment (based on such Lender's pro rata share of each relevant Class of the Term Loans). Any Term Lender (a "Declining Term Lender") may elect, by delivering written notice to the Administrative Agent and the Borrower no later than 5:00 p.m. one (1) Business Day after the date of such Term Lender's receipt of notice from the Administrative Agent regarding such prepayment, that the full amount of any mandatory prepayment otherwise required to be made with respect to the Term Loans held by such Term Lender pursuant to Section 2.05(b) not be made (the aggregate amount of such prepayments declined by the Declining Term Lenders, the "Declined Prepayment Amount"). If a Term Lender fails to deliver notice setting forth such rejection of a prepayment to the Administrative Agent within the time frame specified above or such 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. In the event that the Declined Prepayment Amount is greater than \$0, such Declined Prepayment Amount shall be retained by the Borrower. For the avoidance of doubt, the Borrower may, at its option, apply any amounts retained in accordance with the immediately preceding sentence to prepay loans in accordance with Section 2.05(a).

(vii) Notwithstanding any other provision of this Section 2.05(b) to the contrary, to the extent that a Responsible Officer of the Borrower has reasonably determined in good faith that repatriation of any of or all the Net Cash Proceeds or Excess Cash Flow of a Foreign Subsidiary giving rise to a prepayment event pursuant to this Section 2.05(b) (i) would have a material adverse tax consequence or (ii) would not be permissible under any applicable Law or would conflict with the fiduciary duties of such Foreign Subsidiary's directors, or would result in, or be reasonably be expected to result in, a material risk of personal or criminal liability for any officer, director, employee, manager, member of management or consultant of such Foreign Subsidiary, an amount equal to the Net Cash Proceeds or Excess Cash Flow so affected will not be required to be applied to prepay Loans at the times provided in this Section 2.05(b); provided that the Borrower hereby agrees, and will cause any applicable Subsidiary, to promptly take all commercially reasonable actions required by Law (including applicable local law) to permit such repatriation without such material adverse consequences.

2.06 Termination or Reduction of Commitments. The aggregate Commitments shall be automatically and permanently reduced to zero on the date of the Borrowing of the Term Loans.

2.07 Repayment of Loans. The Borrower shall repay to the Term Lenders principal of outstanding Term Loans on the last Business Day of each March, June, September and December of each year (commencing on the applicable day of the first full fiscal quarter of the Borrower after the Closing Date) prior to the Maturity Date in an amount equal to \$1,200,000, and on the Maturity Date, in an amount equal to the then unpaid principal amount of such Term Loans outstanding.

#### 2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurodollar Rate Loan under the Term Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate and (ii) each Base Rate Loan under the Term Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

#### 2.09 Fees.

(a) The Borrower shall pay to the Lead Arrangers and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter and Agency Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(b) The Borrower agrees to pay on the Closing Date to each Lender of an initial Term Loan party to this Agreement on the Closing Date, as fee compensation for the funding of each such Lender's initial Term Loan, a closing fee, which shall be structured as original issue discount (the "Term Loan Closing Fee") in an amount equal to 2.00% of the stated principal amount of such Lender's initial Term Loan funded on the Closing Date. Such Term Loan Closing Fee will be in all respects fully earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter and shall be netted against the initial Term Loans made by such Lender to the Borrower.

2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar 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 (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt. The Borrowings made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender in the ordinary course of business. The Administrative Agent shall maintain the Register in accordance with Section 10.06(c). The accounts or records maintained by each Lender shall be conclusive absent manifest error of the amount of the Borrowings made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the Register, the Register 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, 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.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made free and clear of and 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 Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the Term Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's

Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the 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 on computing interest or fees, as the case may be.

(b) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (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) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand 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 Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's 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.

(i) Payments by Borrower; Presumptions by Administrative Agent. 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 hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Term Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Term Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (b) shall be conclusive, absent manifest error.

(c) **Failure to Satisfy Conditions Precedent.** If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) **Obligations of Lenders Several.** The obligations of the Lenders hereunder to make Term Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) **Funding Source.** Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) **Insufficient Funds.** If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

2.13 **Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared

by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

- (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and
- (ii) the provisions of this Section 2.13 shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Disqualified Institution) or (y) 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, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section 2.13 shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

#### **2.14 Amend and Extend Transactions.**

(a) The Borrower may, by notice to the Administrative Agent from time to time request an extension (each, an “Extension”) of the maturity date of any Class of Loans to the extended maturity date specified in such notice. Such notice shall (i) set forth the amount of the applicable Class of Term Loans that will be subject to the Extension (which shall be in minimum increments of \$500,000 and a minimum amount of \$10,000,000), (ii) set forth the date on which such Extension is requested to become effective (which shall be not less than thirty (30) 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)) and (iii) identify the relevant Class of Term Loans to which such Extension relates. Each Lender of the applicable Class shall be offered (an “Extension Offer”) an opportunity to participate in such Extension on a pro rata basis and on the same terms and conditions as each other Lender of such Class pursuant to procedures established by, or reasonably acceptable to, the Administrative Agent and the Borrower. If the aggregate principal amount of Term Loans in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans, as applicable, subject to the Extension Offer as set forth in the Extension notice, then the Term Loans of Lenders of the applicable Class shall be extended ratably up to such maximum amount based on the respective principal amounts with respect to which such Lenders have accepted such Extension Offer.

(b) The following shall be conditions precedent to the effectiveness of any Extension: (i) no Default or Event of Default shall have occurred and be continuing prior to and after giving effect to such Extension, (ii) the representations and warranties set forth in Article V and in each other Loan Document shall be deemed to be made and shall be true and correct in all material

respects on and as of the effective date of such Extension and (iii) the terms of such Extended Term Loans shall comply with clause (d) of this Section 2.14.

(c) The Borrower shall have the right to replace each Lender that determines not to so extend its maturity date (a “Non-Extending Lender”) with, and add as “Term Lenders” under this Agreement in place thereof, one or more Eligible Assignees (each, an “Additional Commitment Lender”) as provided in Section 10.13; provided that each of such Additional Commitment Lenders shall enter into an Assignment and Assumption pursuant to which such Additional Commitment Lender shall, effective as of the existing Maturity Date, undertake a Commitment (and, if any such Additional Commitment Lender is already a Term Lender, its Commitment shall be in addition to any other Commitment of such Lender hereunder on such date).

(d) The terms of each Extension shall be determined by the Administrative Agent, the Borrower and the applicable Extending Lenders and set forth in an amendment to this Agreement (an “Extension Amendment”); provided that (i) the final maturity date of any Extended Term Loan shall be no earlier than the maturity date of the Class of Term Loans being extended, (ii) the average life to maturity of the Extended Term Loans shall be no shorter than the remaining average life to maturity of the Class of Term Loans being extended, (iii) the Extended Term Loans will rank pari passu in right of payment and with respect to security with the existing Term Loans and the borrower and guarantors of the Extended Term Loans shall be the same as the Borrower and Guarantors with respect to the existing Term Loans, (iv) the interest rate margin, rate floors, fees, original issue discount and premium applicable to any Extended Term Loans shall be determined by the Borrower and the applicable Extending Lenders, (v) the Extended Term Loans may participate on a pro rata or less than pro rata (but not greater than pro rata) basis in voluntary or mandatory prepayments with the Class of Term Loans and (vi) the terms of the Extended Term Loans shall be substantially identical to the terms set forth herein (except as set forth in clauses (i) through (v) above).

(e) In connection with any Extension, the Borrower, the Administrative Agent and each applicable Extending Lender shall execute and deliver to the Administrative Agent an Extension Amendment and such other documentation as the Administrative Agent shall reasonably specify to evidence the Extension. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension. Any Extension Amendment may, without the consent of any other Lender, 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 implement the terms of any such Extension, including any amendments necessary to establish Extended Term Loans as a new Class or tranche of Term Loans and such other technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Class or tranche (including to preserve the pro rata treatment of the extended and non-extended Classes or tranches), in each case on terms consistent with this Section 2.14. This Section 2.14 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

2.15 Increase in Commitments. The Borrower may by written notice to the Administrative Agent elect to request the establishment of one or more additional tranches of term loans or new Commitments (each, an “Incremental Commitments”) by an aggregate amount not in excess of (other than in the case of Incremental Commitments with respect to Refinancing Term

Loans) the Maximum Incremental Amount. Each such notice shall specify (i) the date (each, an “Increase Effective Date”) on which the Borrower proposes that the Incremental Commitments shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to the Administrative Agent (or such shorter period as may be agreed by the Administrative Agent) and (ii) the identity of each Eligible Assignee to whom the Borrower proposes any portion of such Incremental Commitments be allocated and the amounts of such allocations; *provided* that any existing Lender approached to provide all or a portion of the Incremental Commitments may elect or decline, in its sole discretion, to provide such Incremental Commitment. Each Incremental Commitment shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$500,000 in excess thereof (provided that such amount may be less than \$10,000,000 if such amount represents all remaining availability under the aggregate limit in respect of Incremental Commitments set forth in above).

- (a) Conditions. The Incremental Commitments shall become effective as of the Increase Effective Date; provided that:
- (i) subject to Section 1.09, before and after giving effect to such Incremental Commitments, each of the conditions set forth in Section 4.02 shall be satisfied; and
  - (ii) the Borrower shall deliver or cause to be delivered officer’s certificates and legal opinions of the type delivered on the Closing Date to the extent reasonably requested by, and in form and substance reasonably satisfactory to, the Administrative Agent.
- (b) Terms of New Loans and Commitments. The terms and provisions of Loans made pursuant to Incremental Commitments shall be as follows:
- (i) terms and provisions of Incremental Term Loans shall be, except as otherwise set forth herein or in the Increase Joinder, identical to the Term Loans (it being understood that Incremental Term Loans may be a part of the Term Loans) and to the extent that the terms and provisions of Incremental Term Loans are not identical to the Term Loans (except to the extent permitted by clause (ii), (iii), (iv) or (v) below) they shall be reasonably satisfactory to the Administrative Agent; *provided* that in any event the Incremental Term Loans must comply with clauses (ii), (iii), (iv) and (v) below;
  - (ii) the weighted average life to maturity of any Incremental Term Loans shall be no shorter than the remaining weighted average life to maturity of the then existing Term Loans;
  - (iii) the maturity date of Incremental Term Loans (the “Incremental Term Loan Maturity Date”) shall not be earlier than the then Latest Maturity Date;
  - (iv) the Incremental Term Loans shall not be guaranteed by any subsidiaries of the Borrower that do not guarantee the Obligations and if secured, shall be secured on a *pari passu* or junior basis by the same Collateral (and no additional Collateral) securing the Obligations and any Incremental Term Loans shall have the same payment priority as the Term Facility; provided that any such Incremental Term Loans secured on a junior basis shall be documented in a separate credit agreement and such Incremental Term Loans

shall be subject to an intercreditor agreement in form and substance satisfactory to the Administrative Agent;

(v) the Applicable Rate for Incremental Term Loans shall be determined by the Borrower and the Lenders of the Incremental Term Loans; provided that in the event that the Applicable Rate for any Incremental Term Loan is greater than the Applicable Rate for the Term Loans by more than 50 basis points, then the Applicable Rate for the Term Loans shall be increased to the extent necessary so that the Applicable Rate for the Incremental Term Loans is not more than 50 basis points higher than the Applicable Rate for the Term Loans; provided, further, that in determining the Applicable Rate applicable to the Term Loans and the Incremental Term Loans, (x) original issue discount (“OID”) or upfront fees (which shall be deemed to constitute like amounts of OID) payable by the Borrower to the Lenders of the Term Loans or the Incremental Term Loans in the primary syndication thereof shall be included (with OID being equated to interest based on an assumed four-year life to maturity), (y) customary arrangement or commitment fees payable to the Lead Arrangers (or their respective affiliates) in connection with the Term Loans or to one or more arrangers (or their affiliates) of the Incremental Term Loans shall be excluded; and (z) if the LIBOR or Base Rate “floor” for the Incremental Term Loans is greater than the LIBOR or Base Rate “floor,” respectively, for the existing Term Loans, the difference between such floor for the Incremental Term Loans and the existing Term Loans shall be equated to an increase in the Applicable Rate for purposes of this clause (v) (this clause (v), the “**MFN Protection**”).

The Incremental Commitments shall be effected by a joinder agreement (the “Increase Joinder”) executed by the Borrower, the Administrative Agent and each Lender making such Incremental Commitment, in form and substance reasonably satisfactory to each of them. Notwithstanding the provisions of Section 10.01, the Increase Joinder 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, to effect the provisions of this Section 2.15. In addition, unless otherwise specifically provided herein, all references in Loan Documents to Term Loans shall be deemed, unless the context otherwise requires, to include references to Incremental Term Loans made pursuant to this Agreement. This Section 2.15 shall supersede any provisions in Section 2.13 or Section 10.01 to the contrary.

(c) Making of New Term Loans. On any Increase Effective Date on which new Commitments for Term Loans are effective, subject to the satisfaction of the foregoing terms and conditions, each Lender of such new Commitment shall make a Term Loan to the Borrower in an amount equal to its new Commitment.

(d) Equal and Ratable Benefit. The Loans and Commitments established pursuant to this clause (d) shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Collateral Documents, except that the new Loans may be subordinated in right of payment or the Liens securing the new Loans may be subordinated, in each case, to the extent set forth in the Increase Joinder. The Loan Parties shall take any actions reasonably required by the Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by

the Collateral Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any such class of Term Loans or any such new Commitments.

## 2.16 Refinancing Amendments.

(a) Notwithstanding anything to the contrary in this Agreement, the Borrower may by written notice to the Administrative Agent establish one or more additional tranches of term loans under this Agreement (such loans, “Refinancing Term Loans”), all proceeds of which are used to refinance in whole or in part any Class of Term Loans pursuant to Section 2.05(b)(iv). Each such notice shall specify the date (each, a “Refinancing Effective Date”) on which the Borrower proposes that the Refinancing Term Loans shall be made, which shall be a date not less than ten (10) Business Days after the date on which such notice is delivered to the Administrative Agent (or such shorter period agreed to by the Administrative Agent in its sole discretion); provided, that:

- (i) before and after giving effect to the Borrowing of such Refinancing Term Loans on the Refinancing Effective Date each of the conditions set forth in Section 4.02 shall be satisfied;
- (ii) the final maturity date of the Refinancing Term Loans shall be no earlier than the maturity date of the refinanced Term Loans;
- (iii) the weighted average life to maturity of such Refinancing Term Loans shall be no shorter than the then-remaining weighted average life to maturity of the refinanced Term Loans;
- (iv) the aggregate principal amount of the Refinancing Term Loans shall not exceed the outstanding principal amount of the refinanced Term Loans plus amounts used to pay fees, expenses, commissions, underwriting discounts and premiums and accrued interest associated therewith;
- (v) all other terms applicable to such Refinancing Term Loans (other than provisions relating to original issue discount, upfront fees, interest rates and any other pricing terms, optional prepayment or mandatory prepayment or redemption terms shall be as agreed between the Borrower and the Lenders providing such Refinancing Term Loans) taken as a whole shall (as determined by the Borrower in good faith) be substantially similar to, or no more restrictive to the Borrower and its Restricted Subsidiaries than, the terms, taken as a whole, applicable to the Term Loans being refinanced (except to the extent such covenants and other terms apply solely to any period after the Latest Maturity Date or are otherwise reasonably acceptable to the Administrative Agent);
- (vi) there shall be no borrower (other than the Borrower) and no guarantors (other than the Guarantors) in respect of such Refinancing Term Loans;
- (vii) Refinancing Term Loans shall not be secured by any asset of the Borrower and its subsidiaries other than the Collateral; and
- (viii) Refinancing Term Loans may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any mandatory

prepayments (other than as provided otherwise in the case of such prepayments pursuant to Section 2.05(b)(iv)) hereunder, as specified in the applicable Refinancing Amendment.

(b) The Borrower may approach any Lender or any other person that would be an Eligible Assignee to provide all or a portion of the Refinancing Term Loans; provided, that any Lender offered or approached to provide all or a portion of the Refinancing Term Loans may elect or decline, in its sole discretion, to provide a Refinancing Term Loan. Any Refinancing Term Loans made on any Refinancing Effective Date shall be designated an additional Class of Term Loans for all purposes of this Agreement; provided, further, that any Refinancing Term Loans may, to the extent provided in the applicable Refinancing Amendment governing such Refinancing Term Loans, be designated as an increase in any previously established Class of Term Loans made to the Borrower.

(c) The Borrower and each Lender providing the applicable Refinancing Term Loans shall execute and deliver to the Administrative Agent an amendment to this Agreement (a “Refinancing Amendment”) and such other documentation as the Administrative Agent shall reasonably specify to evidence such Refinancing Term Loans. For purposes of this Agreement and the other Loan Documents, if a Lender is providing a Refinancing Term Loan, such Lender will be deemed to have a Term Loan having the terms of such Refinancing Term Loan. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document (including without limitation this Section 2.16), (i) no Refinancing Term Loan is required to be in any minimum amount or any minimum increment, (ii) there shall be no condition to any incurrence of any Refinancing Term Loan at any time or from time to time other than those set forth in clause (a) above and (iii) all Refinancing Term Loans and all obligations in respect thereof shall be Obligations under this Agreement and the other Loan Documents that rank equally and ratably in right of security with the refinanced Term Loans and all Obligations in respect thereof.

2.17 MIRE Event. Notwithstanding anything to the contrary herein, if there are any Mortgaged Properties, the making, increasing, extension or renewal of any Loans pursuant to this Agreement (including any incremental credit facilities, but excluding any continuation or conversion of Borrowings) after the Closing Date shall be subject to flood insurance due diligence in accordance with Section 6.12 and flood insurance compliance in accordance with Section 5.05 hereto.

Each party hereto hereby agrees that, upon the Refinancing Effective Date of any Refinancing Term Loans, this Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Refinancing Term Loans evidenced thereby. Any amendment to this Agreement or any other Loan Document that is necessary to effect the provisions of this Section 2.17 (including, without limitation, to provide for the establishment of Refinancing Term Loans) and any such collateral and other documentation shall be deemed “Loan Documents” hereunder and may be memorialized in writing between the Administrative Agent and the Borrower and furnished to the other parties hereto.

### **ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY**

#### **3.01 Taxes.**

(a) Payments Free of Taxes. 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 Law. If any Applicable Law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.01) each applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay 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.

(c) Indemnification by Borrower. Each of the Loan Parties shall indemnify each Recipient, 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 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 Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by the any Loan Party to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by laws to report such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(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 Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, 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. 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(g)(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,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two duly executed copies 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 eligible to do so, deliver to the Borrower and the 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 reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party with respect to payments of interest under any Loan Document, two duly executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to such tax treaty;

(2) two duly executed copies of IRS Form W-8ECI;

(3) 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 H-1 to the effect that (I) such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the 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 (II) no payments under any Loan Document are effectively connected with the Lender's conduct of a U.S. trade or business, and (y) two duly executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, two duly executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax

Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-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 H-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two duly executed copies 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 Borrower or the Administrative 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 Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine whether such 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 Borrower and the Administrative Agent in writing of its legal inability to do so.

(iv) Notwithstanding anything in this Section 3.01(e), no Lender shall be required to deliver pursuant to this Section 3.01(e) any form or certification that it is not legally eligible to deliver.

(v) Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(e).

(f) Treatment of Certain Refunds. Unless required by Applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. 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 clause (h), in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this Section 3.01(f) 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 Section 3.01(f) shall not be construed to require any Recipient to available its tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all 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 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, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (a) 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 (b) 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 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, (i) the Borrower 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), either

on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, 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, together with any additional amounts required pursuant to Section 3.05.

### **3.03 Inability to Determine Rates.**

(a) If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof, (i) the Administrative Agent determines that (A) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (B) (x) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or 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 Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of Section 3.03(a), until the Administrative Agent upon 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 Eurodollar Rate Loans (to the extent of the affected Eurodollar 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 in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (i) of Section 3.03(a), the Administrative Agent, in consultation with the Borrower, 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 Administrative 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 Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to

determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

(c) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR 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

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative 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

(iii) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.03, 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 Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a "LIBOR Successor Rate"), together with any proposed LIBOR Successor Rate Conforming Changes (as defined below) and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders do not accept such amendment. Such LIBOR Successor Rate 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 LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

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 Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) the Eurodollar Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice,

the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar 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.

For purposes hereof, “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 Administrative Agent in consultation with the Borrower, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative 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 Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement).

3.04 Increased Costs; Reserves on Eurodollar 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 contemplated by Section 3.04(e));
- (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, 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 London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or other Recipient of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or other Recipient, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in clauses (a) or (b) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) **Reserves on Eurodollar Rate Loans.** The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower 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 Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

### 3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. Each Lender may make any Loan or credit extension to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrower to repay the Loan or credit extension in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts 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 at the request of the Borrower such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts 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 Borrower may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

## ARTICLE IV. CONDITIONS PRECEDENT TO BORROWINGS

4.01 Conditions of Initial Borrowing. The obligation of each Lender to make the initial Loans hereunder is subject to satisfaction of the following conditions precedent:

- (a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:
- (i) executed counterparts of this Agreement;
  - (ii) a Term Note executed by the Borrower in favor of each Lender requesting a Term Note;
  - (iii) a security agreement, in substantially the form of Exhibit F (together with each other security agreement and security agreement supplement delivered pursuant to Section 6.12, in each case as amended, the "Security Agreement"), duly executed by each Loan Party, together with (A) certificates and instruments representing certificated Equity Interests that constitute Collateral accompanied by undated stock powers or instruments of transfer executed in blank, (B) proper Financing Statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement, covering the Collateral described in the Security Agreement, (C) certified copies of UCC, United States Patent and Trademark Office and United States Copyright Office, tax and judgment lien searches, or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents (together with copies of such financing statements and documents) that name any Loan Party as debtor and that are filed in those state and county jurisdictions in which any Loan Party is organized or maintains its principal place of business and such other searches that are required by the Perfection Certificate or that the Administrative Agent deems necessary or appropriate, none of which encumber the Collateral covered or intended to be covered by the Collateral Documents (other than Permitted Liens), (D) a Perfection Certificate, in substantially the form of Exhibit G, duly executed by each of the Loan Parties, (E) evidence that all other actions, recordings and filings that the Administrative Agent may deem necessary in order to have a perfected first priority security interest (subject to the ABL Intercreditor Agreement) in the Collateral (including receipt of duly executed payoff letters and UCC-3 termination statements) shall have been taken, and (F) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with the certificates of insurance, naming the Administrative Agent, on behalf of the Secured Parties, as an additional insured or loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral; provided that to the extent any security interest in the Collateral (other than any Collateral the security interest in which may be perfected by the filing of a UCC financing statement, the filing of short-form security agreements with the United States Patent and Trademark Office or the United States Copyright Office or the delivery of certificates evidencing Equity Interests) is not provided on the Closing Date after the Borrower's use of commercially reasonable efforts to do so, the provision of

such perfected security interest(s) shall not constitute a condition precedent to the availability of the Term Facility on the Closing Date but shall be required to be delivered no later than ninety (90) days after the Closing Date (or such later period as agreed to by the Administrative Agent);

(iv) executed counterparts of the ABL Intercreditor Agreement;

(v) [reserved];

(vi) a Copyright Security Agreement, Patent Security Agreement and Trademark Security Agreement (as each such term is defined in Security Agreement and to the extent applicable) (together with each other intellectual property security agreement delivered pursuant to Section 6.12, in each case as amended, the "Intellectual Property Security Agreement"), duly executed by each Loan Party, together with evidence that all action that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Intellectual Property Security Agreement has been taken (subject to the proviso in clause (iii) above);

(vi) a certificate of each Loan Party, dated as of the Closing Date, attaching a copy of (i) each Organization Document of each Loan Party certified, to the extent applicable, as of a recent date by the applicable Governmental Authority, (ii) incumbency certificates of the Responsible Officers of each Loan Party executing the Loan Documents to which it is a party, (iii) resolutions of the board of directors and/or similar governing bodies of each Loan Party approving and authorizing the execution, delivery and performance of Loan Documents to which it is a party, certified as of the date of the Closing Date by its secretary, an assistant secretary or a Responsible Officer as being in full force and effect without modification or amendment, and (iv) a good standing certificate from the applicable Governmental Authority of each Loan Party's jurisdiction of incorporation, organization or formation;

(vii) [reserved];

(viii) a favorable opinion of Gibson, Dunn & Crutcher, LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent; and

(ix) a certificate from the chief financial officer of the Borrower in substantially the form of Exhibit I.

(b) Upon the reasonable request of any Lender made at least 10 Business Days prior to the Closing Date, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case at least 3 Business Days prior to the Closing Date and (y) at least 5 Business Days prior to the Closing Date, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(c) All fees required to be paid to the Administrative Agent and the Lead Arrangers on or before the Closing Date shall have been paid and all reasonable out-of-pocket expenses required to be paid or reimbursed to the Administrative Agent and the Lead Arrangers on the Closing Date that have been invoiced at least three (3) business days prior to the Closing Date shall have been paid or shall be paid from the proceeds of the initial Loans under the Term Facility.

(d) The Lead Arrangers shall have received copies of the Audited Financial Statements and the Pro Forma Financial Statements.

(e) [reserved].

(f) After giving effect to the Transaction, the Borrower and its Restricted Subsidiaries shall have outstanding no indebtedness or preferred stock other than (a) the Term Loans, (b) the loans and other extensions of credit under the ABL Credit Agreement and (c) other indebtedness incurred in the ordinary course of business.

(g) The Specified Representations shall be true and correct in all material respects (other than any such representations that are qualified by materiality or material adverse effect, which shall be true and correct in all respects).

(h) The Closing Date Acquisition shall have been, or shall concurrently with the funding of the Term Loans be, consummated in compliance with applicable law and regulatory approvals and in accordance with the terms of the Purchase Agreement and such other agreements, instruments and documents relating to the Transaction, which shall not have been altered, amended or otherwise changed or supplemented or any provision waived or consented to (including any change in the purchase price), in each case, in a manner materially adverse to the Lenders, without the prior written consent of the Lenders (it being understood that any decrease in the purchase price shall not be materially adverse to the Lenders so long as any such decrease is equal to or less than 10% of the total purchase price and is applied to reduce the aggregate amount of the Term Facility).

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.

**4.02 Conditions to All Borrowings.** The obligation of each Lender to honor any request for a Borrowing (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) and any extension of credit pursuant to Section 2.14, 2.15 or 2.16 is subject to the following conditions precedent, subject to Section 1.09 with respect to Incremental Term Loans only:

(a) the representations and warranties of the Borrower and each other Loan Party contained in Article V or 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 on and as of the date of such Borrowing in all material respects (other than any such representations

and warranties that are qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects); *provided* that in the case of any Incremental Term Loans used to finance a Limited Condition Acquisition permitted hereunder, to the extent the Lenders participating in such Incremental Term Loans agree, this Section 4.02(a) shall require only the Specified Representations and customary “acquisition agreement representations” (i.e., those representations of the seller or target (as applicable) in the applicable acquisition agreement that are material to the interests of the Lenders and only to the extent that the Borrower or its applicable Subsidiary has the right to terminate its obligations under the applicable acquisition agreement as a result of the failure of such representations to be accurate) be true and correct in all material respects (except, in the case of the Specified Representations, to the extent that any such representation and warranty is qualified by materiality or Material Adverse Effect, in which case such representation and warranty shall be true and correct in all respects).

- (b) no Default or Event of Default shall exist, or would result from such proposed Borrowing or from the application of the proceeds thereof.
- (c) The Administrative Agent shall have received a Request for Borrowing in accordance with the requirements hereof.

Subject to Section 1.09 with respect to Incremental Term Loans, each Request for Borrowing (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Borrowing.

## ARTICLE V. REPRESENTATIONS AND WARRANTIES

Each of the Loan Parties represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power; Compliance with Applicable Laws. Each Loan Party and each of its Restricted Subsidiaries (a) is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and 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 and (d) is in compliance with all Applicable Laws; except in each case referred to in clause (b)(i), (c) or (d), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. No Loan Party is an EEA Financial Institution.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person’s Organization Documents; (b) conflict with or result in any breach of or contravention of (i) any Contractual Obligation (including the ABL Loan Documents) to

which such Person is a party or by which it is bound, the termination or adverse modification of which could reasonably be expected to have a Material Adverse Effect 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; or (c) result in the creation of any Lien (other than Permitted Liens), or (d) violate any Applicable Law.

5.03 **Governmental Authorization; Other Consents.** No 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 such approvals, consents, exemptions, authorizations, actions, notices and filings which have been obtained, taken, given or made and are in full force and effect. All necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and the Loan Parties and Restricted Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance 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 hereunder, 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, except as enforceability may be limited by Debtor Relief Laws.

5.05 **Financial Statements; No Material Adverse Effect.** (a) The consolidated and consolidating balance sheets, and related statements of income, cash flow and shareholder's equity, of the Borrower and its Subsidiaries that have been and are hereafter delivered to Administrative Agent and Lenders (i) are prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial positions and results of operations of the Borrower and Subsidiaries at the dates and for the periods indicated, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness, to the extent required by GAAP to be shown on such financial statements. The consolidated accounts of the Acquired Business and its Subsidiaries that have been delivered to Administrative Agent and Lenders (i) are prepared in accordance with IFRS consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial positions and results of operations of the Acquired Business and Subsidiaries at the dates and for the periods indicated, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Acquired Business and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness, to the extent required by IFRS to be shown on such financial statements.

(b) Since December 31, 2017, there has been no change in the condition, financial or otherwise, of the Borrower or any Restricted Subsidiary that could reasonably be expected to have a Material Adverse Effect.

(c) The Borrower is Solvent and Borrower and the Subsidiaries on a consolidated basis are Solvent.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Loan Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

5.07 No Default. Neither any Loan Party nor any Subsidiary is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens. The Loan Parties and each Restricted Subsidiary 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 (other than minor defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect), and all personal Property, including all Property reflected in any financial statements delivered to Administrative Agent or Lenders, in each case free of Liens except Permitted Liens. Each Borrower and each Restricted Subsidiary has paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, other than Permitted Liens. All Liens of the Administrative Agent in the Collateral are duly perfected, first priority Liens, subject only to Permitted Liens that are expressly allowed to have priority over the Administrative Agent's Liens.

5.09 Environmental Compliance. The Loan Parties and their Restricted Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties (including Real Estate), and as a result thereof the Loan Parties have reasonably concluded that, except as specifically disclosed on Schedule 5.09, such Environmental Laws and claims could not, individually or in the aggregate reasonably be expected to have a Material Adverse Effect. No Loan Party or Restricted Subsidiary has any contingent liability with respect to any Environmental Release, environmental pollution or hazardous material.

5.10 Insurance. The properties of the Borrower and its Restricted Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of any Loan Party, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Restricted Subsidiary operates.

5.11 Taxes. The Borrower and each Restricted Subsidiary has filed all U.S. federal and state tax returns and all material local and non-U.S. tax returns and other material reports that it is

required by Applicable Laws to file, and has paid, or made proper provision in accordance with relevant accounting standards for the payment of, all Taxes upon it, its income and its Properties that are due and payable, except to the extent being Properly Contested.

5.12 ERISA Compliance. Except as disclosed on Schedule 5.12:

- (a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Loan Parties, nothing has occurred which would prevent, or cause the loss of, such qualification. The Borrower and each ERISA Affiliate has made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.
- (b) There are no pending or, to the best knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could be 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 that has resulted or could reasonably be expected to result in a Material Adverse Effect.
- (c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan (other than a Multiemployer Plan) has any Unfunded Pension Liability; (iii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.
- (d) With respect to any Foreign Plan, except as could not reasonably be expected to have a Material Adverse Effect, (i) all employer and employee contributions required by law or by the terms of the Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices; (ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance, or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and (iii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.
- (e) The Borrower represents and warrants as of the Closing Date that the Borrower is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified

by Section 3(42) of ERISA, or otherwise) of one or more Benefit Plans in connection with the Loans or the Commitments.

5.13 Subsidiaries; Equity Interests; Loan Parties. Schedule 5.13 shows, for each Loan Party and each Subsidiary, its name and its jurisdiction of organization. Schedule 5.13 shows, for each Subsidiary of the Borrower, its authorized and issued Equity Interests, the holders of its Equity Interests, and all agreements binding on such holders with respect to their Equity Interests. Except as disclosed on Schedule 5.13, in the five years preceding the Closing Date, neither the Borrower nor any Subsidiary has acquired any substantial assets from any other Person nor been the surviving entity in a merger, amalgamation or combination. The Borrower has good title to its Equity Interests in its Subsidiaries, and all such Equity Interests are duly issued, fully paid and non-assessable. There are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Subsidiary of the Borrower.

5.14 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U). No Loan proceeds will be used by the Borrower to purchase or carry, or to reduce or refinance any Indebtedness incurred to purchase or carry, any margin stock or for any related purpose, in each case in violation of Regulation T, U or X of the Board of Governors.

(b) None of the Borrower or any of its Restricted Subsidiaries is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.15 Disclosure. No written report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) taken as a whole 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 misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that projections are subject to significant uncertainties and contingencies, many of which are beyond the Borrower’s control, and that no assurance can be given the projections will be realized).

5.16 Compliance with Laws. The Borrower and each Restricted Subsidiary is in compliance in all material respects with the requirements of all Applicable 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 Applicable Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc. As could not reasonably be expected to have a Material Adverse Effect, the Borrower and its Restricted Subsidiaries own, or possess the lawful right to use, all Intellectual Property used in or otherwise necessary for the conduct of its business, without conflict with the rights of any other Person. To the best knowledge of the Loan Parties, no slogan or other advertising device, product, process, method, substance, part or other material now employed by the Borrower or any of its Restricted Subsidiaries, infringes upon any valid, proprietary rights held by any other Person that could result in a claim, that, if successful, could reasonably be expected to have a Material Adverse Effect. No Intellectual Property Claim is pending or, to the best knowledge of the Loan Parties, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The Borrower has disclosed on Schedule 5.17 all Intellectual Property registrations, filings and applications for registration owned by and registered copyrights exclusively licensed by any Loan Party.

5.18 Solvency. Each Loan Party is, individually and together with its Subsidiaries on a consolidated basis, Solvent.

5.19 [Reserved].

5.20 Labor Matters. Except as described on Schedule 5.20, no Loan Party is party to or bound by any collective bargaining agreement. Except as would not reasonably be expected to have a Material Adverse Effect, there are no grievances, disputes or controversies with any union or other organization of the Borrower's or any Restricted Subsidiary's employees, or, to any Loan Party's knowledge, any asserted or threatened strikes, work stoppages or demands for collective bargaining.

5.21 OFAC. Neither the Borrower, nor any of its Subsidiaries, nor, to the knowledge of the Borrower and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by one or more individuals or entities that are (a) currently the subject or target of any Sanctions, (b) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority or (c) located, organized or resident in a Designated Jurisdiction. The Borrower and its Subsidiaries have conducted their businesses in compliance in all material respects with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.

5.22 Anti-Corruption Laws. The Borrower and its Subsidiaries have conducted their businesses in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other applicable anti-corruption legislation in other jurisdictions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.23 USA PATRIOT Act. The Borrower and each of its Subsidiaries is in compliance with the applicable provisions of the USA PATRIOT Act in all material respects.

5.24 Beneficial Ownership Certificate. As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

**5.25 Liens; Security Interests in the Collateral.**

(a) The Security Agreement is (and the other Collateral Documents, upon execution thereof will, to the extent required thereby) effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a security interest in the Collateral described therein (subject to any limitations specified therein). When financing statements specified in the Perfection Certificate in appropriate form are filed in the offices specified in the Perfection Certificate, the Administrative Agent shall have a perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral (subject to any limitations specified therein) to the extent perfection of such security interest can be perfected by the filing of a financing statement, as security for the Obligations, in each case prior and superior in right to any other Person (subject to Permitted Liens). Upon the taking of possession or control by the Administrative Agent of Collateral with respect to which a security interest may be perfected by possession or control, the Liens created by the Collateral Documents shall constitute first priority perfected Liens on, and security interests in, such Collateral (subject to Permitted Liens).

(b) When the Security Agreement or an ancillary document thereunder is properly filed and recorded in the United States Patent and Trademark Office and the United States Copyright Office, and, with respect to Collateral in which a security interest cannot be perfected by such filings, upon the proper filing of the financing statements referred to in clause (a) above, the Administrative Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties thereunder in the United States Intellectual Property included in the Collateral listed in such ancillary document (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on material registered trademarks and patents, trademark and patent applications and registered copyrights acquired by, or registered copyrights exclusively licensed to, the Loan Parties after the Closing Date).

(c) If there are any Mortgaged Properties, the Mortgages shall be effective to create in favor of the Administrative Agent (for the benefit of the Secured Parties) or, if so contemplated by the respective Mortgage, the Administrative Agent and the other Secured Parties, legal, valid and enforceable Liens on all of the Loan Parties' rights, titles and interests in and to the Mortgaged Property thereunder and the proceeds thereof, and when such Mortgages are validly filed, registered or recorded in the proper real estate filing, registration or recording offices, and all required mortgage Taxes and recording and registration charges are duly paid, the Administrative Agent (for the benefit of the Secured Parties) shall have valid Liens with record or registered notice to third parties on all rights, titles and interests of the Loan Parties in such Mortgaged Property.

**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, the Borrower shall, and shall cause each Restricted Subsidiary to:

**6.01 Financial Statements.** Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower, balance sheets as at the end of such fiscal year, and the related statements of income or operations, shareholders' equity and cash flows for such fiscal year, on a consolidated and consolidating basis for the Borrower and its Subsidiaries, 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, which consolidated statements shall be audited and accompanied by (x) a report and opinion of an independent certified public accountant or chartered accountant, as applicable, of nationally recognized standing, 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 (other than with respect to, or resulting from, an upcoming maturity date of the Term Facility) and (y) customary management discussion and analysis of financial condition and results of operation;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, unaudited balance sheets as at the end of such fiscal quarter, and the related statements of income or operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, on a consolidated and consolidating basis for the Borrower and its Subsidiaries, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief financial officer of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) simultaneously with the delivery of the reports referred to in clauses (a) and (b) above, a Compliance Certificate of a Responsible Officer of the Borrower (i) stating whether there exists on the date of such certificate any Default or Event of Default and setting forth the details thereof and the action which the Borrower is taking with respect thereto and (ii) in the case of certificates delivered simultaneously with the delivery of the reports referred to in clause (a) above, setting forth in reasonable detail the calculations for Excess Cash Flow for such period and Available Amount as of the end of such period; and

(d) simultaneously with the delivery of the reports referred to in clauses (a) and (b) above, the related consolidating financial statements reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements (or other reconciliation reasonably acceptable to the Administrative Agent).

6.02 Certificates; Other Information. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) [reserved];

(b) concurrently with the delivery of financial statements under Section 6.01(a), copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Borrower by independent

accountants in connection with the accounts or books of the Borrower or any Subsidiary, or any audit of any of them;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the Securities and Exchange Commission or any provincial securities commission or regulator, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly following the Administrative Agent's request therefor, all documentation and other information that the Administrative Agent reasonably requests on its behalf or on behalf of any Lender 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;

(e) promptly following the Administrative Agent's request therefor, copies of (i) any documents described in Section 101(k)(1) of ERISA that the Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l)(1) of ERISA that the Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan; provided that if the Borrower or any of its ERISA Affiliates have not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan prior to the Administrative Agent's request therefor, the Borrower or one of its ERISA Affiliates shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof;

(f) promptly after the Borrower has notified the Administrative Agent of any intention by the Borrower to treat the Loans and related transactions as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4), a duly completed copy of IRS Form 8886 or any successor form;

(g) concurrently with the delivery of the financial statements referred to in Section 6.01(a), projections of the Borrower's consolidated balance sheets, results of operations and cash flow for the next fiscal year, month by month; and

(h) promptly, such additional information regarding the Collateral or the business, financial or corporate affairs of Borrowers or any Subsidiary, or compliance with the terms of the Loan Documents, as Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which the Administrative Agent and each Lender have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent);

provided that: (i) if any Lender so requests, the Borrower shall deliver paper copies or electronic copies via electronic mail of such the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender of the posting of any such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper 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 by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Lead Arrangers may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar, or a substantially similar electronic transmission system (the “Platform”) and (b) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (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 Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its 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 Side Information;” and (z) the Administrative Agent and the Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

6.03 Notices. Promptly notify the Administrative Agent and each Lender:

- (a) Within five (5) Business Days after the occurrence of a Default or Event of Default under Section 8.01(e) and promptly after the occurrence of any other Default or Event of Default;
- (b) Promptly of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including, if applicable (i) breach or non-performance of, or any default under, a Contractual Obligation of any Borrower or any Restricted Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between any Borrower or any Restricted Subsidiary and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Borrower or any Restricted Subsidiary, including pursuant to any applicable Environmental Laws; or (iv) the assertion of any Intellectual Property Claim;

- (c) Promptly of the occurrence of any ERISA Event;
- (d) Promptly of any material change in accounting policies or financial reporting practices by the Borrower or any of its Subsidiaries;
- (e) Promptly after obtaining knowledge of any pending or threatened labor dispute, strike or walkout, or the expiration of any material labor contract that, in each case, materially and adversely affects the Borrower or any of its Restricted Subsidiaries;
- (f) Promptly of any judgment affecting the Borrower or any of its Restricted Subsidiaries in an amount exceeding \$45,000,000; and
- (g) Promptly after the discharge or any withdrawal or resignation by Borrower's accountants.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Obligations.** Pay and discharge as the same shall become due and payable, all its obligations and liabilities including (a) all Taxes and tax liabilities, assessments and governmental charges or levies upon it or its Properties, unless such Taxes are being Properly Contested; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

**6.05 Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) maintain, preserve or renew all of its Intellectual Property, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties.** (a) Except for any downsizing, restructuring, closure or partial closure of the golf ball manufacturing operations of the Borrower in existence on the Closing Date, maintain, preserve and protect all of its material properties and material 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 except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.07 Maintenance of Insurance.** (a) In addition to the insurance required hereunder and under the Security Agreement with respect to Collateral, maintain insurance with insurers (with a Best Rating of at least A7, unless otherwise approved by the Administrative Agent) satisfactory to the Administrative Agent, with respect to the Properties and business of the Borrower and its

Restricted Subsidiaries of such type (including product liability, workers' compensation, larceny, embezzlement, or other criminal misappropriation insurance), in such amounts, and with such coverages and deductibles as are customary for companies similarly situated. All such insurance shall (i) provide for not less than 30 days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance and (ii) name the Administrative Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable.

(b) At the time of delivery of the applicable Mortgage (or such later date as may be agreed to by the Administrative Agent in its reasonable discretion), cause such property insurance policy with respect to the Mortgaged Property subject to such Mortgage to be endorsed or otherwise amended to include a "standard" lender's loss payable mortgage endorsement, in form and substance reasonably satisfactory to the Administrative Agent; deliver a certificate of insurance with respect to such Mortgaged Property to the Administrative Agent; and deliver to the Administrative Agent, prior to or concurrently with the cancellation or nonrenewal of any such policy of insurance covered by this clause (b), a copy of a renewal or replacement (or other evidence of renewal of a policy previously delivered to the Administrative Agent) insurance certificate with respect thereto.

(c) If any building or mobile home on an improved 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 (each a "Special Flood Hazard Area") with respect to which flood insurance has been made available under the Flood Insurance Laws, (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Applicable 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 Applicable Law or order, write, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Materially comply with all Anti-Terrorism Laws, Anti-Corruption Laws and Sanctions.

6.09 Books and Records. Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of each Borrower and each 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 Borrower and each of its Subsidiaries, as the case may be.

6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to

such accountants' policies and procedures), all at the 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 notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, such visits, inspections and examinations shall only be conducted by the Administrative Agent and shall be limited to one per fiscal year (and only one time at the Borrower's expense); provided, further, that when an Event of Default has occurred and is continuing, 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 without advance notice. Lenders may participate in any such visit or inspection at their own expense.

6.11 Use of Proceeds. Use the proceeds of the Loans for the Transactions and general corporate purposes not in contravention of any Law or of any Loan Document. No proceeds of any Loan will be used, directly or to the best knowledge of the Loan Parties, indirectly, or contributed or otherwise made available to any Subsidiary or other Person, in violation of Anti-Corruption Laws, or to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the target of Sanctions, or in any other manner that will result in a violation by a party to this Agreement or any of its Related Parties (including any individual or entity participating in the transaction, whether as Lender, Lead Arranger, Administrative Agent or otherwise) of Sanctions.

6.12 Additional Guarantors and Collateral.

(a) Promptly notify the Administrative Agent upon any Person becoming a Restricted Subsidiary and (a) cause any such Restricted Subsidiary that is (i) a Domestic Subsidiary or (ii) a Foreign Subsidiary that loses its status as a CFC and is (or becomes) a guarantor of the obligations of a U.S. borrower under the ABL Credit Agreement promptly (and in any event within 30 days of such Person becoming a Restricted Subsidiary (or such longer period as the Administrative Agent may agree to in its reasonable discretion)) to execute and deliver to the Administrative Agent a Guaranty (including, if requested by the Administrative Agent, a joinder to the Guaranty in form and substance satisfactory to the Administrative Agent) in favor of the Administrative Agent for the benefit of the Secured Parties, (b) cause such Guarantor to promptly (and in any event within 30 days of such Guarantor becoming a Restricted Subsidiary (or such longer period as the Administrative Agent may agree to in its reasonable discretion)) deliver to the Administrative Agent such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers or other authorized Persons of such Subsidiary as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer or other authorized Person thereof in connection with the Guaranty to which such Subsidiary is a party and such additional and other documents and certifications as the Administrative Agent may reasonably require to evidence that such Subsidiary is duly organized or formed and is validly existing, in good standing and qualified to engage in business, in each case to the extent applicable, in jurisdictions reasonably identified by the Administrative Agent, and (c) cause such Guarantor to execute and deliver promptly (and in any event within 30 days of such Guarantor becoming a Restricted Subsidiary) such documents, instruments and agreements and to take such other actions as the Administrative Agent shall require to evidence and perfect a Lien in favor of the Administrative Agent (for the benefit of Secured Parties) on all assets of such

Person which are the same type as the Collateral, including delivery of legal opinions, in form and substance satisfactory to Agent, as it shall deem appropriate.

(b) Subject to the terms of the ABL Intercreditor Agreement and, with respect to any Material Real Property, clause (c) below, with respect to any property acquired after the Closing Date by any Loan Party (including, without limitation, any acquisition pursuant to an LLC Division) that is intended to be subject to the Lien created by any of the Collateral Documents but is not so subject, promptly (and in any event within 90 days after the acquisition thereof, or such longer period as may be agreed to the Administrative Agent in its sole discretion) (i) execute and deliver to the Administrative Agent such amendments or supplements to the relevant Collateral Documents or such other documents as the Administrative Agent shall deem necessary or advisable to grant to the Administrative Agent, for its benefit and for the benefit of the other Secured Parties, a Lien on such property subject to no Liens other than Permitted Liens and (ii) take all actions necessary to cause such Lien to be duly perfected to the extent required by such Collateral Document in accordance with all applicable requirements of law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent. The Borrower shall otherwise take such actions and execute and/or deliver to the Administrative Agent such documents as the Administrative Agent shall require to confirm the validity, perfection and priority of the Lien of the Collateral Documents on such after-acquired properties.

(c) With respect to any Mortgaged Property on the Closing Date, within one hundred twenty (120) days following the Closing Date (or such longer period as may be agreed to by the Administrative Agent in its reasonable discretion), and with respect to any Material Real Property acquired after the Closing Date, within one hundred twenty (120) days after such acquisition (but in no event prior to forty-five (45) days after the Borrower has given notice of such acquisition to the Administrative Agent and in no event prior to the Borrower receiving confirmation from the Administrative Agent that flood insurance due diligence has been completed or such longer period as may be agreed to by the Administrative Agent in its reasonable discretion), the Borrower shall, or shall cause the applicable Loan Party to, grant to the Administrative Agent a Mortgage on such Material Real Property, which Mortgage shall constitute a valid and enforceable Lien on the applicable Loan Party's right, title and interest in and to such Material Real Property, subject to no other Liens except Permitted Liens, and record, register or file, the Mortgage in such manner and in such places as is required by law to establish the Liens in favor of the Administrative Agent (for the benefit of the Secured Parties) required to be granted pursuant to the Mortgages and pay, and cause each such Loan Party to pay, in full, all Taxes, fees and other charges required to be paid in connection with such recording, registration or filing of the Mortgages. With respect to each such Mortgage, the Borrower shall cause the following requirements to be satisfied with respect to such Mortgaged Property:

- (i) the Administrative Agent shall have received with respect to each Mortgaged Property the Flood Documentation;
- (ii) the Administrative Agent shall have received with respect to the Mortgage encumbering each such Mortgaged Property, opinions of local counsel regarding the enforceability of the Mortgages and such other matters customarily covered in real estate mortgage counsel opinions as the Administrative Agent may reasonably request, if and to

the extent, and in such form, as local counsel customarily provides such opinions as to such other matters, and

(iii) the Administrative Agent shall have received:

(A) a policy or policies or marked up unconditional binder of title insurance ("Mortgage Policy"), in the amount of the fair market value of the respective Mortgaged Property, issued by a nationally recognized title insurance company ("Title Insurer") insuring the Lien of each Mortgage as a valid first priority Lien on the Mortgaged Property described therein, free of any other Liens except Permitted Liens, together with such customary endorsements, coinsurance and reinsurance as the Administrative Agent may reasonably request and which are available at commercially reasonable rates in the jurisdiction where the applicable Mortgaged Property is located (provided, however, that in lieu of a zoning endorsement, Administrative Agent shall accept a zoning report from a nationally recognized zoning report provider), and

(B) a survey of each Mortgaged Property (including all improvements, easements and other customary matters thereon reasonably required by the Administrative Agent), as applicable, for which all necessary fees (where applicable) have been paid, which (A) complies in all material respects with the minimum detail requirements of the American Land Title Association and American Congress of Surveying and Mapping as such requirements are in effect on the date of preparation of such survey and (B) is sufficient for such Title Insurer to remove all standard survey exceptions from the title insurance policy relating to such Mortgaged Property or otherwise reasonably acceptable to the Administrative Agent; provided, however, that so long as the Title Insurer shall accept the same to eliminate the standard survey exceptions from such policy or policies, in lieu of a new or revised survey Borrowers may provide a "no material change" affidavit with respect to any prior survey for the respective Mortgaged Property (which prior survey otherwise substantially complies with the foregoing survey requirements) (a "Survey").

6.13 Further Assurances. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by Applicable Law, subject any Loan Party's or any of its Restricted Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed

in connection with any Loan Document to which any Loan Party or any of its Restricted Subsidiaries is or is to be a party, and cause each of its Restricted Subsidiaries to do so.

6.16 **Maintenance of Ratings.** The Borrower shall use commercially reasonable efforts to cause the credit facilities provided for herein to be continuously rated by S&P and Moody's and to maintain a corporate family rating of the Borrower from each of S&P and Moody's; *provided* that the Borrower shall not be required to obtain or maintain any specific rating.

6.17 **Conference Calls.** The Borrower shall, prior to, or within 10 days (or such later date as the Administrative Agent may agree in its reasonable discretion) after, the date of the delivery of the quarterly and annual financial information pursuant to clause (a) or (b) of Section 6.01, hold a conference call or teleconference, at a time selected by the Borrower and reasonably acceptable to the Administrative Agent, with all of the Lenders that choose to participate, to review the financial results of the previous fiscal quarter or year, as the case may be, of the Borrower (it being understood that any such call may be combined with any similar call held for any of the Borrower's other lenders or security holders).

6.18 **Post-Closing Requirements.** Except as otherwise agreed by the Administrative Agent in its reasonable discretion, the Borrower shall, and shall cause each of the other Loan Parties to, deliver each of the documents, instruments and agreements and take each of the actions set forth on Schedule 6.18, if any, within the time periods set forth therein (or such longer time periods as determined by the Administrative Agent in its reasonable discretion).

## ARTICLE VII. NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Borrower shall not, 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 suffer to exist under the Uniform Commercial Code of any jurisdiction a financing statement that names the Borrower or any of its Restricted Subsidiaries as debtor, or assign any accounts or other right to receive income, other than the following (collectively, "**Permitted Liens**"):

- (a) Liens pursuant to any Loan Document;
- (b) Liens existing on the Closing Date and listed on Schedule 7.01;
- (c) Liens for Taxes not yet due and payable or being Properly Contested;
- (d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being Properly Contested;
- (e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits or other Liens to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting Real Estate which, are (i) shown in any lender's policy of title insurance insuring any Mortgage, or (ii) in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution;

(i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h) or securing appeal or other surety bonds related to such judgments (so long as such judgments do not constitute an Event of Default under Section 8.01(h));

(j) Liens securing Indebtedness permitted under Section 7.02(e); provided that such Liens do not at any time encumber any property other than the property financed by such Indebtedness;

(k) any Lien existing on any property or asset prior to the acquisition thereof or existing on any property or asset of any Person that becomes a Restricted Subsidiary after the date hereof prior to the time such Person becomes a Restricted Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Restricted Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of such Restricted Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes Restricted Subsidiary;

(l) extensions, renewals and replacements of Liens referred to in clauses (a) through (k) above, provided that the property covered thereby is not increased and any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02.

(m) Liens arising under leases, subleases, licenses and rights to use granted to others and permitted under Section 7.05(f);

(n) Liens not expressly permitted by clauses (a) through (m) above and as to which the aggregate amount of obligations secured thereby does not exceed \$75,000,000 at any one time;

(o) other Liens in an unlimited amount so long as, in the case of (a) Liens securing Indebtedness on a *pari passu* basis with the Liens securing the Obligations, the First Lien Net Leverage Ratio would not exceed 2.25 to 1.00 and (b) Liens securing Indebtedness on a junior basis with the Liens securing the Obligations, the Senior Secured Net Leverage Ratio would not exceed 2.75 to 1.00;

(p) Liens securing Indebtedness permitted under Section 7.02(o); provided that such Liens do not at any time encumber any property other than the property financed or leased by such Indebtedness;

(q) Liens securing Indebtedness permitted under Section 7.02(p); provided that (x) with respect to ABL Priority Collateral only, subject to the ABL Intercreditor Agreement, such Liens may be senior to the Liens in favor of the Administrative Agent (and if such Liens are senior to the Liens in favor of the Administrative Agent with respect to ABL Priority Collateral, then such Liens must be junior to the Liens in favor of the Administrative Agent with respect to Collateral not constituting ABL Priority Collateral) and (y) such Indebtedness shall be subject to the ABL Intercreditor Agreement or another customary intercreditor agreement reasonably acceptable to the Administrative Agent; and

(r) Liens on the Collateral (or any portion thereof) securing Indebtedness issued pursuant to Section 7.02(q).

Notwithstanding the foregoing, the Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien upon (x) any Equity Interests owned by any Loan Party in Top Golf and (y) intellectual property owned by any Foreign Subsidiary that is a borrower or a guarantor under the ABL Intercreditor Agreement (other than Liens on such intellectual property pursuant to the ABL Loan Documents).

For purposes of determining compliance with this Section 7.01, in the event that any Lien (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Lien (or any portion thereof) in any manner that complies with this covenant; provided, that all Liens created pursuant to the Loan Documents will be deemed to have been incurred on the Closing Date in reliance on the exception in clause (a) above and will not be permitted to be reclassified pursuant to this paragraph.

7.02 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness on the Closing Date and listed on Schedule 7.02;

(c) Indebtedness consisting of unsecured intercompany loans among the Borrower and any Restricted Subsidiary or unsecured guarantees of the Borrower or any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary so long as, in each case, the corresponding Investment is permitted under Section 7.03;

(d) Indebtedness of the Borrower or any Restricted Subsidiary existing or arising under any Swap Contract, provided that such Swap Contract was entered into by such Person to hedge risks arising in the ordinary course of business and not for speculative purposes;

(e) Indebtedness in respect of Capitalized Leases, Off-Balance Sheet Liabilities and purchase money obligations for fixed or capital assets; provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$50,000,000;

(f) Indebtedness that is in existence when a Person becomes a Restricted Subsidiary or that is secured by an asset when acquired by the Borrower or Restricted Subsidiary, as long as such Indebtedness was not incurred in contemplation of such Person becoming a Restricted Subsidiary or such acquisition, and does not exceed \$50,000,000 in the aggregate at any time;

(g) Indebtedness of any wholly owned Restricted Subsidiary to the Borrower or another wholly owned Restricted Subsidiary constituting the purchase price in respect of intercompany transfers of goods and services made in the ordinary course of business to the extent otherwise permitted by Section 7.08 and not constituting Indebtedness for borrowed money;

(h) Indebtedness of the Borrower or any Restricted Subsidiary in connection with guaranties resulting from endorsement of negotiable instruments in the ordinary course of business;

(i) Indebtedness on account of surety bonds and appeal bonds in connection with the enforcement of rights or claims of the Borrower or its Restricted Subsidiaries or in connection with judgments not resulting in an Event of Default under Section 8.01(h);

(j) any refinancings, refundings, renewals or extensions of Indebtedness permitted pursuant to Sections 7.02(b); provided that (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, and (ii) Indebtedness subordinated to the Obligations is not refinanced except on subordination terms at least as favorable to the Administrative Agent and the Lenders and no more restrictive on the Borrower and its Restricted Subsidiaries than the subordinated Indebtedness being refinanced.

(k) Bank Product Debt (other than Indebtedness arising under Swap Contracts);

(l) Indebtedness that is not included in any of the preceding clauses (a) through (k) of this Section 7.02 and does not exceed \$75,000,000 in the aggregate at any time;

(m) Indebtedness to the Person, or the beneficial holders of Equity Interests in the Person, whose assets or Equity Interests are acquired in a Permitted Acquisition where such Indebtedness (i) is payable in full no sooner than three years from the date of such Permitted Acquisition, (ii) is repayable in installments of no more than one-third of the initial amount in any year after the date of such Permitted Acquisition, (iii) bears interest and fees that are consistent with then available market rates for such Indebtedness, (iv) is not secured by a Lien and (v) does not exceed (together with all other Indebtedness incurred under this clause (m)) \$25,000,000 in the aggregate at any time;

(n) other Indebtedness that is not included in any of the preceding clauses of this Section so long as: (i) such Indebtedness does not have a weighted average life that is shorter than that of the Term Facility, (ii) such Indebtedness has a maturity date that is at least 6 months after the Maturity Date, (iii) to the extent such Indebtedness is secured on a pari passu basis with the Liens securing the Obligations, such Indebtedness shall be subject to MFN Protection solely to the extent any Incremental Term Loans incurred in lieu thereof would be subject to MFN Protection,

and (iv) immediately upon and after giving effect to such Indebtedness, the Consolidated Total Net Leverage Ratio is not greater than 3.25 to 1.00; provided, that all such Indebtedness outstanding pursuant to this clause (n) incurred by a Restricted Subsidiary that is not a Guarantor shall not exceed \$75,000,000 in the aggregate at any time;

(o) Indebtedness pursuant to equipment financing and/or leases entered into among one or more of the Loan Parties and Banc of America Leasing & Capital, LLC, in an aggregate amount not to exceed \$50,000,000 at any time outstanding;

(p) Indebtedness incurred pursuant to the ABL Credit Agreement and the related credit documents in an aggregate principal amount not to exceed the greater of (x) \$450,000,000 and (y) the Borrowing Base, and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder; provided further that any Indebtedness incurred pursuant to this clause (p) is not guaranteed by, or secured by the assets of, any Foreign Subsidiary (other than the Acquired Business and any Foreign Subsidiary formed in the United Kingdom or Canada); and

(q) (A) Indebtedness (in the form of senior secured, senior unsecured, senior subordinated, or subordinated notes or junior lien or unsecured loans) incurred by the Borrower in an aggregate principal amount not to exceed the then remaining Maximum Incremental Amount, which Indebtedness shall be deemed to have been incurred in reliance on Section 2.15; provided that (1) such Indebtedness shall not mature earlier than the Latest Maturity Date in effect at such time, (2) as of the date of the incurrence of such Indebtedness, the weighted average life to maturity of such Indebtedness shall be no shorter than that of the weighted average life to maturity of the existing Term Loans under any Term Facility, (3) no Restricted Subsidiary is a borrower or guarantor with respect to such Indebtedness other than any Loan Party, (4) the covenants, events of default, guarantees, collateral and other terms of such Indebtedness (other than pricing and optional prepayment or redemption terms), taken as a whole, are not more materially restrictive to the Borrower and the Restricted Subsidiaries, as reasonably determined by the Borrower, than those set forth in this Agreement; (5) if secured, such indebtedness shall only be secured by Collateral and, at the time of incurrence the holders of such Indebtedness (or a representative thereof on behalf of such holders) shall have entered into an intercreditor agreement with the Administrative Agent in form and substance reasonably acceptable to the Administrative Agent agreeing that any Liens securing such Indebtedness are subject to the terms thereof (provided that, for the avoidance of doubt, such Liens shall be pari passu with or junior to the Liens securing the Obligations) and (6) the Borrower has delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirements set forth in subclauses (1)-(4) (and which shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement) (such Indebtedness incurred pursuant to this subclause (q) being referred to as "Permitted Alternative Incremental Facilities Debt") and (B) any refinancing, refunding, renewal or extension of any Indebtedness specified in subclause (A) above; provided that (x) the principal amount of any such Indebtedness is not increased above

the principal amount thereof outstanding immediately prior to such refinancing, refunding, renewal or extension (except for any original issue discount thereon, accrued and unpaid interest and the amount of fees, expenses and premium in connection with such refinancing) and (y) such refinancing, refunding, renewal or extension meets the requirements set forth in subclauses (A)(1) through (A)(6) above.

The outstanding aggregate principal amount of all Indebtedness of the Foreign Subsidiaries of the Borrower incurred pursuant to clauses (e), (f), (l), (m), (n) and (q) of this Section 7.02 shall not exceed \$50,000,000.

For purposes of determining compliance with this Section 7.02, in the event that any Indebtedness (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Indebtedness (or any portion thereof) in any manner that complies with this covenant; *provided*, that all Indebtedness created pursuant to the Loan Documents will be deemed to have been incurred on the Closing Date in reliance on the exception in clause (a) above and will not be permitted to be reclassified pursuant to this paragraph.

7.03 Investments. Make or hold any Investments, except:

- (a) advances to officers, directors and employees of the Borrower and its Restricted Subsidiaries for travel, entertainment, relocation and analogous ordinary business purposes;
- (b) Investments in Restricted Subsidiaries to the extent existing on the Closing Date and other Investments in existence on the Closing Date and set forth on Schedule 7.03;
- (c) Investments by: (i) a Loan Party in another Loan Party; (ii) a Borrower or a Guarantor in a Restricted Subsidiary that is not a Loan Party so long as: (A) the aggregate amount of such Investments, together with all Permitted Acquisitions of entities that are not or do not become Guarantors and assets that do not become Collateral pursuant to clause (e) of the definition of "Permitted Acquisitions" (other than in reliance on the Permitted Acquisition Leverage Condition), shall not exceed: \$200,000,000, and (B) no Event of Default has occurred and is continuing at the time of such Investment, or would result therefrom; and (iii) a Restricted Subsidiary that is not a Borrower or Guarantor in any other Restricted Subsidiary; *provided* that any intercompany loan from a Loan Party to the Borrower or any Subsidiary shall be documented by an intercompany note in form and substance reasonably satisfactory to the Administrative Agent and such intercompany note shall be pledged to the Administrative Agent (for the benefit of the Secured Parties);
- (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) Investments consisting of Permitted Acquisitions;
- (f) Investments pursuant to Swap Contracts otherwise permitted hereunder;

(g) Investments in Cash Equivalents;

(h) so long as no Event of Default has occurred and is continuing or would result therefrom, any other Investments made after the Closing Date in an aggregate amount not to exceed \$150,000,000 at any time outstanding;

(i) [reserved];

(j) Investments, so long as: (i) no Default or Event of Default has occurred and is continuing or would result therefrom; (ii) the amount expended in connection with any such Investment is made solely using Top Golf Proceeds, (iii) the aggregate amount expended in connection with all such Investments consummated under this clause (j) and transactions consummated under Section 7.06(g) does not exceed \$150,000,000 in the aggregate; (iv) the Borrower provides the Administrative Agent with at least 7 days prior written notice of any such Investment (which notice shall contain the amount to be expended in such transaction and evidence of the source of funds for such expenditure); (v) the Borrower provides the Administrative Agent with evidence of the making of any Investment under this clause (j);

(k) additional Investments in Top Golf in an amount not to exceed \$30,000,000 in the aggregate at any time so long as at the time of any such Investment, no Default or Event of Default has occurred and is continuing or would result therefrom;

(l) unlimited Investments provided that after giving effect thereto (i) no Event of Default shall have occurred and be continuing and (ii) the Consolidated Total Net Leverage Ratio is equal to or less than 2.00 to 1.00; and

(m) Investments in an amount not to exceed the portion of the Available Amount on the date of such election that the Borrower elects to apply to this Section 7.03(m); provided that after giving effect thereto no Event of Default shall have occurred and be continuing.

7.04 Fundamental Changes. (a) Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Delaware LLC Division), except that, so long as no Default exists or would result therefrom:

(i) any Restricted Subsidiary may merge with (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Restricted Subsidiaries, provided that when any Loan Party (other than the Borrower) is merging with another Restricted Subsidiary, such Loan Party shall be the continuing or surviving Person;

(ii) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party;

(iii) any Restricted Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another Restricted Subsidiary that is not a Loan Party or (ii) to a Loan Party;

- (iv) any Immaterial Subsidiary may be wound up, liquidated or dissolved; and
  - (v) the Borrower and its Restricted Subsidiaries may make those Dispositions permitted by Section 7.05; or
- (b) Change its name; change its tax, charter or other organizational identification number; or change its form or state of organization without 10 Business Days' prior written notice to the Administrative Agent.

7.05 **Dispositions**. Make any Disposition or enter into any agreement to make any Disposition, except:

- (a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;
- (b) Dispositions of inventory in the ordinary course of business;
- (c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;
- (d) Dispositions of property by any Restricted Subsidiary to the Borrower or to a wholly-owned Restricted Subsidiary; provided that if the transferor of such property is a Guarantor, the transferee thereof must either be the Borrower or a Guarantor;
- (e) Dispositions permitted by Section 7.04 (other than Section 7.04(a)(v)), (ii) Investments permitted by Section 7.03, and (iii) Restricted Payments permitted by Section 7.06;
- (f) leases, subleases, licenses and rights to use granted to others in the ordinary course of business and not otherwise prohibited by this Agreement so long as such leases, subleases, licenses and rights to use do not materially adversely affect the conduct by the Borrower and its Restricted Subsidiaries of their core golf products business or the value of the Collateral;
- (g) [reserved];
- (h) (i) Dispositions of excess Real Estate and related assets made in connection with the consolidation of business activities in other locations and (ii) sale and leaseback transactions involving Real Estate;
- (i) [reserved];
- (j) other Dispositions in an aggregate amount in any fiscal year not to exceed 5% of the Consolidated Tangible Assets of the Borrower and its Restricted Subsidiaries as of the end of the most recently ended fiscal year of the Borrower; and
- (k) other Dispositions; provided that at least 75% of the consideration for such Disposition shall be paid to the Borrower or such Restricted Subsidiary in cash or Cash

Equivalents; provided that (1) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate Fair Market Value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (1) from and after the Closing Date, not in excess of \$50,000,000, with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed cash and (2) any liabilities or obligations that are assumed by the transferee in connection with such Disposition shall be deemed cash and any securities, notes or other obligations received by the Borrower or any of its Restricted Subsidiaries from the transferee or Affiliates in connection with such Disposition shall be deemed cash if the Borrower or the applicable Restricted Subsidiary intends at the time of receipt to convert such securities, notes or other obligations to cash within fifteen months of receipt thereof (with the proceeds thereof being cash proceeds upon any such conversion); provided, further, that any such Disposition shall be for Fair Market Value.

provided, however, that any Disposition pursuant to Section 7.05(a) through Section 7.05(j) shall be for fair market value; provided, further, that the Borrower or any of its Restricted Subsidiaries may enter into an agreement to make an Disposition otherwise prohibited by this Section 7.05 if failure to consummate such Disposition would not result in a liability or Indebtedness otherwise prohibited by this Agreement and the consummation of the Disposition contemplated by such agreement is conditioned upon either the termination of this Agreement or receipt of the prior written consent of the Administrative Agent and the Required Lenders.

**7.06 Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any capital contributions, except that:

- (a) each Restricted Subsidiary may make Restricted Payments to the Borrower, any Restricted Subsidiaries of the Borrower that are Guarantors and any other Person that owns a direct Equity Interest in such Restricted Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;
- (b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other Equity Interests of such Person;
- (c) so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower and each Restricted Subsidiary may purchase, redeem or otherwise acquire shares of its common stock or other Equity Interests or warrants or options to acquire any such Equity Interests with the proceeds received from the substantially concurrent issue of new shares of its common stock or other Equity Interests;
- (d) the Borrower may purchase Equity Interests in any Loan Party or options with respect to Equity Interests in any Loan Party held by employees or management of any Loan Party in connection with the termination of employment of such employees or management so long as: (i) the aggregate amount of such purchases do not exceed \$10,000,000 in any fiscal year of the Borrower, and (ii) no Event of Default has occurred and is continuing at the time of any such purchase or would result therefrom;

(e) so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower and its Restricted Subsidiaries may make other Restricted Payments in an aggregate amount not to exceed \$50,000,000;

(f) so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may make cash payments in lieu of issuance of fractional shares in connection with the conversion of any convertible stock or debt securities of the Borrower, in an aggregate amount not to exceed \$10,000,000 for all such payments;

(g) the Borrower may make repurchases of and pay dividends on its common stock so long as: (i) no Default or Event of Default has occurred and is continuing or would result therefrom; (ii) the amount expended in connection with any such transaction is made solely using Top Golf Proceeds; (iii) the aggregate amount expended in connection with all such transactions consummated under this clause (g) and Investments made under Section 7.03(j) does not exceed \$150,000,000 in the aggregate; (iv) the Borrower provides Agent with at least 7 days prior written notice of any such transaction (which notice shall contain the amount to be expended in such transaction and evidence of the source of funds for such expenditure); and (v) the Borrower provides Agent with evidence of the completion of any such transaction under this clause (g);

(h) any Restricted Payment made out of the net cash proceeds of the substantially concurrent sale of, or made by exchange for, Qualified Equity Interests or Junior Debt of the same payment and lien priority of any Junior Debt being prepaid or exchanged therefor pursuant to this clause (h) of the Borrower (other than Qualified Equity Interests issued or sold to a Restricted Subsidiary of the Borrower or an employee stock ownership plan or to a trust established by the Borrower or any of its Restricted Subsidiaries for the benefit of their employees) or a substantially concurrent cash capital contribution received by the Borrower from its stockholders; provided that such net cash proceeds are not included in any determination of the Available Amount;

(i) unlimited Restricted Payments provided that after giving effect thereto (i) no Event of Default shall have occurred and be continuing and (ii) the Consolidated Total Net Leverage Ratio is equal to or less than 1.75 to 1.00;

(j) Restricted Payments in an amount not to exceed the portion of the Available Amount on the date of such election that the Borrower elects to apply to this Section 7.06(j); provided that after giving effect thereto no Event of Default shall have occurred and be continuing; and

(k) so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower and its Subsidiaries may make other Restricted Payments in an aggregate amount not to exceed \$30,000,000 during each year.

7.07 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Restricted Subsidiaries on the date hereof, one or more of the leisure goods, products and services businesses generally or, in each case, any business substantially related or incidental thereto.

7.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower, except (a) transactions (i) between or among Loan Parties and (ii)

between or among Restricted Subsidiaries that are not Loan Parties, (b) transactions constituting Investments in Restricted Subsidiaries as permitted by Section 7.03, (c) transactions constituting Indebtedness among the Borrower or any of its Restricted Subsidiaries, in each case as permitted by Section 7.02; (d) transactions among the Borrower or any of its Restricted Subsidiaries, in each case as permitted by Section 7.04 or Section 7.05, (e) transactions constituting Restricted Payments permitted by Section 7.06, (f) transactions constituting reasonable fees and compensation paid to (including issuance and grants of securities and stock options, employment agreements and stock option and ownership plans for the benefit of, and indemnities provided on behalf of) officers, directors, employees and consultants of the Borrower or any Restricted Subsidiary, (g) constituting loans or advances to employees and officers of the Borrower and its Restricted Subsidiaries to the extent permitted by Section 7.03(a), and (h) transactions with Affiliates in the ordinary course of business, upon fair and reasonable terms fully disclosed to the Administrative Agent and no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate.

7.09 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document or the ABL Credit Agreement and the other ABL Loan Documents, and in each case any amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings thereof permitted under this Agreement) that (a) limits the ability (i) of any Restricted Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to or invest in the Borrower or any Guarantor, (ii) of the Borrower or any Restricted Subsidiary to incur or repay the Obligations, (iii) of the Borrower or any Restricted Subsidiary to grant Liens on any Collateral in favor of the Agent for the benefit of the Lenders or (iv) of any Loan Party to guarantee the Obligations; provided, that the restrictions set forth herein shall not apply to (w) customary restrictions on transfers of property subject to a capital lease as set forth in such capital lease; (x) customary restrictions with respect to a Restricted Subsidiary pursuant to an agreement that has been entered into for the sale or disposition (not otherwise prohibited by this Agreement or any other Loan Document) of all or substantially all of the capital stock or assets of such Restricted Subsidiary; (y) customary prohibitions on assignment in any contract or lease; and (z) customary net worth provisions contained in leases and other agreements entered into by a Restricted Subsidiary in the ordinary course of business.

7.10 Organization Documents. Amend, modify or otherwise change any of its Organization Documents as in effect on the Closing Date where such amendment, modification or other change would have a Material Adverse Effect.

7.11 Tax Consolidation. File or consent to the filing of any consolidated income tax return with any Person other than Borrower and Subsidiaries.

7.12 Accounting Changes. Make any material change in accounting treatment or reporting practices, except as required by GAAP and in accordance with Section 1.03; or change the Borrower's fiscal year.

7.13 Activities of uPlay. Unless Borrower causes uPlay to become a Guarantor hereunder in accordance with Section 6.12, uPlay will not (a) engage in any business or activity or (b) own any assets or have any liabilities (other than liabilities reasonably incurred in connection with its maintenance of its existence).

## ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an event of default (each, an “**Event of Default**”):

- (a) Non-Payment. The Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan or (ii) pay within three days after the same becomes due, any interest on any Loan, or any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or
- (b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(a), 6.05 (solely with respect to the Borrower’s existence), 6.11 or Article VII; or
- (c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or
- (d) Representations and Warranties. Any representation, warranty, certification or statement of fact made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or
- (e) Cross-Default. (i) 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 Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice or lapse of time 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 an event of default under the ABL Credit Agreement shall not constitute an Event of Default unless and until the date on which the lenders under the ABL Credit Agreement have actually declared all such obligations under the ABL Credit Agreement to be immediately due and payable in accordance with the terms of the ABL Credit Agreement and such declaration has not been rescinded by the lenders under the ABL Credit Agreement on or before such date; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any

Restricted Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Restricted Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Restricted Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Restricted Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) 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, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments. There is entered against 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 judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final 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) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower or any of its Restricted Subsidiaries to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower 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 has resulted or could reasonably be expected to result in liability of the Borrower or any of its Restricted Subsidiaries in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material 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 contests in any manner the validity or enforceability of any provision of any Loan Document other than as expressly permitted hereunder or thereunder; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Collateral Documents. Any Collateral Document that creates a Lien with respect to a material portion of the Collateral, after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien (subject to Liens permitted by Section 7.01) on the Collateral purported to be covered thereby, except to the extent that (i) any of the foregoing results from the failure of the Administrative Agent to maintain possession of any stock certificates, promissory notes, certificates of title or other instruments delivered to it under the Collateral Documents or (ii) such loss is covered by a title insurance policy benefitting the Administrative Agent or the Lenders and the related insurer has not asserted in writing that such loss is not covered by such title insurance policy and has not denied coverage.

8.02 Remedies upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

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), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective 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 and other Obligations arising under the Loan Documents, 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 and Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, 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. Each Cash Management Bank or Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a “Lender” party hereto.

## ARTICLE IX. ADMINISTRATIVE AGENT

9.01 Appointment and Authority. (a) Each of the Lenders 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 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 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 Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) 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 potential Hedge Bank and a potential Cash Management Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and

all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

**9.02 Rights as a Lender.** The Person serving as the 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 the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Restricted Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**9.03 Exculpatory Provisions.** The Administrative Agent 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 Administrative Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under 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 Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.
- (d) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith

shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. 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.

(e) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (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.

(f) 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 Agreement 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 prospective Lender is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment of Loans, or disclosure of confidential information, to any Disqualified Institution.

9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and

any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative 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 nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 **Resignation of Administrative Agent.** The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, (or such earlier day as shall be agreed by the Required Lenders) (the “**Resignation Effective Date**”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that in no event shall any such successor Administrative Agent be a Disqualified Institution. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(c) With effect from the Resignation Effective Date, (1) 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 (2) except for any indemnity payments or other amounts then owed to the retiring Administrative Agent, 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, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. 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 removed) Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the 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 Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring Administrative Agent was acting as Administrative Agent and (ii) after such resignation for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (a) acting as collateral agent or otherwise holding any collateral security on

behalf of any of the Lenders and (b) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent 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.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners or Lead Arrangers listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

9.09 Administrative Agent May File Proofs of Claim; Credit Bidding. 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, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 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 to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any Applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (j) of Section 10.01 of this Agreement), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

9.10 Collateral and Guaranty Matters. (a) Without limiting the provisions of Section 9.09, each of the Lenders agree that a Guarantor shall automatically be released from its obligations under the Loan Documents, and all security interests created by the Collateral Documents in Collateral owned by such Guarantor shall be automatically released, upon consummation of any transaction not prohibited by this Agreement resulting in such Guarantor ceasing to be a Guarantor.

(b) The Lenders hereby irrevocably agree that (A) upon (i) any sale or other transfer by any Loan Party (other than to another Loan Party) of any Collateral in a transaction not prohibited by this Agreement, (ii) the effectiveness of any written consent to the release of the security interest created under any Collateral Document in any Collateral or (iii) the release of any

Guarantor from its Guarantee pursuant to the Guaranty, the security interests in such Collateral described in clauses (i) or (ii) and Collateral of such Guarantor described in clause (iii) created by the Collateral Documents shall be automatically released. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) in respect of all interests retained by the Loan Parties, including the proceeds of any Disposition, 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 and (B) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank of Hedge Bank shall have been made), all security interests created by the Collateral Documents shall be automatically released.

(c) Each of the Lenders irrevocably authorizes the Administrative Agent to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(j).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, 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 of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 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.

#### **9.12 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the

Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

9.13 Withholding Taxes. To the extent required by any Applicable Law, the Administrative Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason), such Lender shall indemnify and hold harmless the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties, additions to Tax or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred, whether or not such Tax was 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 this Agreement or any other Loan Document against any amount due the Administrative Agent under paragraph. The agreements in this paragraph shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the repayment, satisfaction or discharge of all other obligations.

## ARTICLE X. MISCELLANEOUS

10.01 Amendments, Etc. Subject to Section 3.03(c) and the last paragraph of this Section 10.01 and except as provided in Sections 2.14, 2.15 and 2.16, 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 and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) waive any condition set forth in Section 4.01 (other than Section 4.01(b) or (c)), or, in the case of the initial Borrowing, Section 4.02, without the written consent of each Lender;
- (b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for (i) any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment or (ii) any scheduled reduction of the Term Facility hereunder or under any other Loan Document without the written consent of each Term Lender;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (ii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(e) change (i) Section 2.13 or Section 8.03 or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans among the Term Facility from the application thereof set forth in the applicable provisions of Section 2.05(b), respectively, in any manner that materially and adversely affects the Lenders under the Term Facility without the written consent of each Lender directly affected thereby;

(g) change any provision of this Section 10.01 or the definition of "Required Lenders" or "Required Class Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender;

(h) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(i) subordinate any Lien of the Administrative Agent with respect to the Collateral, without the written consent of each Lender affected thereby;

(j) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Restricted Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(k) directly and materially adversely affect the rights of Lenders holding Commitments or Loans of one Class differently from the rights of Lenders holding Commitments or Loans of any other Class without the written consent of the applicable Required Class Lenders;

and provided, further, 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 the Administrative Agent under this Agreement or any other Loan Document; and (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Required Lenders, the Administrative Agent and the Borrower to effectuate

any Incremental Term Loans, Refinancing Term Loans or Extended Term Loans in a manner consistent with Sections 2.14, 2.15 and 2.16 and as may be necessary to establish such Incremental Term Loans, Refinancing Term Loans or Extended Term Loans as a separate Class or tranche from any existing Term Loans and, in the case of Extended Term Loans, to reduce the amortization schedule of the related existing Class of Term Loans proportionately.

Notwithstanding any provision herein to the contrary, if the Administrative Agent and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document (including the schedules and exhibits thereto), then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

**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 except as provided in clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

- (i) if to 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
- (ii) if to any Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

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 sub clause (b) below shall be effective as provided in such clause (b).

(b) **Electronic Communications.** Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. The Administrative Agent or the Borrower may each, in its discretion, agree to accept notices and other communications to it

hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to 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, any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Borrower and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the 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.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices and 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 Loan Parties shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the 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.

10.03 No Waiver; Cumulative Remedies; Enforcement. 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 10.08 (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 clause (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 Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent (which shall be limited to the reasonable fees and expenses of one primary counsel to the Lead Arrangers and the Administrative Agent taken as a whole and one local counsel in each relevant jurisdiction (which may include a single counsel acting in multiple jurisdictions))), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other

Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender ((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 Lenders taken as a whole and, solely in the case of a conflict of interest, one additional counsel to all affected Lenders taken as a whole (and, if reasonably necessary, of one local counsel in any relevant jurisdiction and of one special counsel to all such persons, taken as a whole and, solely in the case of a conflict of interest, additional local and special counsel to all similarly affected persons taken as a whole)), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.04, or (B) in connection with Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (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 such Indemnitees taken as a whole and, solely in the case of a conflict of interest, one additional counsel to all affected Indemnitees taken as a whole (and, if reasonably necessary, of one local counsel in any relevant jurisdiction and of one special counsel to all such persons, taken as a whole and, solely in the case of a conflict of interest, additional local and special counsel to all similarly affected Indemnitees taken as a whole)), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the 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, in the case of the Administrative Agent (and any sub agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Restricted Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Restricted Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, willful misconduct or bad faith of such Indemnitee or any of its Related Parties, in each case, that was involved in the negotiation or syndication of the Loan Documents or (y) result from a claim not involving an act or omission of the Borrower and that is brought by an Indemnitee against another Indemnitee (other than against the Lead Arrangers or the Administrative Agent in their capacities as such). 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, liabilities and expenses arising from any non-Tax claim.

(c) **Reimbursement by Lenders**. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under clauses (a) or (b) of this Section 10.04 to be paid by it to the Administrative Agent (or any sub-agent thereof) or any of its Related Parties, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Term Loan Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), in its capacity as such, or against such Related Party acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 2.12(d).

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by Applicable Law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) **Payments**. All amounts due under this Section 10.04 shall be payable not later than thirty (30) days after demand therefor.

(f) **Survival**. The agreements in this Section 10.04 and the indemnity provisions of Section 10.02(e) shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent, or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full

force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

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 the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.06(b) and in the case of any assignee that is the Borrower or any of its Subsidiaries, Section 10.06(f), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(e) (and any other attempted assignment or transfer by any party hereto shall be prohibited). 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 clause (d) of this Section 10.06 and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b)) at the time owing to it); provided that (in each case with respect to the Term Facility) 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/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in clause (b)(i)(B) of this Section 10.06 in the aggregate 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 clause (b)(i)(A) of this Section 10.06, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less

than \$1,000,000 unless each of the Administrative Agent and, so long as no Event of Default under Section 8.01(a) or (f) has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(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 clause (b)(i)(B) of this Section 10.06 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(a) or (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; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Term Facility; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund;

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries except in accordance with Section 10.06(f) or (B) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of a natural Person).

(vi) Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section 10.06, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled

to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, 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 clause (b) 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 clause (d) of this Section 10.06.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for Tax purposes), shall maintain at the Administrative 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 owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender (with respect to its own interests only), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person or the Borrower or any of the Borrower's 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 Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. The Borrower agrees 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 clause (b) of this Section 10.06 (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 10.06; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 10.13 as if it were an assignee under clause (b) of this Section 10.06 and (B) shall not be entitled to receive any greater payment under

Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. 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 that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for Tax purposes), maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Term 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.

(f) Assignments to Borrower.

Notwithstanding anything to the contrary contained in this Section 10.06 or any other provision of this Agreement, so long as no Default or Event of Default has occurred and is continuing or would result therefrom, each Term Lender shall have the right at any time to sell, assign or transfer all or a portion of its Commitment or Term Loans owing to it to the Borrower on a non-pro rata basis subject to the following limitations:

(i) The Borrower may conduct one or more modified Dutch auctions (each, an "**Auction**") to repurchase all or any portion of the Term Loans, provided that, (A) notice of the Auction shall be made to all Term Lenders and (B) the Auction shall be conducted pursuant to such procedures as the Auction Manager may establish which are consistent with this Section 10.06(f) and the Auction Procedures set forth on Exhibit J and are otherwise reasonably acceptable to Borrower, the Auction Manager, and the Administrative Agent;

(ii) With respect to all repurchases made by the Borrower pursuant to this Section 10.06(f), (A) Borrower shall deliver to the Auction Manager a certificate of an Responsible Officer stating that (1) no Default or Event of Default has occurred and is continuing or would result from such repurchase and (2) as of the launch date of the related Auction and the effective date of any Affiliate Assignment Agreement, it is not in possession of any information regarding Borrower, its Subsidiaries or its Affiliates, or their assets, the Borrower's ability to perform its Obligations or any other matter that may be material to a decision by any Lender to participate in any Auction or enter into any Affiliate Assignment Agreement or any of the transactions contemplated thereby that has not previously been disclosed to the Auction Manager, Administrative Agent and the Lenders and (B) the assigning Lender and the Borrower shall execute and deliver to the Auction Manager and the Administrative Agent an Affiliate Assignment Agreement;

(iii) Following any repurchase by the Borrower pursuant to this Section 10.06(f), the Term Loans so repurchased shall, without further action by any Person, be deemed cancelled for all purposes and no longer outstanding (and may not be resold by Borrower), for all purposes of this Agreement and all other Loan Documents, including, but not limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Loan Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Loan Document or (C) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Loan Document. In connection with any Term Loans repurchased and cancelled pursuant to this Section 10.06(f), the Administrative Agent is authorized to make appropriate entries in the Register to reflect any such cancellation; and

(iv) no such purchase shall be funded, directly or indirectly, with a drawing under the ABL Credit Agreement;

(g) Disqualified Institutions. (i) No assignment shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the applicable Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment as otherwise contemplated by this Section 10.06, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to the definition of "Disqualified Institution"), (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Assumption with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Institution. Any assignment in violation of this clause(g)(i) shall not be void, but the other provisions of this clause(g) shall apply.

(ii) If any assignment is made to any Disqualified Institution without the Borrower's prior consent in violation of clause (i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the

Administrative Agent, (A) in the case of outstanding Term Loans held by Disqualified Institutions, 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 under the other Loan Documents and/or (B) require such Disqualified Institution to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this Section 10.06), all of its interest, rights and obligations under this Agreement and related Loan Documents to an Eligible Assignee that shall assume such obligations 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 and under the other Loan Documents; provided that (i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.06(b), (ii) such assignment does not conflict with Applicable Laws and (iii) in the case of clause (A), the Borrower shall not use the proceeds from any Loans to prepay Term Loans held by Disqualified Institutions.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws ("Plan of Reorganization"), each Disqualified Institution party hereto hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Institution does vote on such Plan of Reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code of the United States (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy Code of the United States (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Institutions provided by the Borrower and any updates thereto from time to time (collectively, the "DQ List") on the Platform, including that portion of the Platform that is

designated for “public side” Lenders or (B) provide the DQ List to each Lender requesting the same.

**10.07 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, its auditors and its Related Parties (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 required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 10.07, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.15 or Section 2.16 or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder (it being understood that the DQ List may be disclosed to any assignee or prospective assignee), in reliance on this clause (f)), (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the application, issuance, publishing and monitoring of CUSIP numbers of other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 10.07, (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or (z) is independently discovered or developed by a party hereto without utilizing any Information received from the Borrower or violating the terms of this Section 10.07. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section 10.07, “Information” means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.07 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Applicable Law, including United States Federal and state securities Laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates 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.

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 Applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Applicable Law, (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 and any separate letter agreements with respect to fees payable to the Administrative Agent or the Lead Arrangers, 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 means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

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.

10.13 Replacement of Lenders. If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Non-Consenting Lender or if 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, 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 Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.06(b);
- (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (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;

(d) such assignment does not conflict with Applicable 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 Borrower to require such assignment and delegation cease to apply.

Each party hereto agrees that (a) an assignment required pursuant to this Section 10.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (b) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further that any such documents shall be without recourse to or warranty by the parties thereto.

**10.14 Governing Law; Jurisdiction; Etc.** 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.

(a) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE

JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HERAFTER 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 CLAUSE (B) OF THIS SECTION 10.14. 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.

(c) 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.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.15.

10.16 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), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Lead Arrangers and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Lead Arrangers and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts,

the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Lead Arrangers and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any Lead Arranger nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Lead 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 and its Affiliates, and neither the Administrative Agent, any Lead Arranger nor any Lender has any obligation to disclose any of such interests to the Borrower its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, the Lead Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 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, Committed Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

10.18 USA PATRIOT Act. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Act. The Borrower and each other Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

10.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Solely to the extent any Lender that is an EEA Financial Institution is a party to this Agreement and

notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender 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.

*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**CALLAWAY GOLF COMPANY**

By: /s/ Brian P. Lynch

Name: Brian P. Lynch

Title: Senior Vice President, General Counsel, Corporate  
Secretary and Chief Financial Officer

[Callaway – Signature Page to Credit Agreement]

BANK OF AMERICA, N.A., as  
Administrative Agent

By: /s/ Mollie S. Canup

Name: Mollie S. Canup

Title: Vice President

[Callaway – Signature Page to Credit Agreement]

BANK OF AMERICA, N.A., as a Lender

By: /s/ Justin Neubauer

Name: Justin Neubauer

Title: Director

[Callaway – Signature Page to Credit Agreement]

## FORM OF COMMITTED LOAN NOTICE

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of January 4, 2019 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among Callaway Golf Company, a Delaware corporation (the "Borrower"), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

The undersigned hereby requests (select one):

- a Borrowing
  - a conversion or continuation of Loans (specify Class)
1. On \_\_\_\_\_ (a Business Day).
  2. In the principal amount of \$\_\_\_\_\_.  
3. Comprised of \_\_\_\_\_.  
[Type of Loan requested]
  4. [With an Interest Period of \_\_\_\_ months.]<sup>1</sup>
  5. Location and number of the Borrower's account to which proceeds of Borrowings are to be disbursed: \_\_\_\_\_.

<sup>1</sup> For Eurodollar Rate Loans only. To be an Interest Period of one, two, three or six months (in each case, subject to availability) or such other period that is twelve months or less requested by the Borrower and consented to by all the Term Lenders.

**CALLAWAY GOLF COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## FORM OF TERM NOTE

[ ], 20[ ]

FOR VALUE RECEIVED, the undersigned (the “Borrower”), hereby promises to pay to [REDACTED] or registered assigns (the “Term Lender”), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of each Term Loan from time to time made by the Term Lender to the Borrower under that certain Credit Agreement, dated as of January 4, 2019 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement;” the terms defined therein being used herein as therein defined), among the Borrower, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

The Borrower promises to pay interest on the unpaid principal amount of each Term Loan from the date of such Term Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Term Lender in Dollars in immediately available funds at the Administrative Agent’s Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Term Note is one of the Term Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Term Note is also entitled to the benefits of the Guaranty. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Term Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. Term Loans made by the Term Lender shall be evidenced by one or more loan accounts or records maintained by the Term Lender in the ordinary course of business. The Term Lender may also attach schedules to this Term Note and endorse thereon the date, amount and maturity of its Term Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Term Note.

THIS TERM NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

**CALLAWAY GOLF COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [the][each] Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each] Assignee identified in item 2 below ([the][each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees] hereunder are several and not joint.]<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto in the amount[s] and equal to the percentage interest[s] identified below of all the outstanding rights and obligations under the Term Facility identified below and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: \_\_\_\_\_

\_\_\_\_\_

2. Assignee[s]: \_\_\_\_\_

\_\_\_\_\_

<sup>1</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.

[for each Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]]

3. **Borrower:** Callaway Golf Company
4. **Administrative Agent:** Bank of America, N.A., as the administrative agent under the Credit Agreement
5. **Credit Agreement:** Credit Agreement, dated as of January 4, 2019, among Callaway Golf Company, a Delaware corporation, the Lenders from time to time party thereto and Bank of America, N.A., as Administrative Agent
6. **Assigned Interest[s]:**

<u>Assignor[s]2</u>	<u>Assignee[s]3</u>	Aggregate Amount of Commitment/Loans for all Lenders under Term Facility 4	Amount of Commitment/Loans Assigned under Term Facility	Percentage Assigned of Commitment/Loans under Term Facility 5	<u>CUSIP Number</u>
		\$	\$	%	
		\$	\$	%	
		\$	\$	%	

[7. Trade Date: \_\_\_\_\_]<sup>6</sup>

Effective Date: \_\_\_\_\_, 20 \_\_\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

- 2 List each Assignor, as appropriate.  
3 List each Assignee and, if available, its market entity identifier, as appropriate.  
4 Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to payments or prepayments made between the Trade Date and the Effective Date. take into account any  
5 Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.  
6 To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR[S]7  
[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE[S]8  
[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Name:  
Title:

- 
- 7 Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).  
8 Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

(....continued)

[Consented to and]9 Accepted:

BANK OF AMERICA, N.A., as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

[Consented to:]10

CALLAWAY GOLF COMPANY, as Borrower

By: \_\_\_\_\_  
Name:  
Title:

<sup>9</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

<sup>10</sup> To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

**1. Representations and Warranties.**

1.1. **Assignor[s].** [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

**1.2. Assignee[s].**

(1) [The][Each] Assignee represents and warrants that:

- (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement;
- (ii) it meets all the requirements to be an assignee under Section 10.06(b)(iii) and (v) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Credit Agreement);
- (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder;
- (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type;
- (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate

to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest;

(vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest; and

(vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and

(2) [The][Each] Assignee agrees that:

(i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; and

(ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. **Payments.** From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to [the][the relevant] Assignee.

3. **General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

FORM OF ADMINISTRATIVE QUESTIONNAIRE

[On file with the Administrative Agent.]

D - 1

FORM OF GUARANTY

[See attached.]

E - 1

FORM OF SECURITY AGREEMENT

[See attached.]

F - 1

FORM OF PERFECTION CERTIFICATE

[See attached.]

G - 1

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of January 4, 2019 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) among Callaway Golf Company, a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto and Bank of America, N.A., as Administrative Agent.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Term Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code, and (vi) no payments under any Loan Document are effectively connected with the undersigned’s conduct of a U.S. trade or business.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN-E (or W-8BEN, as applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent in writing, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

H - 1 - 1

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of January 4, 2019 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) among Callaway Golf Company, a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code, and (v) no payments with respect to such participation are effectively connected with the undersigned’s conduct of a U.S. trade or business.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN-E (or W-8BEN, as applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

H - 2 - 1

## FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of January 4, 2019 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) among Callaway Golf Company, a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) neither the undersigned nor any of its direct or indirect partners/members that is claiming the portfolio interest exemption (its “Applicable Partners/Members”) is a bank within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its Applicable Partners/Members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (v) none of its Applicable Partners/Members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code, and (vi) no payments with respect to such participation are effectively connected with the conduct of a U.S. trade or business by the undersigned or any of its Applicable Partners/Members.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its Applicable Partners/Members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN-E (or W-8BEN, as applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E (or W-8BEN, as applicable) from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**  
 (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of January 4, 2019 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) among Callaway Golf Company, a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Term Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Term Note(s) evidencing such Loan(s)), (iii) neither the undersigned nor any of its direct or indirect partners/members that is claiming the portfolio interest exemption (its “Applicable Partners/Members”) is a bank within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its Applicable Partners/Members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (v) none of its Applicable Partners/Members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code, and (vi) no payments under any Loan Document are effectively connected with the conduct of a U.S. trade or business by the undersigned or any of its Applicable Partners/Members.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its Applicable Partners/Members: (i) an IRS Form W-8BEN-E (or W-8BEN, as applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN-E (or W-8BEN, as applicable) from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent in writing, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

## FORM OF SOLVENCY CERTIFICATE

This Solvency Certificate is delivered pursuant to Section 4.01(a)(ix) of the Credit Agreement dated as of January 4, 2019, among Callaway Golf Company, a Delaware corporation (the “**Borrower**”), the lenders party thereto from time to time (the “**Lenders**”) and Bank of America, National Association, as administrative agent and collateral agent (in such capacities, the “**Administrative Agent**”) (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The undersigned hereby certifies, solely in his capacity as an officer of the Borrower and not in his individual capacity, as follows:

1. I am the Chief Financial Officer of the Borrower. I am familiar with the Transaction, and have reviewed the Credit Agreement, financial statements referred to in Section 4.01(d) of the Credit Agreement and such documents and made such investigation as I have deemed relevant for the purposes of this Solvency Certificate.
2. As of the date hereof, immediately after giving effect to the consummation of the Transaction, on and as of such date (i) the fair value of the assets of the Borrower and its subsidiaries on a consolidated basis, at a fair valuation, exceeds the debts and liabilities, direct, subordinated, contingent or otherwise, of the Borrower and its subsidiaries on a consolidated basis; (ii) the present fair saleable value of the property of the Borrower and its subsidiaries on a consolidated basis is greater than the amount required to pay the probable liability of the Borrower and its subsidiaries on a consolidated basis on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) the Borrower and its subsidiaries on a consolidated basis are able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) the Borrower and its subsidiaries on a consolidated basis do not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted following the Closing Date.

3. As of the date hereof, immediately after giving effect to the consummation of the Transaction, the Borrower does not intend to, and the Borrower does not believe that it or any of its subsidiaries will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing and amounts of cash to be received by it or any such subsidiary and the timing and amounts of cash to be payable on or in respect of its debts or the debts of any such subsidiary.

This Solvency Certificate is being delivered by the undersigned officer only in his capacity as Chief Financial Officer of the Borrower and not individually and the undersigned shall have no personal liability to the Administrative Agent or the Lenders with respect thereto.

[SIGNATURE PAGE FOLLOWS]

I - 1

The foregoing certifications are made and delivered as of the Closing Date.

**CALLAWAY GOLF COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## AUCTION PROCEDURES

*This outline is intended to summarize certain basic terms of procedures with respect to Dutch auctions (each, an “**Auction**”) pursuant to and in accordance with the terms and conditions of Section 10.06(f) of the Credit Agreement to which this Exhibit J is attached. It is not intended to be a definitive list of all of the terms and conditions of an Auction and all such terms and conditions shall be set forth in the applicable auction procedures documentation set for each Auction (the “**Offer Documents**”), which shall be acceptable to the Administrative Agent and the Borrower. None of the Administrative Agent, the Auction Manager or any of their respective Affiliates makes any recommendation pursuant to the Offer Documents as to whether or not any Term Lender should sell by assignment any of its Term Loans pursuant to the Offer Documents (including, for the avoidance of doubt, by participating in the Auction as a Term Lender) or whether or not the Borrower should purchase by assignment any Term Loans from any Term Lender pursuant to any Auction. Each Term Lender should make its own decision as to whether to sell by assignment any of its Term Loans and, if so, the principal amount of and price to be sought for such Term Loans. In addition, each Term Lender should consult its own attorney, business advisor or tax advisor as to legal, business, tax and related matters concerning any Auction and the Offer Documents. Capitalized terms used but not otherwise defined herein have the meanings assigned to them in the Credit Agreement.*

**Summary.** Borrower may purchase (by assignment) Term Loans on a non-pro rata basis by conducting one or more Auctions pursuant to the procedures described herein; provided that no more than one Auction may be ongoing at any one time and no more than five Auctions may be made in any period of four consecutive fiscal quarters of the Borrower.

**Notice Procedures.** In connection with each Auction, the Borrower (the “**Offeror**”) will provide notification to the Auction Manager (for distribution to the Term Lenders) of the Term Loans that will be the subject of the Auction by delivering to the Auction Manager a written notice in form and substance reasonably satisfactory to the Auction Manager (an “**Auction Notice**”). Each Auction Notice shall contain (i) the maximum principal amount of Term Loans the Offeror is willing to purchase (by assignment) in the Auction (the “**Auction Amount**”), which shall be no less than \$5,000,000 or an integral multiple of \$1,000,000 in excess of thereof, (ii) the range of discounts to par (the “**Discount Range**”), expressed as a range of prices per \$1,000, at which the Offeror would be willing to purchase Term Loans in the Auction, (iii) the first date on which Return Bids (as defined below) may be submitted and (iv) the date on which the Auction will conclude, on which date Return Bids will be due at the time provided in the Auction Notice (such time, the “**Expiration Time**”), as such date and time may be extended upon notice by the Offeror to the Auction Manager not less than 24 hours before the original Expiration Time. The Auction Manager will deliver a copy of the Offer Documents to each Term Lender promptly following completion thereof.

**Reply Procedures.** In connection with any Auction, each Term Lender holding Term Loans wishing to participate in such Auction shall, prior to the Expiration Time, provide the Auction Manager with an irrevocable notice of participation in form and substance reasonably

satisfactory to the Auction Manager (the “**Return Bid**”, to be included in the Offer Documents) which shall specify (i) a discount to par that must be expressed as a price per \$1,000 of Term Loans (the “**Reply Price**”) within the Discount Range and (ii) the principal amount of Term Loans, in an amount not less than \$1,000,000, that such Term Lender is willing to offer for sale at its Reply Price (the “**Reply Amount**”); *provided*, that each Term Lender may submit a Reply Amount that is less than the minimum amount and incremental amount requirements described above only if the Reply Amount comprises the entire amount of the Term Loans held by such Term Lender at such time. A Term Lender may only submit one Return Bid per Auction, but each Return Bid may contain up to three component bids, each of which may result in a separate Qualifying Bid (as defined below) and each of which will not be contingent on any other component bid submitted by such Term Lender resulting in a Qualifying Bid. In addition to the Return Bid, a participating Term Lender must execute and deliver, to be held by the Auction Manager, an assignment and acceptance in the form included in the Offer Documents which shall be in form and substance reasonably satisfactory to the Auction Manager and the Administrative Agent (the “**Auction Assignment and Acceptance**”). The Offeror will not purchase any Term Loans at a price that is outside of the applicable Discount Range, nor will any Return Bids (including any component bids specified therein) submitted at a price that is outside such applicable Discount Range be considered in any calculation of the Applicable Threshold Price (as defined below).

**Acceptance Procedures.** Based on the Reply Prices and Reply Amounts received by the Auction Manager, the Auction Manager, in consultation with the Offeror, will calculate the lowest purchase price (the “**Applicable Threshold Price**”) for the Auction within the Discount Range for the Auction that will allow the Offeror to complete the Auction by purchasing the full Auction Amount (or such lesser amount of Terms Loans for which the Offeror has received Qualifying Bids). The Offeror shall purchase (by assignment) Term Loans from each Term Lender whose Return Bid is within the Discount Range and contains a Reply Price that is equal to or less than the Applicable Threshold Price (each, a “**Qualifying Bid**”). The principal amount of all Term Loans included in Qualifying Bids received at a Reply Price lower than the Applicable Threshold Price will be purchased at a purchase price equal to the applicable Reply Price and shall not be subject to proration. If a Term Lender has submitted a Return Bid containing multiple component bids at different Reply Prices, then all Term Loans of such Term Lender offered in any such component bid that constitutes a Qualifying Bid with a Reply Price lower than the Applicable Threshold Price shall also be purchased at a purchase price equal to the applicable Reply Price and shall not be subject to proration.

**Proration Procedures.** All Term Loans offered in Return Bids (or, if applicable, any component bid thereof) constituting Qualifying Bids equal to the Applicable Threshold Price will be purchased at a purchase price equal to the Applicable Threshold Price; *provided* that if the aggregate principal amount of all Term Loans for which Qualifying Bids have been submitted in any given Auction equal to the Applicable Threshold Price would exceed the remaining portion of the Auction Amount (after deducting all Term Loans purchased below the Applicable Threshold Price), the Offeror shall purchase the Term Loans for which the Qualifying Bids submitted were at the Applicable Threshold Price ratably based on the respective principal amounts offered and in an aggregate amount up to the amount necessary to complete the purchase of the Auction Amount. For the avoidance of doubt, no Return Bids (or any component thereof) will be accepted above the Applicable Threshold Price.

**Notification Procedures.** The Auction Manager, in consultation with the Offeror, will calculate the Applicable Threshold Price no later than the next Business Day after the date that the Return Bids were due. The Auction Manager will insert the amount of Term Loans to be assigned and the applicable settlement date determined by the Auction Manager in consultation with the Offeror onto each applicable Auction Assignment and Acceptance received in connection with a Qualifying Bid. Upon written request of the submitting Term Lender, the Auction Manager will promptly return any Auction Assignment and Acceptance received in connection with a Return Bid that is not a Qualifying Bid.

**Additional Procedures.** Once initiated by an Auction Notice, the Offeror may withdraw an Auction by written notice to the Auction Manager no later than 24 hours before the original Expiration Time so long as no Qualifying Bids have been received by the Auction Manager at or prior to the time the Auction Manager receives such written notice from the Borrower. Any Return Bid (including any component bid thereof) delivered to the Auction Manager may not be modified, revoked, terminated or cancelled; *provided* that a Term Lender may modify a Return Bid at any time prior to the Expiration Time solely to reduce the Reply Price included in such Return Bid. However, an Auction shall become void if the Offeror fails to satisfy one or more of the conditions to the purchase of Term Loans set forth in Section 10.06(f) of the Credit Agreement, as applicable, or to otherwise comply with any of the provisions of such Section 10.06(f). The purchase price for all Term Loans purchased in an Auction shall be paid in cash by the Offeror directly to the respective assigning Term Lender on a settlement date as determined by the Auction Manager in consultation with the Offeror (which shall be no later than ten (10) Business Days after the date Return Bids are due), along with accrued and unpaid interest (if any) on the applicable Term Loans up to the settlement date. The Offeror shall execute each applicable Auction Assignment and Acceptance received in connection with a Qualifying Bid.

All questions as to the form of documents and validity and eligibility of Term Loans that are the subject of an Auction will be determined by the Auction Manager, in consultation with the Offeror, and the Auction Manager's determination will be conclusive, absent manifest error. The Auction Manager's interpretation of the terms and conditions of the Offer Document, in consultation with the Offeror, will be final and binding.

None of the Administrative Agent, the Auction Manager, any other agent or any of their respective affiliates assumes any responsibility for the accuracy or completeness of the information concerning the Borrower or its Subsidiaries contained in the Offer Documents or otherwise or for any failure to disclose events that may have occurred and may affect the significance or accuracy of such information.

The Auction Manager acting in its capacity as such under an Auction shall be entitled to the benefits of the provisions of Article IX and Section 10.04 of the Credit Agreement to the same extent as if each reference therein to the "Administrative Agent" were a reference to the Auction Manager, and the Administrative Agent shall cooperate with the Auction Manager as reasonably requested by the Auction Manager in order to enable it to perform its responsibilities and duties in connection with each Auction.

This Exhibit J shall not require the Borrower to initiate any Auction, nor shall any Term Lender be obligated to participate in any Auction.

## AFFILIATE ASSIGNMENT AGREEMENT

This Affiliate Assignment Agreement (this “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [the][each] Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each] Assignee identified in item 2 below ([the] [each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]<sup>12</sup> hereunder are several and not joint.]<sup>13</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto in the amount[s] and equal to the percentage interest[s] identified below of all the outstanding rights and obligations under the Term Facility identified below and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1.      Assignor[s]: \_\_\_\_\_

\_\_\_\_\_

2.      Assignee[s]: \_\_\_\_\_

\_\_\_\_\_

<sup>12</sup> Select as appropriate.

<sup>13</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.

3. Affiliate status: \_\_\_\_\_
4. Borrower: Callaway Golf Company
5. Administrative Agent: Bank of America, N.A., as the administrative agent under the Credit Agreement
6. Credit Agreement: Credit Agreement, dated as of January 4, 2019, among Callaway Golf Corporation, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent
6. Assigned Interest[s]:

<u>Assignor[s]</u> <sup>14</sup>	<u>Assignee[s]</u> <sup>15</sup>	<u>Aggregate Amount of Commitment/Loans for all Lenders under Term Facility</u> <sup>16</sup>	<u>Amount of Commitment/Loans Assigned under Term Facility</u>	<u>Percentage Assigned of Commitment/Loans under Term Facility</u> <sup>17</sup>	<u>CUSIP Number</u>
		\$	\$	%	
		\$	\$	%	
		\$	\$	%	

[7. Trade Date: \_\_\_\_\_]<sup>18</sup>

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

<sup>14</sup> List each Assignor, as appropriate.

<sup>15</sup> List each Assignee and, if available, its market entity identifier, as appropriate.

<sup>16</sup> Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>17</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

<sup>18</sup> To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR[§]19  
[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE[§]20  
[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Name:  
Title:

- 
- 19 Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).  
20 Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

(....continued)

[Consented to and]21 Accepted:

BANK OF AMERICA, N.A., as Administrative Agent

By: \_\_\_\_\_

Name:

Title:

[Consented to:]22

CALLAWAY GOLF COMPANY, as Borrower

By: \_\_\_\_\_

Name:

Title:

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21 To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

22 To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

## STANDARD TERMS AND CONDITIONS FOR

## AFFILIATE ASSIGNMENT AGREEMENT

**1. Representations and Warranties.**

1.1. **Assignor[s].** [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

**1.2. Assignee.**

(1) [The][Each] Assignee represents and warrants that:

- (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement;
- (ii) it meets all the requirements to be an assignee under Section 10.06(b)(iii) and (v) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Credit Agreement), including the requirements of Section 10.06(f);
- (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder;
- (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type;
- (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as

applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest;

(vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest; and

(vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee;

(2) [The][Each] Assignee agrees that:

(i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; and

(ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. **Payments.** From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to [the][the relevant] Assignee.

3. **General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

FORM OF ABL INTERCREDITOR AGREEMENT

[See attached.]

L - 1

## FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: [      ], 20[      ]

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of January 4, 2019 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among Callaway Golf Company, a Delaware corporation the "Borrower"), the Lenders from time to time party thereto and Bank of America, N.A., as Administrative Agent.

The undersigned Responsible Officer hereby certifies as of the date hereof that he/she is the \_\_\_\_\_ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of the Borrower, and that:

*[Use following paragraph 1 for fiscal year-end financial statements]*

1. The Borrower has delivered the year-end audited financial statements required by Section 6.01(a) of the Agreement for the fiscal year of the Borrower ended as of the above date, together with the report and opinion of an independent certified public accountant or chartered accountant, as applicable, required by such section.

*[Use following paragraph 1 for fiscal quarter-end financial statements]*

1. The Borrower has delivered the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of the Borrower ended as of the above date. Such financial statements fairly present the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.

2. The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of the Borrower during the accounting period covered by such financial statements.

3. A review of the activities of the Borrower during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Borrower performed and observed all its Obligations under the Loan Documents, and

[to the best knowledge of the undersigned, during such fiscal period the Borrower performed and observed each covenant and condition of the Loan Documents applicable to it, and no Default has occurred and is continuing.]

--or--

[to the best knowledge of the undersigned, during such fiscal period the following covenants or conditions have not been performed or observed and the following is a list of each such Default and its nature and status:]

4. The representations and warranties of the Borrower contained in Article V of the Agreement, and any representations and warranties of any Loan Party that are contained in any document furnished at any time under or in connection with the Loan Documents, are true and correct on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Compliance Certificate, the representations and warranties contained in subsection (a) of Section 5.05 of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01 of the Agreement, including the statements in connection with which this Compliance Certificate is delivered.

5. [For certificates delivered in connection with fiscal year-end financial statements, add:] Schedule 1 hereto sets forth the computations necessary to determine the Borrower's calculation of Excess Cash Flow and the applicable ECF Percentage for the Excess Cash Flow Period ending on the last day of the fiscal year ended [ ], 20[ ].

*IN WITNESS WHEREOF*, the undersigned has executed this Certificate as of , .

**[BORROWER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

M - 3

## SCHEDULE 1

### Calculation of the Borrower's Excess Cash Flow Sweep

#### I. Calculation of Excess Cash Flow

An amount equal to the excess of:

(a) the sum, without duplication, of:

- (i) Consolidated Net Income of the Borrower for such period, \$\_\_\_\_\_
- (ii) an amount equal to the amount of all noncash charges to the extent deducted in arriving at such Consolidated Net Income, \_\_\_\_\_
- (iii) decreases in Consolidated Working Capital and long-term account receivables for such period (other than any such decreases arising from acquisitions by the Borrower and its Restricted Subsidiaries completed during such period), \_\_\_\_\_
- (iv) the amount by which tax expense deducted in determining such Consolidated Net Income for such period exceeded taxes (including penalties and interest) paid in cash or tax reserves set aside or payable (without duplication) by the Borrower and its Restricted Subsidiaries in such period, and \_\_\_\_\_
- (v) an amount equal to the aggregate net noncash loss on the sale, lease, transfer or other disposition of assets by the Borrower and its Restricted Subsidiaries during such period (other than sales in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income; over \_\_\_\_\_

(b) the sum, without duplication, of:

- (i) an amount equal to the amount of all noncash credits included in arriving at such Consolidated Net Income, \_\_\_\_\_
- (ii) without duplication of amounts deducted in arriving at such Consolidated Net Income or pursuant to subclause (b)(xi) below in prior periods, the amount of Capital Expenditures made in cash during such period, except to the extent that such Capital Expenditures were financed with the proceeds of Indebtedness of the Borrower or its Restricted Subsidiaries (other than under any revolving credit facility), \_\_\_\_\_
- (iii) the aggregate amount of all principal payments of Indebtedness of the Borrower and its Restricted Subsidiaries (including (x) the principal component of payments in respect

of Capitalized Leases and (y) the amount of any scheduled repayment of Term Loans, but excluding all other prepayments of Term Loans (other than pursuant to Section 2.05(b)(ii) of the Credit Agreement to the extent required due to a Disposition or Casualty Event that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase), and (z) all prepayments in respect of any revolving credit facility (other than the ABL Credit Agreement), but only to the extent there is an equivalent permanent reduction in commitments thereunder), except to the extent financed with the proceeds of other Indebtedness (other than under any revolving credit facility) of the Borrower or its Restricted Subsidiaries,

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(iv) an amount equal to the aggregate net noncash gain on the sale, lease, transfer or other disposition of assets by the Borrower and its Restricted Subsidiaries during such period (other than sales in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

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(v) increases in Consolidated Working Capital and long-term account receivables for such period (other than any such increases arising from acquisitions of a Person or business unit by the Borrower and its Restricted Subsidiaries during such period),

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(vi) cash payments by the Borrower and the Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and the Restricted Subsidiaries other than Indebtedness,

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(vii) without duplication of amounts deducted pursuant to subclause (b)(xi) below in prior periods, the amount of Investments and acquisitions (including earn-out payments) made during such period to the extent permitted under Section 7.03 of the Credit Agreement (excluding Investments in (x) Cash Equivalents, (y) Investment Grade Securities and (z) the Borrower or any of its Restricted Subsidiaries), except to the extent that such Investments and acquisitions were financed with the proceeds of Indebtedness (other than under any revolving credit facility) of the Borrower or its Restricted Subsidiaries,

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(viii) the amount of Restricted Payments made in cash during such period to the extent permitted under clauses (d), (e), (f), (g) and (j) of Section 7.06 of the Credit Agreement, to the extent that such Restricted Payments were financed with internally generated cash flow of the Borrower and its Restricted Subsidiaries,

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(ix) the aggregate amount of expenditures actually made by the Borrower and the Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period,

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(x) 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 that are required to be made in connection with any prepayment of Indebtedness,

---

(xi) without duplication of amounts deducted in arriving at such Consolidated Net Income or deducted from Excess Cash Flow in prior periods, (A) the aggregate consideration required to be paid in cash by the Borrower or any of its Restricted Subsidiaries pursuant to binding contracts, letters of intent or purchase orders (the “Contract Consideration”) entered into prior to or during such period relating to acquisitions or Capital Expenditures and (B) at the option of the Borrower, to the extent set forth in a certificate of a Responsible Officer delivered to the Administrative Agent prior to the relevant Excess Cash Flow Application Date, the aggregate amount of cash that is reasonably expected to be paid in respect of planned cash Capital Expenditures by the Borrower or any of its Restricted Subsidiaries (“Planned Capital Expenditures”), in each case to be consummated or made during the period of four consecutive fiscal quarters of the Borrower following the end of such period; provided that to the extent the aggregate amount of internally generated cash flow of the Borrower and its Restricted Subsidiaries actually utilized to finance such acquisitions, Capital Expenditures or Planned Capital Expenditures during such period of four consecutive fiscal quarters is less than the Contract Consideration or Planned Capital Expenditures, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters,

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(xii) the amount of cash taxes paid in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period, and

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(xiii) an amount equal to the aggregate net cash losses on the sale, lease, transfer or other disposition of assets by the Borrower and its Restricted Subsidiaries during such period (other than sales in the ordinary course of business) to the extent deducted in determining Consolidated Net Income.

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**Excess Cash Flow**

\$ \_\_\_\_\_

II. **Calculation of ECF Percentage**

The ratio of:

\$ \_\_\_\_\_

- (a) Funded Debt that is secured by any Lien on any assets or property of the Borrower on a pari passu or senior basis to the Liens securing the Obligations as of such date, less Unrestricted Cash of the Borrower and its Restricted Subsidiaries; to

\$ \_\_\_\_\_

- (b) Consolidated EBITDA of the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

[ ]: 1.00

**ECF Percentage as of the date of determination pursuant to the defintion of “ECF Percentage”**

[ ]%

M - 7

### III. Calculation of ECF Sweep

On or prior to the Excess Cash Flow Application Date, the Borrower shall prepay an aggregate principal amount of Loans equal to the excess (if any) of:

(A)	
(i)	Excess Cash Flow (as shown on Part I of this Schedule 1), <i>multiplied by</i>
(ii)	ECF Percentage (as shown on Part II of this Schedule 1), Clause (A) total: \$_____
	<u>over</u> ,

(B) to the extent not financed using the proceeds of long-term Indebtedness,

(x)	the aggregate principal amount of Term Loans prepaid pursuant to <u>Section 2.05(a)</u> of the Credit Agreement <i>plus</i>	\$_____
(y)	the aggregate principal amount of voluntary prepayments under the ABL Credit Agreement (to the extent commitments under the ABL Credit Agreement are permanently reduced by the amount of such prepayments at the time of such prepayment)	\$_____
	Clause (B) total: \$_____	

Required Mandatory Prepayment purusant to Section 2.05(b)(i) of the Credit Agreement (Clause (A) *minus* Clause (B)) \$\_\_\_\_\_

## SECOND AMENDMENT TO THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

THIS SECOND AMENDMENT TO THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this “Amendment”), dated as of January 4, 2019, is entered into by and among the Lenders (as defined below) signatory hereto, **BANK OF AMERICA, N.A.**, as administrative agent and as security trustee for the Lenders (in such capacity, “Agent”), **CALLAWAY GOLF COMPANY**, a Delaware corporation (“Parent”), **CALLAWAY GOLF SALES COMPANY**, a California corporation (“Callaway Sales”), **CALLAWAY GOLF BALL OPERATIONS, INC.**, a Delaware corporation (“Callaway Operations”), **OGIO INTERNATIONAL INC.**, a Utah corporation (“Ogio”), **TRAVISMATHEW, LLC**, a California limited liability company (“travisMathew” and together with Parent, Callaway Sales, Callaway Operations and Ogio, collectively, “U.S. Borrowers”), **CALLAWAY GOLF CANADA LTD.**, a Canada corporation (“Canadian Borrower”), **CALLAWAY GOLF EUROPE LTD.**, a company organized under the laws of England (registered number 02756321) (“U.K. Borrower” and together with the U.S. Borrowers and the Canadian Borrower, collectively, “Borrowers”), and the other Obligors party hereto.

### RECITALS

A. Borrowers, the other Obligors party thereto, Agent, and the financial institutions signatory thereto from time to time (each a “Lender” and collectively the “Lenders”) have previously entered into that certain Third Amended and Restated Loan and Security Agreement dated as of November 20, 2017 (as amended, supplemented, restated and modified from time to time, the “Loan Agreement”), pursuant to which the Lenders have made certain loans and financial accommodations available to Borrowers. Terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement.

B. Obligors have requested that Agent and the Lenders amend the Loan Agreement, which Agent and the Lenders are willing to do pursuant to the terms and conditions set forth herein.

C. Obligors are entering into this Amendment with the understanding and agreement that, except as specifically provided herein, none of Agent’s or any Lender’s rights or remedies as set forth in the Loan Agreement or any of the other Loan Documents are being waived or modified by the terms of this Amendment.

### AGREEMENT

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

**1. Amendments to Loan Agreement.**

(a) Subject to the satisfaction of the conditions set forth in Section 2 of this Amendment, the Loan Agreement (but not including any Exhibits or Schedules thereto unless expressly provided herein) is hereby amended as set forth in Exhibit A attached hereto such that all of the newly inserted bold, double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text) and any formatting changes attached hereto shall be deemed to be inserted in the text of the Loan Agreement and all of the deleted stricken text (indicated textually in the same manner as the following examples: stricken text and stricken text) shall be deemed to be deleted from the text of the Loan Agreement. An unmarked draft of the Loan Agreement (but not

including any Exhibits or Schedules thereto), as amended by this Amendment, is attached hereto as [Exhibit B](#).

(b) Schedule 9.1.17 of the Loan Agreement is hereby amended and replaced in its entirety with Schedule 9.1.17 attached hereto on [Exhibit C](#).

(c) Schedule 9.1.24 attached hereto on [Exhibit D](#) is hereby added to the Loan Agreement.

2. [Effectiveness of this Amendment](#). The following shall have occurred before this Amendment is effective:

(a) [Amendment](#). Agent shall have received this Amendment, executed by Agent, each Obligor and the Lenders in a sufficient number of counterparts for distribution to all parties.

(b) [Intercreditor Agreement](#). Agent shall have received the Intercreditor Agreement (as defined after giving effect to this Amendment), executed by Agent and the Term Loan Collateral Agent (as defined after giving effect to this Amendment), and acknowledged by each Obligor in a sufficient number of counterparts for distribution to all parties.

(c) [Loan Documents](#). Agent shall have received fully executed copies of the loan documents evidencing and governing the Debt permitted under Section 10.2.3(s) of the Loan Agreement, and such Debt transaction shall have been consummated.

(d) [Representations and Warranties](#). The representations and warranties set forth herein must be true and correct.

(e) [No Default](#). No event has occurred and is continuing that constitutes an Event of Default.

(f) [Other Required Documentation](#). All other documents and legal matters in connection with the transactions contemplated by this Amendment shall have been delivered or executed or recorded and shall be in form and substance satisfactory to Agent.

3. [Representations and Warranties](#). Each Obligor represents and warrants as follows:

(a) [Authority](#). Each Obligor has the requisite corporate power and authority to execute and deliver this Amendment, and to perform its obligations hereunder and under the Loan Documents (as amended or modified hereby) to which it is a party. The execution, delivery and performance by each Obligor of this Amendment have been duly approved by all necessary corporate action and no other corporate proceedings are necessary to consummate such transactions.

(b) [Enforceability](#). This Amendment has been duly executed and delivered by each Obligor. This Amendment and each Loan Document to which any Obligor is a party (as amended or modified hereby) is a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability, and is in full force and effect.

(c) [Representations and Warranties](#). The representations and warranties contained in each Loan Document to which any Obligor is a party (other than any such representations or warranties

that, by their terms, are specifically made as of a date other than the date hereof) are correct on and as of the date hereof as though made on and as of the date hereof.

(d) Due Execution. The execution, delivery and performance of this Amendment are within the power of each Obligor, have been duly authorized by all necessary corporate action, have received all necessary governmental approval, if any, and do not contravene any law or any contractual restrictions binding on any Obligor.

(e) No Default. No event has occurred and is continuing that constitutes an Event of Default.

4. Choice of Law. The validity of this Amendment, its construction, interpretation and enforcement, the rights of the parties hereunder, shall be determined under, governed by, and construed in accordance with the internal laws of the State of New York, without giving effect to any conflict of law principles (but giving effect to Section 5-1401 of the New York General Obligation Law and Federal laws relating to national banks). The consent to forum and judicial reference provisions set forth in Section 14.15 of the Loan Agreement are hereby incorporated in this Amendment by reference.

5. Counterparts. This Amendment may be executed in any number of counterparts and by different parties and separate counterparts, each of which when so executed and delivered, shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by telefacsimile or a substantially similar electronic transmission shall have the same force and effect as the delivery of an original executed counterpart of this Amendment. Any party delivering an executed counterpart of this Amendment by telefacsimile or a substantially similar electronic transmission shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

6. Reference to and Effect on the Loan Documents.

(a) Upon and after the effectiveness of this Amendment, each reference in the Loan Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Loan Agreement, and each reference in the other Loan Documents to "the Loan Agreement", "thereof" or words of like import referring to the Loan Agreement, shall mean and be a reference to the Loan Agreement as modified and amended hereby.

(b) Except as specifically amended above, the Loan Agreement and all other Loan Documents are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed and shall constitute the legal, valid, binding and enforceable obligations of Obligors to Agent and the Lenders.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of Agent or any Lender under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents.

(d) To the extent that any terms and conditions in any of the Loan Documents shall contradict or be in conflict with any terms or conditions of the Loan Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Loan Agreement as modified or amended hereby.

7. Ratification. Each Obligor hereby restates, ratifies and reaffirms each and every term and condition set forth in the Loan Agreement, as amended hereby, and the Loan Documents effective as of the date hereof. Subject to and without limiting the foregoing, all security interests, pledges, assignments and other Liens and Guarantees previously granted by any Obligor pursuant to the Loan Documents are hereby reaffirmed, ratified, renewed and continued, and all such security interests, pledges, assignments and other Liens and Guarantees shall remain in full force and effect as security for the Obligations on and after the date hereof.

8. Estoppel. To induce Lenders to enter into this Amendment and to continue to make advances to Borrowers under the Loan Agreement, each Obligor hereby acknowledges and agrees that, as of the date hereof, there exists no right of offset, defense, counterclaim or objection in favor of any Obligor as against Agent or any Lender with respect to the Obligations.

9. Integration. This Amendment, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

10. Severability. In case any provision in this Amendment shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Amendment and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

**OBLIGORS:**

**CALLAWAY GOLF COMPANY,**  
a Delaware corporation

By: /s/ Brian P. Lynch  
Name: Brian P. Lynch  
Title: Senior Vice President, General Counsel, Corporate Secretary and Chief Financial Officer

**CALLAWAY GOLF SALES COMPANY,**  
a California corporation

By: /s/ Jennifer L. Thomas  
Name: Jennifer L. Thomas  
Title: Chief Financial Officer and Treasurer

**CALLAWAY GOLF BALL OPERATIONS, INC.,**  
a Delaware corporation

By: /s/ Jennifer L. Thomas  
Name: Jennifer L. Thomas  
Title: Treasurer

**CALLAWAY GOLF CANADA LTD.,**  
a Canada corporation

By: /s/ Patrick S. Burke  
Name: Patrick S. Burke  
Title: Director

**CALLAWAY GOLF EUROPE LTD.,**  
a company organized under the laws of England and Wales

By: /s/ Patrick S. Burke  
Name: Patrick S. Burke  
Title: Director

*[Signature Page to Second Amendment to Third Amended and Restated Loan and Security Agreement]*

**CALLAWAY GOLF EUROPE LTD.,**  
a company organized under the laws of England and Wales

By: /s/ Neil Howie

Name: Neil Howie

Title: Director

**CALLAWAY GOLF INTERACTIVE, INC.**  
a Texas corporation

By: /s/ Jennifer L. Thomas

Name: Jennifer L. Thomas

Title: Chief Financial Officer

**CALLAWAY GOLF INTERNATIONAL SALES  
COMPANY,**  
a California corporation

By: /s/ Patrick S. Burke

Name: Patrick S. Burke

Title: President

**CALLAWAY GOLF EUROPEAN HOLDING  
COMPANY LIMITED,**  
a company limited by shares incorporated under the laws of  
England and Wales

By: /s/ Neil Howie

Name: Neil Howie

Title: Director

**CALLAWAY GOLF EUROPEAN HOLDING  
COMPANY LIMITED,**  
a company limited by shares incorporated under the laws of  
England and Wales

By: /s/ Steven Gluyas

Name: Steven Gluyas

Title: Director

*[Signature Page to Second Amendment to Third Amended and Restated Loan and Security Agreement]*

**OGIO INTERNATIONAL INC.,**  
a Utah corporation

By: /s/ Patrick S. Burke

Name: Patrick S. Burke

Title: Vice President and Treasurer

**TRAVISMATHEW, LLC,**  
a California limited liability company

By: /s/ Patrick S. Burke

Name: Patrick S. Burke

Title: Treasurer

*[Signature Page to Second Amendment to Third Amended and Restated Loan and Security Agreement]*

**AGENT AND LENDERS**

**BANK OF AMERICA, N.A.**, as Agent and as a U.S.  
Lender

By: /s/ James Fallahay  
Name: James Fallahay  
Title: Senior Vice President

**BANK OF AMERICA, N.A.**

(acting through its Canada branch), as a Canadian Lender

By: /s/ Sylwia Durkiewicz  
Name: Sylwia Durkiewicz  
Title: Senior Vice President

**BANK OF AMERICA, N.A.**

(acting through its London branch), as a U.K. Lender

By: /s/ James Fallahay  
Name: James Fallahay  
Title: Senior Vice President

**SUNTRUST BANK,**

as a U.S. Lender, a Canadian Lender and a U.K. Lender

By: /s/ Brian O'Fallon  
Name: Brian O'Fallon  
Title: Director

**MUFG UNION BANK N.A.,**

as a U.S. Lender, a Canadian Lender and a U.K. Lender

By: /s/ Pete Ehlinger  
Name: Pete Ehlinger  
Title: Vice President

*[Signature Page to Second Amendment to Third Amended and Restated Loan and Security Agreement]*

**JPMORGAN CHASE BANK, N.A.,**  
as a U.S. Lender

By: /s/ Anna C. Araya  
Name: Anna C. Araya  
Title: Executive Director

**JPMORGAN CHASE BANK, N.A.,**  
**TORONTO BRANCH,**  
as a Canadian Lender

By: /s/ Maria Hornak  
Name: Maria Hornak  
Title: Authorized Officer

**JPMORGAN CHASE BANK, N.A.,**  
**LONDON BRANCH,**  
as a U.K. Lender

By: /s/ Kennedy Capin  
Name: Kennedy Capin  
Title: Executive Director

*[Signature Page to Second Amendment to Third Amended and Restated Loan and Security Agreement]*

**Exhibit A**

Amendments to the Loan Agreement

(see attached)

**CALLAWAY GOLF COMPANY,**  
**CALLAWAY GOLF SALES COMPANY,**  
**CALLAWAY GOLF BALL OPERATIONS, INC.,**  
**OGIO INTERNATIONAL INC.,**~~**TRAVIS MATHEW RETAIL, LLC,**~~ and  
**TRAVISMATHEW, LLC**  
as U.S. Borrowers, Canadian Facility Guarantors, and U.K. Facility Guarantors

**CALLAWAY GOLF CANADA LTD.,**  
as the Canadian Borrower and a U.K. Facility Guarantor,

**CALLAWAY GOLF EUROPE LTD.,**  
as the U.K. Borrower and a Canadian Facility Guarantor, and

**THE OTHER OBLIGORS PARTY HERETO**

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**THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

Dated as of November 20, 2017

\$360,000,000

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**CERTAIN FINANCIAL INSTITUTIONS,**  
as Lenders,

**BANK OF AMERICA, N.A.,**  
as Administrative Agent

**MUFG UNION BANK N.A.**  
as Syndication Agent

**SUNTRUST BANK,**  
as Documentation Agent

and

**BANK OF AMERICA, N.A.,**  
as Sole Lead Arranger and Sole Bookrunner

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## TABLE OF CONTENTS

	Page
Section 1. Definitions; Rules of Construction	2
1.1 Definitions	2
1.2 Accounting Terms	61
1.3 Uniform Commercial Code/PPSA	61
1.4 Certain Matters of Construction	62
1.5 Calculations	62
1.6 Interpretation (Quebec)	63
Section 2. Credit Facilities	63
2.1 Revolver Commitments	63
2.2 U.K. Letter of Credit Facility	68
2.3 U.S. Letter of Credit Facility	71
2.4 Canadian Letter of Credit Facility	75
2.5 Term Loans	78
Section 3. Interest, Fees and Charges	79
3.1 Interest	79
3.2 Fees	81
3.3 Computation of Interest, Fees, Yield Protection	83
3.4 Reimbursement Obligations	84
3.5 Illegality	84
3.6 Inability to Determine Rates	85
3.7 Increased Costs; Capital Adequacy	85
3.8 Mitigation	86
3.9 Funding Losses	87
3.10 Maximum Interest	87
Section 4. Loan Administration	88
4.1 Manner of Borrowing and Funding Revolver Loans	88
4.2 Defaulting Lender	92
4.3 Number and Amount of LIBOR Loans and Canadian BA Rate Loans; Determination of Rate	92
4.4 Borrower Agent	93
4.5 One Obligation	93
4.6 Effect of Termination	93
Section 5. Payments	94
5.1 General Payment Provisions	94
5.2 Repayment of Revolver Loans	94
5.3 Repayment of Term Loans	95
5.4 Payment of Other Obligations	96
5.5 Marshaling; Payments Set Aside	96
5.6 Post-Default Allocation of Payments	96
5.7 Application of Payments	99

5.8	Loan Account; Account Stated	100
5.9	Taxes	101
5.10	Lender Tax Information	105
5.11	Guarantee by Obligors	106
5.12	Currency Matters	113
5.13	Currency Fluctuations	114
Section 6.	Conditions Precedent	114
6.1	Conditions Precedent to Effectiveness and Loans	114
6.2	Conditions Precedent to All Credit Extensions	115
Section 7.	Collateral	116
7.1	Grant of Security Interest	116
7.2	Lien on Deposit Accounts; Cash Collateral	118
7.3	Intentionally Omitted	119
7.4	Certain After-Acquired Collateral	119
7.5	No Assumption of Liability	120
7.6	Further Assurances	120
Section 8.	Collateral Administration	120
8.1	Borrowing Base Certificates	120
8.2	Administration of Accounts	121
8.3	Administration of Inventory	122
8.4	Intentionally Omitted	123
8.5	Administration of Deposit Accounts	123
8.6	General Provisions	123
8.7	Power of Attorney	124
Section 9.	Representations and Warranties	125
9.1	General Representations and Warranties	125
Section 10.	Covenants and Continuing Agreements	132
10.1	Affirmative Covenants	132
10.2	Negative Covenants	139
10.3	Financial Covenants	150
10.4	Company Trademark	151
Section 11.	Events of Default; Remedies on Default	151
11.1	Events of Default	151
11.2	Remedies upon Default	153
11.3	License	154
11.4	Setoff	154
11.5	Remedies Cumulative; No Waiver	154
11.6	Judgment Currency	155
Section 12.	Agent	155
12.1	Appointment, Authority and Duties of Agent	155

12.2	Agreements Regarding Collateral and Field Examination Reports	158
12.3	Reliance By Agent	159
12.4	Action Upon Default	159
12.5	Ratable Sharing	159
12.6	Indemnification	159
12.7	Limitation on Responsibilities of Agent	160
12.8	Successor Agent and Co-Agents	160
12.9	Due Diligence and Non-Reliance	161
12.10	Remittance of Payments and Collections	161
12.11	Agent in its Individual Capacity	162
12.12	Agent Titles	162
12.13	Bank Product Providers	162
12.14	No Third Party Beneficiaries	163
<b>Section 13.</b>	<b>Benefit of Agreement; Assignments</b>	163
13.1	Successors and Assigns	163
13.2	Participations	163
13.3	Assignments	164
13.4	Replacement of Certain Lenders	165
<b>Section 14.</b>	<b>Miscellaneous</b>	165
14.1	Consents, Amendments and Waivers	165
14.2	Indemnity	166
14.3	Notices and Communications	167
14.4	Performance of Obligors' Obligations	167
14.5	Credit Inquiries	168
14.6	Severability	168
14.7	Cumulative Effect; Conflict of Terms	168
14.8	Counterparts	168
14.9	Entire Agreement	168
14.10	Relationship with Lenders	168
14.11	Lender Loss Sharing Agreement	168
14.12	No Advisory or Fiduciary Responsibility	171
14.13	Confidentiality	171
14.14	GOVERNING LAW	172
14.15	Consent to Forum; Judicial Reference; Bail-In of EEA Financial Institutions	172
14.16	Waivers by Obligors	173
14.17	Patriot Act Notice	173
14.18	Canadian Anti-Money Laundering Legislation	174
14.19	Reinstatement	174
14.20	Nonliability of Lenders	174
14.21	Know Your Customer	175
14.22	Amendment and Restatement	175

LIST OF EXHIBITS AND SCHEDULES

Exhibit A-1	Form of Canadian Revolver Note
Exhibit A-2	Form of U.S. Revolver Note
Exhibit A-3	Form of U.K. Revolver Note
Exhibit B	Assignment and Acceptance
Exhibit C	Assignment Notice
Exhibit D	Form of Compliance Certificate
Exhibit E	Form of Mortgage
Schedule E-1	Existing Letters of Credit
Schedule F-1	Company Trademarks
Schedule 1.1	Commitments of Lenders
Schedule 1.1A	Mandatory Cost Formulae
Schedule 1.1C	U.K. Eligible Foreign Accounts
Schedule 1.1D	U.K. Non-Bank Lenders
Schedule 5.9.9	Treaty Lenders under HMRC DT Passport Scheme
Schedule 8.6.1	Business Locations
Schedule 9.1.8	Real Property in a Special Flood Hazard Zone
Schedule 9.1.9	Environmental Matters
Schedule 9.1.12	ERISA Compliance
Schedule 9.1.13	Names and Capital Structure
Schedule 9.1.17	Patents, Trademarks, Copyrights and Licenses
Schedule 9.1.21	Labor Contracts
<u>Schedule 9.1.24</u>	<u>Commercial Tort Claims</u>
Schedule 10.2.1	Existing Liens
Schedule 10.2.2	Permitted Investments
Schedule 10.2.3	Permitted Debt

**THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

**THIS THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT** is dated as of November 20, 2017, among CALLAWAY GOLF COMPANY, a Delaware corporation ("Parent"), CALLAWAY GOLF SALES COMPANY, a California corporation ("Callaway Sales"), CALLAWAY GOLF BALL OPERATIONS, INC., a Delaware corporation ("Callaway Operations"), OGIO INTERNATIONAL INC., a Utah corporation, ("Ogio"), **TRAVIS MATHEW RETAIL, LLC, a California limited liability company** ("Travis Mathew Retail"), **TRAVISMATHEW, LLC**, a California limited liability company ("travisMathew") and together with Parent, Callaway Sales, and Callaway Operations ~~and Travis Mathew Retail~~, collectively, "U.S. Borrowers"), **CALLAWAY GOLF CANADA LTD.**, a Canada corporation ("Canadian Borrower") **CALLAWAY GOLF EUROPE LTD.**, a company organized under the laws of England (registered number 02756321) ("U.K. Borrower" and together with the U.S. Borrowers and the Canadian Borrower, collectively, "Borrowers"), the other Obligors party to this Agreement from time to time, the financial institutions party to this Agreement from time to time as lenders (collectively, "Lenders"), and **BANK OF AMERICA, N.A.**, a national banking association, as administrative agent and as security trustee for the Lenders ("Agent").

**RECITALS:**

**WHEREAS**, Agent, the Lenders party thereto, Parent, Callaway Sales, Callaway Operations, the Canadian Borrower, and the other Obligors party thereto entered into that certain Second Amended and Restated Loan and Security Agreement (the "Second Amended and Restated Loan Agreement"), dated as of December 22, 2011 (the "Second Amended Original Closing Date"), which amended and restated that certain Amended and Restated Loan and Security Agreement dated as of July 22, 2011 (the "Original Amended and Restated Loan Agreement"), which amended and restated that certain Loan and Security Agreement dated as of June 30, 2011 (the "Original Loan Agreement");

**WHEREAS**, the parties hereto have agreed to amend and restate in their entirety the agreements contained in the Second Amended and Restated Loan Agreement as amongst themselves;

**WHEREAS**, the Obligors have requested that: (i) the U.S. Lenders provide a credit facility to the U.S. Borrowers; (ii) the Canadian Lenders provide a credit facility to the Canadian Borrower; and (iii) the U.K. Lenders provide a credit facility to the U.K. Borrower, in each case, to finance their mutual and collective business enterprise;

**WHEREAS**, the applicable Lenders are willing to provide such credit facilities on the terms and conditions set forth herein; and

**WHEREAS**, each Obligor hereby restates, ratifies and reaffirms each and every term and condition set forth in the Second Amended and Restated Loan Agreement, as amended and restated hereby, and the other Loan Documents effective as of the date hereof;

**NOW, THEREFORE**, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is

hereby acknowledged, the parties hereto amend and restate the Second Amended and Restated Loan Agreement and agree as follows:

## **SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION**

**1.1 Definitions.** As used herein, the following terms have the meanings set forth below:

**Account:** as defined in the UCC (and/or, with respect to any Accounts of a Canadian Subsidiary, as defined in the PPSA), including all rights to payment for goods sold or leased, or for services rendered.

**Account Debtor:** a Person who is obligated under an Account, Chattel Paper or General Intangible.

**Acquisition:** any transaction, or any series of related transactions, consummated on or after the Original Agreement Closing Date, by which Parent, directly or indirectly, acquires (a) any going business or all or substantially all of the assets of any Person or division thereof, whether through purchase of assets, merger, or otherwise or (b) in one transaction or as the most recent transaction in a series of transactions, a majority (in number of votes) of the Equity Interests of a Person which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

**Acquisition Cap:** \$25,000,000.

**Additional Collateral:** as defined in **Section 10.2.1(o).**

**Affiliate:** with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “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 correlative meanings.

**Agent:** as defined in the preamble to this Agreement.

**Agent Indemnitees:** Agent and its officers, directors, employees, Affiliates, agents and attorneys.

**Agent Professionals:** attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Agent.

**Agreement:** this Third Amended and Restated Loan and Security Agreement.

**Allocable Amount:** as defined in **Section 5.11.**

AML Legislation: as defined in **Section 14.17**.

Anti-Corruption Laws: means all laws, rules, and regulations of any jurisdiction applicable to any Obligor or any Subsidiaries from time to time concerning or relating to bribery or corruption.

Anti-Terrorism Laws: any laws relating to terrorism or money laundering, including the Patriot Act and the Proceeds of Crime Act.

Applicable Law: all laws, rules, regulations and governmental guidelines with the force of law applicable to the Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

Applicable Lenders: with respect to: (a) the U.S. Borrowers, the U.S. Lenders who have a U.S. Revolver Commitments (and if the U.S. Revolver Commitments have terminated, each U.S. Lender that had a U.S. Revolver Commitment immediately prior to such termination), (b) the Canadian Borrower, the Canadian Lenders, and (c) the U.K. Borrower, the U.K. Lenders.

Applicable Margin: with respect to any Type of Loan, the respective margin set forth in the grid below (the “Pricing Grid”), as determined by the Availability Ratio for the last calendar month:

Level	Availability Ratio	U.S.				Canadian			
		Base Rate	LIBOR Revolver Loans	Canadian BA Rate Loans	Canadian Base Rate Loans	U.K. Base Rate	Base Rate Term Loans	LIBOR Term Loans	
I	Greater than or equal to 67%	0.50%	1.50%	1.50%	0.50%	1.50%	2.00%	3.00%	
II	Less than 67% but greater than or equal to 33%	0.75%	1.75%	1.75%	0.75%	1.75%	2.25%	3.25%	
III	Less than 33%	1.00%	2.00%	2.00%	1.00%	2.00%	2.50%	3.50%	

Margins shall be subject to increase or decrease based upon the Availability Ratio for the prior calendar month, as determined by Agent. If, by the first day of a calendar month, any

Borrowing Base Certificate due in the preceding calendar month has not been received, then, at the option of Agent or Required Lenders, the margins shall be determined as if Level III were applicable, from such day until the first day of the calendar month following actual receipt.

Notwithstanding the foregoing, the Applicable Margin for any month with respect to (i) U.S. Base Rate Revolver Loans, Canadian Prime Rate Loans, Canadian Base Rate Loans, LIBOR Revolver Loans, Canadian BA Rate Loans and U.K. Base Rate Loans shall be increased by .50% if any U.S. Availability is generated under both clause (b)(iii) and clause (b)(iv) of the definition of the U.S. Borrowing Base at any time in such month, and (ii) U.S. Base Rate Revolver Loans, Canadian Prime Rate Loans, Canadian Base Rate Loans, LIBOR Revolver Loans, Canadian BA Rate Loans and U.K. Base Rate Loans, shall be increased by .25% if any U.S. Availability is generated under either clause (b)(iii) or clause (b)(iv) of the definition of the U.S. Borrowing Base (but not both such clauses) at any time in such month.

Applicable Time Zone: for borrowings under, and payments due by Borrowers or Lenders on (a) with respect to U.S. Revolver Loans, Term Loans and Canadian Revolver Loans, Pacific time, and (b) with respect to U.K. Revolver Loans, London time.

Approved Fund: any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, and is administered or managed by a Lender, an entity that administers or manages a Lender, or an Affiliate of either.

Asset Disposition: a sale, lease, license, consignment, transfer or other disposition of Property of an Obligor or a Subsidiary, including a disposition of Property in connection with a sale-leaseback transaction or synthetic lease.

Assignment and Acceptance: an assignment agreement between a Lender and Eligible Assignee, in the form of **Exhibit B**.

Assignment of Claims Act: Assignment of Claims Act of 1940, 31 U.S.C. § 3727, 41 U.S.C. § 15, as amended.

Attorney: as defined in **Section 12.1.1(c)**.

Availability: as of any date of determination, the sum of the U.S. Availability plus the Canadian Availability plus the U.K. Availability.

Availability Ratio: the ratio (expressed as a percentage), for any calendar month, of (a) the average daily Availability for such calendar month to (b) an amount equal to the sum of (i) the average daily Canadian Borrowing Base (without giving effect to the Canadian LC Reserve for purposes of this calculation) for such calendar month, plus (ii) the average daily U.S. Borrowing Base (without giving effect to the U.S. LC Reserve, the Canadian Overadvance Loan Balance, and the U.K. Overadvance Loan Balance for purposes of this calculation) for such calendar month, plus (iii) the average daily U.K. Borrowing Base (without giving effect to the U.K. LC Reserve for purposes of this calculation) for such calendar month.

Available Currency: (i) in the case of a U.S. Borrower, Dollars, (ii) in the case of the Canadian Borrower, Dollars or Canadian Dollars, and (iii) in the case of the U.K. Borrower, Dollars, British Pounds or Euro (but in the case of U.K. Base Rate Loans, Dollars only).

Bail-In Action: 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: 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: Bank of America, N.A., a national banking association, and its successors and assigns.

Bank of America (Canada): Bank of America, N.A. (acting through its Canada branch), and its successors and assigns.

Bank of America Indemnitees: Bank of America and its officers, directors, employees, Affiliates, branches, agents and attorneys.

Bank Product: any of the following products, services or facilities extended to any Obligor or Subsidiary by a Lender or any of its Affiliates:

(a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; (d) purchase cards (including so-called “procurement cards” or “P-cards”), and (e) other banking products or services as may be requested by any Obligor or Subsidiary unless otherwise agreed in writing between such Obligor or Subsidiary and the provider of such products or services, other than Letters of Credit.

Bank Product Debt: Debt and other obligations of an Obligor or Subsidiary relating to Bank Products.

Base Rate Loan: a U.S. Base Rate Loan, a Canadian Base Rate Loan or a U.K. Base Rate Loan, as applicable.

Base Rate Term Loan: a Term Loan that bears interest based on the U.S. Base Rate.

Board of Governors: the Board of Governors of the Federal Reserve System.

Borrowed Money: with respect to any Obligor or Subsidiary, without duplication, its (a) Debt that (i) arises from the lending of money by any Person to such Obligor or Subsidiary, (ii) is evidenced by notes, drafts, bonds, debentures, credit documents or similar instruments, (iii) accrues interest or is a type upon which interest charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business), or (iv) was issued or assumed as full or partial payment for Property; (b) Capital Leases; (c) reimbursement obligations with respect to letters of credit; and (d) guaranties of any Debt of the foregoing types owing by another Person.

Borrower Agent: as defined in **Section 4.4**.

Borrower Group: a group consisting of (i) the U.S. Borrowers, (ii) the Canadian Borrower, or (iii) the U.K. Borrower, as the context requires.

Borrowers: as defined in the preamble to this Agreement.

Borrowing: a group of Loans of one Type that are made on the same day or are converted into Loans of one Type on the same day.

Borrowing Base: the Canadian Borrowing Base and/or the U.S. Borrowing Base and/or the U.K. Borrowing Base, as the context requires.

Borrowing Base Certificate: a U.S. Borrowing Base Certificate, a Canadian Borrowing Base Certificate, or a U.K. Borrowing Base Certificate, as applicable.

British Pounds or £: the lawful currency of the United Kingdom.

Business Day: 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, North Carolina and New York, and if such day relates to: (a) a LIBOR Loan, any such day on which dealings in deposits in the relevant Available Currency of that LIBOR Loan are conducted between banks in the London interbank eurocurrency market, (b) a Canadian Revolver Loan, any such day on which banks in Toronto, Ontario, Canada are open for the transaction of banking business, (c) any U.K. Revolver Loan or U.K. Lender, any day on which commercial banks are open for the transaction of banking business in London, or (d) any Revolver Loan denominated in Euro, any day which is a TARGET Day.

CAM: as defined in **Section 14.11(a)(i)**.

CAM Exchange: as defined in **Section 14.11(a)(ii)**.

CAM Exchange Date: as defined in **Section 14.11(a)(iii)**.

CAM Percentage: as defined in **Section 14.11(a)(iv)**.

Calculation Date: as defined in **Section 5.13**.

Canadian Accounts Formula Amount: (a) as of any date of determination within the period beginning on May 1 through and including October 31 of each Fiscal Year, 85% of the Value of Eligible Accounts of the Canadian Borrower; and (b) as of any date of determination within the period beginning on November 1 through and including April 30 of each Fiscal Year, 90% of the Value of Eligible Accounts of the Canadian Borrower.

Canadian Availability: as of any date of determination, the Canadian Borrowing Base as of such date of determination minus the aggregate principal amount of all Canadian Revolver Loans outstanding on such date of determination.

Canadian Availability Reserve: the sum (without duplication) of (a) the Inventory Reserve with respect to the Canadian Borrower's Inventory; (b) the Canadian Rent and Charges Reserve;

(c) the Canadian LC Reserve; (d) the Canadian Bank Product Reserve; (e) all accrued Royalties of the Canadian Domiciled Obligors, whether or not then due and payable by a Canadian Domiciled Obligor; (f) the aggregate amount of liabilities secured by Liens upon Canadian Facility Collateral that are senior to the Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (g) the Canadian Priority Payables Reserve; (h) the Wage Earner Protection Act Reserve; (i) the Canadian Dilution Reserve; (j) the Canadian Top Golf Reserve; and (k) such additional reserves, in such amounts and with respect to such matters, as Agent in its Credit Judgment may elect to impose from time to time with respect to the Canadian Borrowing Base.

**Canadian BA Rate:** with respect to each Interest Period for a Canadian BA Rate Loan, a per annum rate of interest equal to the Canadian Dollar bankers' acceptance rate, or comparable or successor rate approved by Agent, determined by it at or about 10:00 a.m. (Toronto time) on the applicable day (or the preceding Business Day, if the applicable day is not a Business Day) for a term comparable to the Canadian BA Rate Loan, as published on the CDOR Page or other applicable Reuters screen page (or other commercially available source designated by Agent from time to time), provided, that in no event shall the Canadian BA Rate be less than zero.

**Canadian BA Rate Loan:** a Canadian Revolver Loan, or portion thereof, funded in Canadian Dollars and bearing interest calculated by reference to the Canadian BA Rate.

**Canadian Bank Product Reserve:** the aggregate amount of reserves established by Agent from time to time in its discretion in respect of Secured Bank Product Obligations owing by the Canadian Domiciled Obligors and their Subsidiaries.

**Canadian Base Rate:** for any day, the greater of (i) the per annum rate of interest designated by Bank of America (Canada) from time to time as its base rate for commercial loans made by it in Dollars, which rate is based on various factors, including its 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 rate; (ii) the Federal Funds Rate for such day, plus 0.50% per annum; or (iii) LIBOR for a 30 day interest period as of such day, plus 1.00%; provided, that in no event shall the Canadian Base Rate be less than zero. Any change in such rate shall take effect at the opening of business on the applicable Business Day.

**Canadian Base Rate Loan:** a Canadian Revolver Loan, or portion thereof, funded in Dollars and bearing interest calculated by reference to the Canadian Base Rate.

**Canadian Borrower:** as defined in the preamble to this Agreement.

**Canadian Borrowing Base:** on any date of determination, an amount equal to the lesser of (a) the result of: (i) the Maximum Canadian Facility Amount, minus (ii) the Canadian LC Reserve, minus (iii) the Canadian Top Golf Reserve; or (b) the result of: (i) the Canadian Accounts Formula Amount, plus (ii) the Canadian Inventory Formula Amount, plus (iii) 100% of the amount of Canadian Pledged Cash, minus (iv) the Canadian Availability Reserve.

**Canadian Borrowing Base Certificate:** a certificate, in form and substance satisfactory to Agent, by which the Canadian Borrower certifies calculation of the Canadian Borrowing Base.

**Canadian Cash Collateral Account:** a demand deposit, money market or other account established by Agent at Bank of America (Canada) or such other financial institution as Agent may select in its discretion, which account shall be for the benefit of the Canadian Facility Secured Parties and shall be subject to Agent's Liens securing the Canadian Facility Obligations.

**Canadian Dilution Reserve:** as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts of the Canadian Borrower by 1% for each whole percentage point (or portion thereof) by which the Dilution Percent is in excess of 5.0%.

**Canadian Dollars or Cdn\$:** the lawful currency of Canada.

**Canadian Domiciled Obligor:** each Canadian Subsidiary which is at any time an Obligor, and "**Canadian Domiciled Obligors**" means all such Persons, collectively.

**Canadian Dominion Account:** a special account established by the Canadian Borrower at Bank of America (Canada) or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes during any Dominion Trigger Period.

**Canadian Employee Benefits Legislation:** the *Employment Pensions Plan Act* (Alberta), *Pension Benefits Standards Act* (British Columbia), the *Supplemental Pension Plans Act* (Quebec) and any Canadian federal, provincial or local counterparts or equivalents, in each case, as applicable and as amended from time to time.

**Canadian Employee Plan:** any payroll practice and other employee benefit plan, policy, program, agreement or arrangement, including retirement, pension, profit sharing, employment, individual consultant or other compensation agreement, collective bargaining agreement, bonus or other incentive compensation, retention, stock purchase, equity or equity-based compensation, deferred compensation, change in control, severance, sick leave, vacation, loans, salary continuation, hospitalization, health, life insurance, educational assistance or other fringe benefit or perquisite plan, policy, agreement which is or was sponsored, maintained or contributed to by, or required to be contributed to by, a Canadian Domiciled Obligor, or with respect to which a Canadian Domiciled Obligor has or could have any obligation or liability, contingent or otherwise.

**Canadian Expeditors Reserve:** as of any date of determination, the aggregate amount of accounts payable owed by any Canadian Facility Obligor to Expeditors, as determined by Agent in its Credit Judgment.

**Canadian Facility Collateral:** all Collateral that now or hereafter secures (or is intended to secure) any of the Canadian Facility Obligations, including Property of each Canadian Domiciled Obligor, each U.S. Domiciled Obligor, and each U.K. Domiciled Obligor.

**Canadian Facility Guarantee:** each guarantee agreement (including this Agreement) at any time executed by a Canadian Facility Guarantor in favor of Agent guaranteeing all or any portion of the Canadian Facility Obligations.

**Canadian Facility Guarantor:** Parent, each Canadian Subsidiary, each U.S. Subsidiary (other than uPlay unless uPlay becomes a Guarantor in accordance with **Section 10.2.15**), each

U.K. Subsidiary, and each other Person (if any) who guarantees payment and performance of any Canadian Facility Obligations.

**Canadian Facility Obligations**: all Obligations of the Canadian Facility Obligors (excluding, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of any U.S. Facility Obligations).

**Canadian Facility Obligor**: each of the Canadian Borrower or any Canadian Facility Guarantor, and “**Canadian Facility Obligors**” means all of such Persons, collectively.

**Canadian Facility Secured Parties**: Agent, the Canadian Issuing Bank, the Canadian Lenders and the Secured Bank Product Providers who provide Bank Products to the Canadian Facility Obligors and their Subsidiaries.

**Canadian Inventory Formula Amount**: as of any date of determination, the lesser of (a) the sum of (i) with respect to Eligible Inventory that has been owned by the Canadian Borrower for less than one (1) calendar year as of the applicable date of determination, (A) for the period beginning on March 1 through and including September 30 of each Fiscal Year, 65% of the Value of the Canadian Borrower’s Eligible Inventory, and (B) for the period beginning on October 1 through and including February 28 (or February 29, as applicable) of each Fiscal Year, 75% of the Value of the Canadian Borrower’s Eligible Inventory, plus (ii) with respect to Eligible Inventory that has been owned by the Canadian Borrower for more than one (1) calendar year, as of the applicable date of determination, 50% of the Value of the Canadian Borrower’s Eligible Inventory; or (b) 85% of the NOLV Percentage of the Value of the Canadian Borrower’s Eligible Inventory. Notwithstanding the foregoing, the aggregate amount of the Canadian Inventory Formula Amount which may be attributed to Eligible In-Transit Inventory (the “**Canadian In-Transit Availability**”) shall not exceed \$5,000,000; provided, that, the Canadian In-Transit Availability (after taking into effect the previous proviso) shall be reduced by the Canadian Expeditors Reserve if, as of any date of determination, either (I) Canadian Net Excess Availability is less than 10% of the Maximum Canadian Facility Amount, or (II) there are any accounts payable owed by any Canadian Facility Obligor to Expeditors which are aged in excess of historical levels (except in cases of good faith disputes).

**Canadian Issuing Bank**: Bank of America (Canada) or an Affiliate of Bank of America (Canada).

**Canadian LC Obligations**: the sum (without duplication) of (a) all amounts owing by the Canadian Borrower for any drawings under Letters of Credit; (b) the stated amount of all outstanding Letters of Credit issued for the account of the Canadian Borrower, which if such Letter of Credit is denominated in a currency other than Canadian Dollars or Dollars, may be stated by Agent (at its option) in Canadian Dollars or Dollars calculated at the Spot Rate; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account of the Canadian Borrower.

**Canadian LC Reserve**: the aggregate of all Canadian LC Obligations, other than those that have been Cash Collateralized.

**Canadian Lenders:** Bank of America (Canada) and each other Lender that has issued a Canadian Revolver Commitment (provided that such Person or an Affiliate of such Person also has a U.S. Revolver Commitment). Each Canadian Lender shall be a Canadian Qualified Lender.

**Canadian Letter of Credit Subline:** \$5,000,000.

**Canadian Letters of Credit:** any standby or documentary letter of credit issued by the Canadian Issuing Bank for the account of the Canadian Borrower, or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Agent or the Canadian Issuing Bank for the benefit of the Canadian Borrower.

**Canadian Multi-Employer Plan:** each multi-employer plan, within the meaning of the Regulations under the Income Tax Act (Canada).

**Canadian Net Excess Availability:** as of any date of determination, an amount equal to the Canadian Availability minus the aggregate amount, if any, of all trade payables of Canadian Domiciled Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of Canadian Domiciled Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

**Canadian Overadvance:** as defined in **Section 2.15.**

**Canadian Overadvance Loan:** a Canadian Revolver Loan made to the Canadian Borrower when a Canadian Overadvance exists or is caused by the funding thereof.

**Canadian Overadvance Loan Balance:** on any date, the amount by which the aggregate Canadian Revolver Exposure exceeds the amount of the Canadian Borrowing Base on such date.

**Canadian Pension Plan:** a “registered pension plan,” as defined in the Income Tax Act (Canada) and any other pension plan maintained or contributed to by, or to which there is or may be an obligation to contribute by, any Obligor in respect of its Canadian employees or former employees, excluding, for greater certainty, a Canadian Multi-Employer Plan.

**Canadian Pledged Cash:** the funds maintained in a blocked Deposit Account or securities account of the Canadian Borrower subject to a Deposit Account Control Agreement or securities account control agreement, as applicable, which give Agent at all times exclusive access and control for withdrawal purposes to the exclusion of the Canadian Borrower and precluding the Canadian Borrower from withdrawing or otherwise giving any instructions in connection therewith and which may not be withdrawn without the Agent’s prior written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such withdrawal, no Default or Event of Default shall have occurred and be continuing and (ii) immediately after such withdrawal (for clarification, including after giving effect to any recalculation of the Canadian Borrowing Base upon giving effect to such withdrawal), Canadian Availability would be a positive number), and which are subject to effective security documents, in form and substance satisfactory to Agent, that provide Agent with an unencumbered perfected first priority/ranking security interest in and Lien on such funds.

**Canadian Prime Rate:** on any date, the greater of (i) the per annum rate of interest designated by Bank of America (Canada) from time to time as its prime rate for commercial loans made by it in Canada in Canadian Dollars, which rate is based on various factors, including its 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 rate; or (ii) the Canadian BA Rate for a one month interest period as of such day, plus 1.00%; provided, that in no event shall the Canadian Prime Rate be less than zero. Any change in such rate shall take effect at the opening of business on the applicable Business Day.

**Canadian Prime Rate Loan:** a Canadian Revolver Loan, or portion thereof, funded in Canadian Dollars and bearing interest calculated by reference to the Canadian Prime Rate.

**Canadian Priority Payables Reserve:** on any date of determination, a reserve in such amount as Agent may determine which reflects the unpaid (when due) or un-remitted (when due) payroll tax deductions, unpaid (when due) pension plan contributions, employment insurance premiums, amounts deducted for vacation pay, wages, workers' compensation, unpaid (when due) or un-remitted (when due) sales tax, goods and services tax, value added tax, harmonized tax, excise tax, tax payable pursuant to Part IX of the Excise Tax Act (Canada) or similar applicable provincial legislation and other unpaid (when due) or unremitting (when due) amounts by any Canadian Domiciled Obligor which would give rise to a Lien with priority under Applicable Law over the Lien of Agent.

**Canadian Qualified Lender:** a financial institution that is not precluded from being a Canadian Lender under the terms of the Bank Act (Canada) or other applicable Canadian federal or provincial legislation.

**Canadian Reimbursement Date:** as defined in **Section 2.4.2.**

**Canadian Rent and Charges Reserve:** the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Canadian Facility Collateral or could assert a Lien on any Canadian Facility Collateral; and (b) a reserve at least equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

**Canadian Required Lenders:** Canadian Lenders (subject to **Section 4.2**) having (a) Canadian Revolver Commitments in excess of 50% of the aggregate Canadian Revolver Commitments; and (b) if the Canadian Revolver Commitments have terminated, Canadian Revolver Loans and Canadian LC Obligations in excess of 50% of all outstanding Canadian Revolver Loans and Canadian LC Obligations; provided, however, that the Canadian Revolver Commitments and Canadian Revolver Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more Canadian Lenders, "Canadian Required Lenders" must include at least 3 Canadian Lenders, and (ii) less than 3 Canadian Lenders, "Canadian Required Lenders" must include all Canadian Lenders.

**Canadian Revolver Commitment:** for any Canadian Lender, its obligation to make Canadian Revolver Loans and to participate in Canadian LC Obligations in the applicable

Available Currencies up to the maximum principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party, as such Canadian Revolver Commitment may be adjusted from time to time in accordance with the provisions of **Sections 2.1.4 or 11.2**. “Canadian Revolver Commitments” means the aggregate amount of such commitments of all Canadian Lenders.

Canadian Revolver Commitment Termination Date: the earliest of (a) the U.S. Revolver Commitment Termination Date (without regard to the reason therefor), (b) the date on which the Borrower Agent terminates or reduces to zero all of the Canadian Revolver Commitments pursuant to **Section 2.1.4**, and (c) the date on which the Canadian Revolver Commitments are terminated pursuant to **Section 11.2**.

Canadian Revolver Exposure: on any date, an amount equal to the sum of the Dollar Equivalent of the Canadian Revolver Loans outstanding on such date plus the Canadian LC Obligations on such date.

Canadian Revolver Loan: a Revolver Loan made by Canadian Lenders to Canadian Borrower pursuant to **Section 2.1.1(b)**, which Revolver Loan shall, if denominated in Canadian Dollars, be either a Canadian BA Rate Loan or a Canadian Prime Rate Loan and, if denominated in Dollars, shall be either a Canadian Base Rate Loan or a LIBOR Loan, in each case as selected by the Borrower Agent, and any Canadian Swingline Loan, Canadian Overadvance Loan or Protective Advance made to or owed by the Canadian Borrower.

Canadian Revolver Notes: a promissory note executed by Canadian Borrower in favor of a Canadian Lender in the form of **Exhibit A-1**, in the amount of such Canadian Lender’s Canadian Revolver Commitment.

Canadian Security Agreement: each (a) general security agreement, security agreement, deed of hypothec, pledge agreement, mortgage or similar agreement pursuant to which any Canadian Domiciled Obligor grants to Agent, for the benefit of the Canadian Facility Secured Parties, Liens upon its Property as security for the Canadian Facility Obligations or (b) security agreement, deed of hypothec, pledge agreement, mortgage or similar agreement pursuant to which any U.S. Domiciled Obligor or U.K. Domiciled Obligor grants to Agent, for the benefit of the Secured Parties, Liens on its Property located in Canada or otherwise subject to Canadian law as security for the Obligations.

Canadian Subsidiary: a Subsidiary of Parent incorporated or organized under the laws of Canada or any province or territory of Canada.

Canadian Swingline Loan: any Borrowing of Canadian Base Rate Loans funded with Agent’s funds, until such Borrowing is settled among the Canadian Lenders or repaid by the Canadian Borrower.

Canadian Top Golf Reserve: a reserve established by Agent at Parent’s request in accordance with the definition of Top Golf Proceeds, in an initial amount as of such establishment equal to \$0. The Canadian Top Golf Reserve (a) shall be reduced on a dollar for dollar basis for the amount expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent’s common stock, in each case after the Third Amendment to Second Amended and

Restated Effective Date in accordance with **Section 10.2.6(g)(ii)(C)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)(ii)(C)**; (b) may be permanently reduced from time to time upon Parent's written request to Agent; and (c) subject to Agent's written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such adjustment, no Default or Event of Default shall have occurred and be continuing, and (ii) immediately after such adjustment (for clarification, including after giving effect to any recalculation of the U.K. Borrowing Base and U.S. Borrowing Base upon giving effect to such adjustment), U.K. Availability and U.S. Availability would be a positive number), may be reallocated on a dollar for dollar basis to the U.K. Top Golf Reserve and/or the U.S. Top Golf Reserve upon Parent's written request to Agent; provided, however, that once reduced pursuant to clause (b) above, the Canadian Top Golf Reserve may not be increased. The parties agree that the Canadian Top Golf Reserve shall never be less than zero (-0-). For clarification, the aggregate amount of the Canadian Top Golf Reserve, the U.K. Top Golf Reserve, and the U.S. Top Golf Reserve may not exceed an amount equal to the aggregate amount of Top Golf Proceeds received by Parent as reflected in all Top Golf Proceeds Notices (less any amounts Parent elects to deposit into the Top Golf Blocked Account) less all amounts expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)** and less all permanent reductions elected by Parent pursuant to clause (b) of each of the definitions of Canadian Top Golf Reserve, U.K. Top Golf Reserve, and U.S. Top Golf Reserve.

Canadian Unused Line Fee Rate: a per annum rate equal to 0.25%.

Capital Expenditures: all liabilities incurred or expenditures made by an Obligor or Subsidiary for the acquisition of fixed assets, or any improvements, replacements, substitutions or additions thereto with a useful life of more than one year.

Capital Lease: any lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

Cash Collateral: cash, and any interest or other income earned thereon, that is delivered to Agent to Cash Collateralize any Obligations.

Cash Collateral Account: the U.S. Cash Collateral Account and/or the Canadian Cash Collateral Account and/or the U.K. Cash Collateral Account, as the context may require.

Cash Collateralize: the delivery of cash to Agent, as security for the payment of Obligations, in an amount equal to (a) with respect to LC Obligations, 105% of the aggregate LC Obligations, and (b) with respect to any inchoate, contingent or other Obligations (including Secured Bank Product Obligations), Agent's good faith estimate of the amount due or to become due, including all fees and other amounts relating to such Obligations. "Cash Collateralization" has a correlative meaning.

Cash Equivalents: (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the United States, Canadian or United Kingdom government,

maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by Bank of America or a commercial bank organized under the laws of the United States (or any state or district of the United States), Canada (or any province or territory of Canada), England, Wales, Scotland or Northern Ireland, rated A-1 (or better) by S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) entered into with any bank described in clause (b); (d) commercial paper issued by Bank of America or rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within nine months of the date of acquisition; and (e) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least \$500,000,000 and has the highest rating obtainable from either Moody's or S&P.

Cash Management Services: any services provided from time to time by any Lender or any of its Affiliates to any Obligor or Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

CERCLA: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*).

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; 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: (a) 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 Parent or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) 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 (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the Equity Interests of Parent entitled to vote for members of the board of directors or equivalent governing body of Parent on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or (b) Parent ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests in all other Obligors.

**Claims:** all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys' fees and Extraordinary Expenses) at any time (including after Full Payment of the Obligations or replacement of Agent or any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person, in any way relating to (a) any Loans, Letters of Credit, Loan Documents, or the use thereof or transactions relating thereto, (b) any action taken or omitted in connection with any Loan Documents, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law, or (e) failure by any Obligor to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

**Closing Date:** as defined in **Section 6.1**.

**Code:** the Internal Revenue Code of 1986.

**Collateral:** all Property described in **Section 7.1**, all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

**Commitment:** for any Lender, the aggregate amount of such Lender's U.S. Revolver Commitment, Term Loan Commitment, Canadian Revolver Commitment, and U.K. Revolver Commitment. "**Commitments**" means the aggregate amount of all U.S. Revolver Commitments, Canadian Revolver Commitments, and U.K. Revolver Commitments.

**Commodity Exchange Act:** the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

**Common Stock Repurchase:** a repurchase, redemption or other retirement for value of Parent's common stock.

**Company Trademark:** collectively, the trademarks owned by the U.S. Borrowers set forth on **Schedule F-1** (as such Schedule may be updated to include additional trademarks with the written consent of all Lenders).

**Compliance Certificate:** a certificate, in the form of **Exhibit D**, by which Borrowers certify compliance with **Section 10.3** and for purposes of determination of the Applicable Margin (such certificate to include a calculation of the Fixed Charge Coverage Ratio and the Leverage Ratio in all cases, whether or not a Covenant Trigger Period is in effect and regardless of the current pricing level as set forth in the Pricing Grid).

**Consolidated Tangible Assets:** as of any date of determination, the Consolidated Total Assets of Parent and its Subsidiaries minus consolidated intangible assets of Parent and its Subsidiaries, all determined in accordance with GAAP.

**Consolidated Total Assets:** as of any date of determination, the consolidated total assets of Parent and its Subsidiaries as of such date, determined in accordance with GAAP.

Contingent Obligation: as to any Person, any (a) obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt 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 Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt 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 Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt 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) Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person. The amount of any Contingent Obligation 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 Contingent Obligation 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.

Contractual Obligation: 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.

Costco: Costco Wholesale Corporation, a Washington corporation.

Covenant Trigger Period: the period (a) commencing on the day that Net Excess Availability is less than, at any time, an amount equal to the Covenant Trigger Period Threshold Percentage of the Maximum Facility Amount; and (b) continuing until, during the preceding 30 consecutive days, Net Excess Availability has been greater than, at all times, an amount equal to the Covenant Trigger Period Threshold Percentage of the Maximum Facility Amount.

Covenant Trigger Period Threshold Percentage: 10%.

Credit Judgment: Agent’s judgment exercised in good faith, based upon its consideration of any factor that it believes (a) could reasonably be expected to adversely affect the quantity, quality, mix or value of Collateral (including any Applicable Law that may inhibit collection of an Account), the enforceability or priority of Agent’s Liens, or the amount that Agent and Lenders could receive in liquidation of any Collateral; (b) provides a reasonable basis to conclude that any collateral report or financial information delivered by any Obligor is incomplete, inaccurate or misleading in any material respect; (c) materially increases the likelihood of any Insolvency Proceeding involving an Obligor; or (d) creates or could reasonably be expected to result in a Default or Event of Default. In exercising such judgment, Agent may consider any factors that could reasonably be expected to increase the credit risk of lending to Borrowers on the security of the Collateral.

Credit Party: Agent, a Lender or an Issuing Bank; and “Credit Parties” means Agent, Lenders and Issuing Banks.

Creditor Representative: under any Applicable Law, a receiver, interim receiver, receiver and manager, trustee (including any trustee in bankruptcy), custodian, conservator, administrator, examiner, sheriff, monitor, assignee, liquidator, provisional liquidator, sequestrator or similar officer or fiduciary.

CWA: the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*).

Debt: 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) 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) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable and accrued expenses arising in the Ordinary Course of Business); (d) 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; (e) Capital Leases and Off-Balance Sheet Liabilities; (f) all Contingent Obligations of such Person in respect of the foregoing clauses (a) through (e); and (g) in the case of an Obligor, the Obligations.

Default: an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

Default Rate: for any Obligation (including, to the extent permitted by law, interest not paid when due), 2% plus the interest rate otherwise applicable thereto.

Defaulting Lender: any Lender that, as determined by Agent, (a) has failed to perform any funding obligations hereunder, and such failure is not cured within three Business Days; (b) has notified Agent or any Borrower that such Lender does not intend to comply with its funding obligations hereunder or has made a public statement to the effect that it does not intend to comply with its funding obligations hereunder or under any other credit facility; (c) has failed, within three Business Days following request by Agent, to confirm in a manner satisfactory to Agent that such Lender will comply with its funding obligations hereunder; or (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority), or Bail-In Action; provided, however, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent company unless the ownership provides immunity for such Lender from jurisdiction of courts within the United States or from enforcement of judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate or otherwise to reject such Lender's agreements.

Deposit Account: as defined in the UCC (and/or with respect to any Deposit Account located in Canada and/or the U.K., any bank account with a deposit function).

**Deposit Account Control Agreements:** the deposit account control agreements to be executed by each institution maintaining a Deposit Account for an Obligor, in favor of Agent, for the benefit of Secured Parties.

**Designated Jurisdiction:** a country or territory that is the target of Sanctions.

**Designated Obligations:** as defined in **Section 14.11(a)(v).**

**Dilution Percent:** the percent, for any period determined by Agent, equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts of the U.S. Borrowers (in the case of the U.S. Dilution Reserve), the Canadian Borrower (in the case of the Canadian Dilution Reserve), or the U.K. Borrower (in the case of the U.K. Dilution Reserve), divided by (b) gross sales of the U.S. Borrowers (in the case of the U.S. Dilution Reserve), of the Canadian Borrower (in the case of the Canadian Dilution Reserve), or of the U.K. Borrower (in the case of the U.K. Dilution Reserve).

**Direction:** as defined in **Section 5.9.2(b)(i).**

**Distribution:** any declaration or payment of a distribution, interest or dividend on any Equity Interest (other than payment-in-kind); any distribution, advance or repayment of Debt to a holder of Equity Interests; or any purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

**Document:** as defined in the UCC (and/or with respect to any Document of a Canadian Subsidiary, a “document of title” as defined in the PPSA).

**Dollars:** lawful money of the United States.

**Dollar Equivalent:** on any date, with respect to any amount denominated in Dollars, such amount in Dollars, and with respect to any stated amount in a currency other than Dollars, the amount of Dollars that Agent determines (which determination shall be conclusive and binding absent manifest error) would be necessary to be sold on such date at the applicable Exchange Rate to obtain the stated amount of the other currency.

**Dominion Account:** with respect to the U.S. Domiciled Obligors, a U.S. Dominion Account, with respect to the Canadian Domiciled Obligors, a Canadian Dominion Account, and with respect to the U.K. Domiciled Obligors, a U.K. Dominion Account.

**Dominion Trigger Period:** the period (a) commencing on the day that an Event of Default occurs, or Net Excess Availability is less than: (i) an amount equal to 10% of the Maximum Facility Amount for five (5) consecutive Business Days, or (ii) 7.5% of the Maximum Facility Amount at any time, and (b) continuing until, during the preceding 30 consecutive days, no Event of Default has existed and Net Excess Availability has been greater than, at all times, an amount equal to 10% of the Maximum Facility Amount. Agent will endeavor to provide copies of each notice of control Agent sends to any Dominion Account bank to Borrower Agent substantially contemporaneously with providing such notice to such Dominion Account bank; provided, however, that the failure of Agent to provide a copy of any such notice to Borrower Agent shall not give rise to any liability on the part of Agent and shall not affect the validity and effectiveness of such notice.

**EBITDA**: determined on a consolidated basis for Parent and Subsidiaries, net income, calculated before interest expense, non-cash stock compensation expense, provision for income taxes, depreciation and amortization expense, other non-cash expenses (except to the extent representing a reserve or accrual for cash expenses in another period) of Borrower Agent and its subsidiaries (including, without limitation, non-cash amounts related to any downsizing, restructuring or partial close of any operations of Borrower Agent or any of its subsidiaries), gains or losses arising from the sale of capital assets, gains arising from the write-up of assets, any extraordinary gains, any gains on account of a transaction which results in Parent receiving Top Golf Proceeds, the transaction expenses incurred during the 2017 Fiscal Year in an aggregate amount not to exceed \$4,000,000, and one-time transaction expenses incurred with respect to any Debt incurrence permitted by **Section 10.2.3** (in each case, to the extent included in determining net income).

**EEA Financial Institution**: (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) above; or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in the foregoing clauses and is subject to consolidated supervision with its parent.

**EEA Member Country**: any of the member states of the European Union, Iceland, Liechtenstein and Norway.

**EEA Resolution Authority**: any public administrative authority or any Person entrusted with public administrative authority of an EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

**Eligible Account**: an Account owing to a Borrower that arises in the Ordinary Course of Business from the sale of goods or rendition of services, is payable in Dollars (or, in the case of: (x) an Account owing to the Canadian Borrower, in Dollars or Canadian Dollars, and (y) an Account owing to the U.K. Borrower, in Dollars, Euro, or British Pounds), and is deemed by Agent, in its Credit Judgment, to satisfy the criteria set forth below. No Account shall be an Eligible Account if (a) it is unpaid for more than 60 days after the original due date (or up to an additional 30 days as Agent may approve on an Account Debtor by Account Debtor basis in its sole discretion), or it is unpaid for more than 150 days after the original invoice date (or up to an additional 30 days as Agent may approve on an Account Debtor by Account Debtor basis in its sole discretion); (b) 50% or more of the Accounts owing by the Account Debtor are not Eligible Accounts under the foregoing clause; (c) when aggregated with other Accounts owing by the Account Debtor and such Account Debtor's Affiliates, it exceeds 15% of the aggregate Eligible Accounts (or such higher percentage as Agent may establish for the Account Debtor and its Affiliates from time to time); provided that, with respect to Accounts owing by Dick's Sporting Goods, such percentage shall be 30%; (d) it does not conform with a covenant or representation herein; (e) it is owing by a creditor or supplier, or is otherwise subject to a potential offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance (but ineligibility shall be limited to the amount thereof); (f) an Insolvency Proceeding has been commenced by or against the Account Debtor; or the Account Debtor has failed, has suspended or ceased doing business, is liquidating, dissolving or winding up its affairs, or is not

Solvent, or is the target of any Sanction or on any specially designated nationals list maintained by OFAC; or the Borrower that originated such Account is not able to bring suit or enforce remedies against the Account Debtor through judicial process; (g) with respect to Accounts owing to: (i) the U.S. Borrowers or the Canadian Borrower, the Account Debtor is organized or has its principal offices or assets outside the United States or Canada, and (ii) the U.K. Borrower, the Account Debtor is organized or has its principal offices or assets outside of England, Wales, Scotland or Northern Ireland other than a U.K. Eligible Foreign Account; (h) it is owing by a Government Authority, unless the Account Debtor is the United States or any department, agency or instrumentality thereof and the Account has been assigned to Agent in compliance with the Assignment of Claims Act or the Account Debtor is the federal government of Canada or any Crown corporation, department, agency or instrumentality of Canada and the Canadian Borrower has complied, to the satisfaction of Agent, with the Financial Administration Act or other Applicable Law; (i) it is not subject to a duly perfected, first priority (in the case of U.K. Accounts, expressed as a fixed charge) Lien in favor of Agent, or is subject to any other Lien; (j) the goods giving rise to it have not been delivered to the Account Debtor, the services giving rise to it have not been accepted by the Account Debtor, or it otherwise does not represent a final sale; (k) it is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment; (l) its payment has been extended or the Account Debtor has made a partial payment; (m) it arises from a sale to an Affiliate, from a sale on a cash-on-delivery, bill-and-hold, sale-or-return, sale-on-approval, consignment, or other repurchase or return basis, or from a sale for personal, family or household purposes; (n) it represents a progress billing or retainage, or relates to services for which a performance, surety or completion bond or similar assurance has been issued; or (o) it includes a billing for interest, fees or late charges, but ineligibility shall be limited to the extent thereof. In calculating delinquent portions of Accounts under clauses (a) and (b), credit balances more than 60 days old (or such later date as Agent may approve in its sole discretion) will be excluded.

The criteria for Eligible Accounts set forth above may only be changed and any new criteria for Eligible Accounts may only be established by Agent in its Credit Judgment, based on: (i) an event, condition or other circumstance arising after the date hereof, (ii) an event, condition or other circumstance existing on the date hereof to the extent that the Agent has no knowledge thereof or its effect on the Account, or (iii) facts, information, or circumstances provided to or learned by Agent in the course of its administration of the facility, including, without limitation, in connection with field exams, audits, reports and other information received, and observance of Collateral and the Obligors' business performance, in any case under clauses (i), (ii) or (iii), which adversely affects or would reasonably be expected to adversely affect the Accounts as determined by Agent in its Credit Judgment.

**Eligible Assignee:** a Person that is (i) a Lender or a U.S.-based Affiliate of a Lender, (ii) if such Person is to hold U.S. Facility Obligations, an Approved Fund; (iii) if such Person is to hold Canadian Facility Obligations, such person is at all times, other than during any Event of Default, a Canadian Qualified Lender and an Affiliate or branch of a U.S. Lender; (iv) if such Person is to hold U.K. Facility Obligations, such person is at all times, other than during any Event of Default, a U.K. Qualified Lender and an Affiliate of a U.S. Lender, (v) any other financial institution approved by Agent and Borrower Agent (which approval by Borrower Agent shall not be unreasonably withheld or delayed), that is organized under the laws of the United States or Canada or any state, province or district thereof, has total assets in excess of \$5 billion, extends

asset-based lending facilities in its Ordinary Course of Business and whose becoming an assignee would not constitute a prohibited transaction under Section 4975 of the Code or any other Applicable Law; and (vi) during any Event of Default, any Person acceptable to Agent in its discretion.

Eligible Costco Inventory: Inventory consisting of finished goods owned by a U.S. Borrower and consigned to Costco that would otherwise be Eligible Inventory if it were not consigned to a Person in violation of clause (h)(i) of the definition of "Eligible Inventory" and either (a) Costco has delivered to Agent a Lien Waiver with respect to such Inventory, or (b) Costco is rated BBB- (or better) by S&P and Baa3 (or better) by Moody's as of the applicable date of determination.

Eligible Inventory: Inventory owned by a Borrower that Agent, in its Credit Judgment, deems to satisfy the criteria set forth below. No Inventory shall be Eligible Inventory unless it (a) is finished goods or raw materials, and not packaging or shipping materials, labels, samples, display items, bags, replacement parts or manufacturing supplies; (b) is not held on consignment, nor subject to any deposit or down payment; (c) is in new and saleable condition and is not damaged, defective, shopworn or otherwise unfit for sale; (d) is not slow-moving (as determined by Agent from time to time), perishable, obsolete or unmerchantable, and does not constitute returned or reposessed goods; (e) meets all standards imposed by any Governmental Authority, has not been acquired from a Person that is the target of any Sanction or on any specially designated nationals list maintained by OFAC, and does not constitute hazardous materials under any Environmental Law; (f) conforms with the covenants and representations herein; (g) is subject to Agent's duly perfected, first priority Lien, and no other Lien; (h) (i) other than Eligible Costco Inventory, is not consigned to any Person, and (ii) other than Eligible In-Transit Inventory, is within: (A) the continental United States, in the case of Inventory of a U.S. Borrower, (B) Canada, in the case of Inventory of the Canadian Borrower, and (C) England, Wales, Scotland or Northern Ireland, in the case of Inventory of the U.K. Borrower; (i) other than Eligible In-Transit Inventory, is not in transit unless it is, in the case of: (i) Inventory of a U.S. Borrower, in transit between facilities in the United States of the U.S. Borrowers, (ii) Inventory of the Canadian Borrower, in transit between facilities in Canada of the Canadian Borrower, and (iii) Inventory of the U.K. Borrower, in transit between facilities in England, Wales, Scotland or Northern Ireland of the U.K. Borrower; (j) is not subject to any warehouse receipt or negotiable Document; (k) is not subject to any License or other arrangement that restricts such Borrower's or Agent's right to dispose of such Inventory, unless Agent has received an appropriate Lien Waiver; (l) is not located on leased premises or in the possession of a warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person, unless the lessor or such Person has delivered a Lien Waiver or an appropriate U.S. Rent and Charges Reserve (in the case of the U.S. Borrowers), a Canadian Rent and Charges Reserve (in the case of the Canadian Borrower), or a U.K. Rent and Charges Reserve (in the case of the U.K. Borrower) has been established; and (m) is reflected in the details of a current perpetual inventory report.

The criteria for Eligible Inventory set forth above may only be changed and any new criteria for Eligible Inventory may only be established by Agent in its Credit Judgment, based on: (i) an event, condition or other circumstance arising after the date hereof, (ii) an event, condition or other circumstance existing on the date hereof to the extent that the Agent has no knowledge thereof or its effect on Inventory, or (iii) facts, information, or circumstances provided to or learned

by Agent in the course of its administration of the facility, including, without limitation, in connection with field exams, audits, reports and other information received, and observance of Collateral and the Obligors' business performance, in any case under clauses (i), (ii) or (iii), which adversely affects or would reasonably be expected to adversely affect the Inventory as determined by Agent in its Credit Judgment.

Eligible In-Transit Inventory: Inventory consisting of finished goods owned by a Borrower that would be Eligible Inventory if it were not subject to a Document and in transit from a foreign location to a location of a Borrower within the United States, Canada or England, and that Agent, in its Credit Judgment, deems to be Eligible In-Transit Inventory, and thus to be Eligible Inventory. Without limiting the foregoing, no Inventory shall be Eligible In-Transit Inventory unless it (a) is finished goods, (b) has been delivered to a carrier in a foreign port or foreign airport for receipt by a Borrower in the United States (in the case of the U.S. Borrowers) or Canada (in the case of the Canadian Borrower) or England, Wales, Scotland or Northern Ireland (in the case of the U.K. Borrower) within sixty (60) days of the date of determination, but which has not yet been received by the applicable Borrower, (c) is subject to a negotiable Document showing Agent (or, with the consent of Agent, the applicable Borrower) as consignee, which Document is in the possession of Agent or such other Person as Agent shall approve; (d) is fully insured in a manner satisfactory to Agent; (e) has been identified to the applicable sales contract and title has passed to the applicable Borrower; (f) is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against the Inventory, or with respect to whom any Borrower is in default of any obligations; (g) is subject to purchase orders and other sale documentation satisfactory to Agent; (h) is shipped by a common carrier that is not affiliated with the vendor and is not the target of any Sanction or on any specially designated nationals list maintained by OFAC; and (i) is being handled by a customs broker, freight-forwarder or other handler that has delivered a Lien Waiver.

Eligible Real Estate: Real Estate owned by a U.S. Borrower that is located at 2180 Rutherford Road, Carlsbad, CA 92008, and that Agent, in its Credit Judgment, deems to satisfy the criteria set forth in the subsequent sentence. Such Real Estate shall not be Eligible Real Estate unless: (a) a first priority Mortgage, in substantially the form attached hereto as **Exhibit E**, has been executed, delivered and recorded with respect to such Real Estate, and (b) Agent shall have received the Related Real Estate Documents with respect to such Real Estate.

EMU Legislation: the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

Enforcement Action: any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, exercise of any right to vote or act in an Obligor's Insolvency Proceeding, or otherwise).

Environmental Laws: all Applicable Laws (including all programs, permits and guidance promulgated by regulatory agencies) relating to public health (but excluding occupational safety and health, to the extent regulated by OSHA) or the protection or pollution of the environment,

including CERCLA, RCRA, CWA, the Environmental Protection Act (Ontario) and similar Applicable Laws of foreign jurisdictions.

Environmental Notice: a notice (whether written or oral) from any Governmental Authority or other Person of any possible noncompliance with, investigation of a possible violation of, litigation relating to, or potential fine or liability under any Environmental Law, or with respect to any Environmental Release, environmental pollution or hazardous materials, including any complaint, summons, citation, order, claim, demand or request for correction, remediation or otherwise.

Environmental Release: a release as defined in CERCLA or under any other Environmental Law.

Equity Interest: the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest.

ERISA: the Employee Retirement Income Security Act of 1974.

ERISA Affiliate: any trade or business (whether or not incorporated) under common control with an Obligor 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: (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Obligor or ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) any Obligor or ERISA Affiliate fails to meet any funding obligations with respect to any Pension Plan or Multiemployer Plan, or requests a minimum funding waiver; (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; or (g) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or ERISA Affiliate.

EU Bail-In Legislation Schedule: the EU Bail-In Legislation Schedule published by the Loan Market Association, as in effect from time to time.

Euro: the lawful currency of the Participating Member States introduced in accordance with EMU Legislation.

Event of Default: as defined in **Section 11**.

Excess Amount: as defined in **Section 5.13**.

Excess Cash Flow: determined on a consolidated basis for Parent and Subsidiaries for any period, EBITDA, minus (a) cash interest expense; (b) Capital Expenditures (except those financed with Borrowed Money other than Revolver Loans or Term Loans); (c) principal payments made on Borrowed Money and Capital Leases; (d) Distributions made (to the extent permitted hereunder and other than Distributions made among Parent and its Subsidiaries) to the extent such Distributions are consistent with prior practice as of the Closing Date; (e) any non-cash items to the extent added to the calculation of EBITDA in accordance with the definition thereof; (f) amounts expended (including transaction costs) in connection with any Acquisition and other Investment permitted hereunder provided that the aggregate amount under this clause (f) shall not exceed \$10,000,000; and (g) cash taxes paid.

Exchange Rate: on any date of determination, with respect to Canadian Dollars, British Pounds, Euro or another foreign currency in relation to Dollars, the Spot Rate for Canadian Dollars, British Pounds, Euro or such other foreign currency, as applicable.

Excluded Intellectual Property: any Intellectual Property: (i) owned by travisMathew or Travis Mathew Retail as of the date hereof; (ii) hereafter developed by travisMathew or Travis Mathew Retail (and unrelated to any Intellectual Property of the Obligors (other than travisMathew or Travis Mathew Retail) as of the date hereof); or (iii) related to the brands of travisMathew or Travis Mathew Retail as of the date hereof. For the avoidance of doubt, any Intellectual Property listed on Schedule 9.1.17 shall not constitute Excluded Intellectual Property.

"Excluded Property" shall mean

(a) any permit or license issued by a Governmental Authority to any U.S. Domiciled Obligor or any agreement to which any U.S. Domiciled Obligor is a party, in each case, only to the extent and for so long as the terms of such permit, license or agreement or any requirement of law applicable thereto, validly prohibit the creation by such U.S. Domiciled Obligor of a security interest in such permit, license or agreement in favor of the Agent (after giving effect to Sections 9-406(d), 9-407(a), 9-408(a) or 9-409 of the UCC (or any successor provision or provisions) or any other applicable law (including the U.S. Bankruptcy Code) or principles of equity);

(b) assets owned by any U.S. Domiciled Obligor on the date hereof or hereafter acquired and any proceeds thereof that are subject to a Lien permitted by Section 10.2.1(j) of the Credit Agreement to the extent and for so long as the contract or other agreement in which such Lien is granted (or the documentation providing for the Capital Lease, Off-Balance Sheet Liability or purchase money obligation subject to such Lien) validly prohibits the creation of any other Lien on such assets and proceeds;

(c) any Equity Interests of a Foreign Subsidiary to the extent and for so long as the pledge thereof to the Agent would constitute an investment of earnings in United States property under Section 956 (or a successor provision) of the Code, which investment would or could reasonably be expected to trigger a material increase in the net income of a United States shareholder of such Foreign Subsidiary pursuant to Section 951 (or a successor provision) of the Code, as reasonably determined by the Agent; provided that this clause (c) shall not apply to (a) voting stock of any Subsidiary which is a first-tier controlled foreign corporation (as defined in

Section 957(a) of the Code) representing 65% of the total voting power of all outstanding voting stock of such Subsidiary and (b) 100% of the Equity Interests not constituting voting stock of any such Subsidiary, except that any such Equity Interests constituting “stock entitled to vote” within the meaning of Treasury Regulation Section 1.956-2(c)(2) shall be treated as voting stock for purposes of this clause (c);

(d) any intent-to-use trademark application to the extent and for so long as creation by a U.S. Domiciled Obligor of a security interest therein would result in the loss by such U.S. Domiciled Obligor of any material rights therein;

(e) any fee owned real property (other than Material Real Property and the fee-owned real property located at 2180 Rutherford Road, Carlsbad, CA 92008), and any leasehold rights and interests in such real property;

(f) Margin Stock;

(g) motor vehicles and other assets subject to certificates of title other than to the extent a security interest therein can be perfected by a UCC filing;

(h) pledges and security interests prohibited by applicable law, rule, regulation or contractual obligation after giving effect to the anti-assignment provisions of the UCC and other applicable law; and

(i) those assets as to which the Agent and the Borrowers reasonably agree that the cost or other consequence (including any adverse tax consequences to the Borrowers or any of their Subsidiaries) of obtaining such a security interest or perfection thereof are excessive in relation to the value afforded thereby;

provided, however, that Excluded Property shall not include any Proceeds, substitutions or replacements of any Excluded Property referred to in clause (a), (b), (c), (d), (e), (f), (g), (h) or (i), unless such Proceeds, substitutions or replacements would constitute Excluded Property referred to in clauses (a), (b), (c), (d), (e), (f), (g), (h) or (i)).

Excluded Stock Repurchases: any Common Stock Repurchases made, or dividends paid on Parent’s common stock, in accordance with Section 10.2.6(g).

Excluded Swap Obligation: with respect to an Obligor, each Swap Obligation as to which, and only to the extent that, such Obligor’s guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Obligor does not constitute an “eligible contract participant” as defined in the Act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Obligor and all guarantees of Swap Obligations by other Obligors) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Obligor.

Excluded Tax: with respect to Agent, any Lender, any Issuing Bank or any other recipient of a payment to be made by or on account of any Obligation, (a) taxes imposed on or measured by

its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located; (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Borrower Agent is located; (c) any backup withholding tax required by the Code to be withheld from amounts payable to a Lender that has failed to comply with **Section 5.10**; (d) in the case of a Foreign Lender, any United States withholding tax that is (i) required pursuant to laws in force at the time such Lender becomes a Lender (or designates a new Lending Office) hereunder, or (ii) attributable to such Lender's failure or inability (other than as a result of a Change in Law) to comply with **Section 5.10**, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from Borrowers with respect to such withholding tax; and (e) any U.S. federal withholding Taxes imposed under FATCA.

Expeditors: Expeditors International of Washington, Inc., a Washington corporation.

Existing Letters of Credit: those letter(s) of credit described on **Schedule E-1**.

Extraordinary Expenses: all costs, expenses or advances that Agent or any Lender may incur during a Default or Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents, Letters of Credit or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Agent or any Lender in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses. Notwithstanding the forgoing, absent a conflict of interest among Lenders, Extraordinary Expenses shall not include (i) legal fees for more than one counsel to the Lenders (plus any local counsel deemed necessary by the Lenders) in addition to any counsel engaged by Agent or (ii) other costs, expenses or advances incurred by any Lender to the extent unreasonably duplicative of such costs, expenses or advances incurred by the Agent.

Facility Termination Date: November 19, 2022.

FATCA: Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantially comparable and not materially more onerous to

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

**Federal Funds Rate:** (a) the weighted average of interest rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on the applicable Business Day (or on the preceding Business Day, if the applicable day is not a Business Day), as published by the Federal Reserve Bank of New York on the next Business Day; or (b) if no such rate is published on the next Business Day, the average rate (rounded up, if necessary, to the nearest 1/8 of 1%) charged to Bank of America on the applicable day on such transactions, as determined by Agent; provided, that in no event shall the Federal Funds Rate be less than zero.

**Fee Letters:** each fee letter agreement between Agent and Borrowers (or any of them).

**Financial Administration Act:** the Financial Administration Act (Canada) and all regulations and schedules thereunder.

**First Amendment to Second Amended and Restated Effective Date:** June 11, 2012.

**First Amendment to Third Amended and Restated Effective Date:** November 29, 2018.

**Fiscal Quarter:** each period of three months, commencing on the first day of a Fiscal Year.

**Fiscal Year:** the fiscal year of Parent and its Subsidiaries for accounting and tax purposes, ending on December 31 of each year.

**Fixed Charge Coverage Ratio:** the ratio, determined on a consolidated basis for Parent and its Subsidiaries for the most recent twelve calendar months, of (a) EBITDA minus Capital Expenditures (except those financed with Borrowed Money other than Revolver Loans or Term Loans) and cash taxes paid (which amount may not be less than zero), to (b) Fixed Charges; provided, however, that solely for the purposes of calculating the Fixed Charge Coverage Ratio under **Section 10.3**, Fixed Charges shall not include any Excluded Stock Repurchases.

**Fixed Charges:** the sum of cash interest expense, principal payments made on Borrowed Money, and Distributions made (other than Distributions made to Obligors to the extent permitted hereunder).

**FLSA:** the Fair Labor Standards Act of 1938.

**Flood Laws:** the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973 and related laws.

**Foreign Lender:** any Lender that is (a) in the case of the U.S. Borrowers, organized under the laws of a jurisdiction other than the laws of the United States, or any state or district thereof, (b) in the case of the Canadian Borrower, not a Canadian Qualified Lender, and (c) in the case of the U.K. Borrower, not a U.K. Qualified Lender.

Foreign Plan: any employee benefit plan or arrangement (a) maintained or contributed to by any Obligor or Subsidiary that is not subject to the laws of the United States or Canada; or (b) mandated by a government other than the United States or Canada for employees of any Obligor or Subsidiary.

Foreign Subsidiary: a Subsidiary of Parent that is a “controlled foreign corporation” under Section 957 of the Code.

Fronting Exposure: a Defaulting Lender’s Pro Rata share of U.S. LC Obligations, Canadian LC Obligations, U.K. LC Obligations, U.S. Swingline Loans, Canadian Swingline Loans, or U.K. Swingline Loans, as applicable, except to the extent allocated to other Lenders under **Section 4.2**.

FSCO: the Financial Services Commission of Ontario or like body in any other province of Canada and any other Governmental Authority succeeding to the functions thereof.

Full Payment: with respect to any Obligations, (a) the full and indefeasible cash payment thereof in the applicable currency required hereunder, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); (b) if such Obligations are LC Obligations or inchoate or contingent in nature, Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Agent in its discretion, in the amount of required Cash Collateral); and (c) a release of any Claims of Obligors against Agent, Lenders and Issuing Banks arising on or before the payment date. No Loans shall be deemed to have been paid in full until all Commitments related to such Loans have expired or been terminated.

Funded Debt: as of any date of determination, all Debt for borrowed money of Parent and its Subsidiaries, determined on a consolidated basis in accordance with GAAP.

GAAP: generally accepted accounting principles in effect in the United States from time to time.

General Intangibles: as defined in the UCC (and/or with respect to any General Intangible of a Canadian Subsidiary, an “intangible” as defined in the PPSA).

Governmental Approvals: all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority: any federal, state, provincial, municipal, foreign or other governmental department, agency, commission, board, bureau, court, tribunal, instrumentality, political subdivision, or other entity or officer exercising executive, legislative, judicial, regulatory or administrative functions for or pertaining to any government or court, in each case whether it is or is not associated with the United States, a state, district or territory thereof, Canada, a province or territory thereof or any other foreign entity or government.

Guarantee: each guarantee agreement (including this Agreement, the Canadian Facility Guarantee, and the U.K. Facility Guarantee) executed by a Guarantor in favor of Agent guaranteeing all or any portion of any Canadian Facility Obligation, U.S. Facility Obligation, or U.K. Facility Obligation.

Guarantor Payment: as defined in **Section 5.11**.

Guarantors: Canadian Facility Guarantors, U.S. Facility Guarantors, U.K. Facility Guarantors, and each other Person who guarantees payment or performance of any Obligations.

Hedging Agreement: any “swap agreement” as defined in Section 101(53B)(A) of the U.S. Bankruptcy Code.

Immaterial Subsidiary: at any time, any Subsidiary of Parent that is not a Material Subsidiary.

Indemnified Taxes: Taxes other than Excluded Taxes.

Indemnitees: Agent Indemnitees, Lender Indemnitees, Issuing Bank Indemnitees and Bank of America Indemnitees.

Insolvency Proceeding: any case or proceeding or proposal commenced by or against a Person under any state, provincial, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the U.S. Bankruptcy Code, or any other insolvency, debtor relief, bankruptcy, receivership, debt adjustment law or other similar law (whether state, provincial, federal or foreign), including the Bankruptcy and Insolvency Act (Canada), the Companies’ Creditors Arrangement Act (Canada), the United Kingdom Insolvency Act 1986 and/or the Enterprise Act 2002; (b) the appointment of a Creditor Representative or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights (and all associated moral and neighboring rights), mask works, industrial design rights, trademarks and service marks (together with all associated goodwill), trade names, trade dress, domain names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

Intellectual Property Claim: any claim or assertion (whether in writing, by suit or otherwise) that an Obligor’s or Subsidiary’s ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person’s Intellectual Property.

Intercreditor Agreement: [that certain Intercreditor Agreement dated as of the Second Amendment to Third Amended and Restated Effective Date between Agent and the Term Loan Collateral Agent, relating to the Debt permitted under Section 10.2.3\(s\)](#).

Interest Period: as defined in **Section 3.1.4**.

Interest Period Loans: LIBOR Loans or Canadian BA Rate Loans.

Inventory: as defined in the UCC (and/or with respect to any inventory located in Canada, as defined in the PPSA), including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in the applicable Obligor's business (but excluding Equipment).

Inventory Reserve: reserves established by Agent in its Credit Judgment to reflect factors that may negatively impact the Value of Inventory, including change in salability, obsolescence, seasonality, theft, shrinkage, imbalance, change in composition or mix, markdowns and vendor chargebacks.

Investment: 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 capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Contingent Obligation in respect of Debt of, assumption of Debt of, or purchase or other acquisition of any other Debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

IP Assignment: a collateral assignment or security agreement pursuant to which an Obligor grants a Lien on its Intellectual Property to Agent, as security for its Obligations.

IRS: the United States Internal Revenue Service.

Issuing Bank Indemnitees: the Issuing Banks and their officers, directors, employees, Affiliates, branches, agents and attorneys.

Issuing Banks: the U.S. Issuing Bank, the Canadian Issuing Bank, and the U.K. Issuing Bank.

LC Application: an application by a Borrower or Borrower Agent on behalf of a Borrower to an Issuing Bank for issuance of a Letter of Credit, in form and substance satisfactory to such Issuing Bank.

LC Conditions: the following conditions necessary for issuance of a Letter of Credit: (a) each of the conditions set forth in **Section 6**; (b) after giving effect to such issuance, total U.S. LC Obligations do not exceed the U.S. Letter of Credit Subline, no U.S. Overadvance exists or would result therefrom and, if no U.S. Revolver Loans are outstanding, the U.S. LC Obligations do not exceed the U.S. Borrowing Base (without giving effect to the U.S. LC Reserve for purposes of this calculation); (c) after giving effect to such issuance, total Canadian LC Obligations do not exceed the Canadian Letter of Credit Subline, no Canadian Overadvance exists or would result therefrom and, if no Canadian Revolver Loans are outstanding, the Canadian LC Obligations do not exceed the Canadian Borrowing Base (without giving effect to the Canadian LC Reserve for purposes of this calculation); (d) after giving effect to such issuance, total U.K. LC Obligations do not exceed the U.K. Letter of Credit Subline, no U.K. Overadvance exists or would result therefrom and, if

no U.K. Revolver Loans are outstanding, the U.K. LC Obligations do not exceed the U.K. Borrowing Base (without giving effect to the U.K. LC Reserve for purposes of this calculation); (e) the expiration date of such Letter of Credit is (i) no more than 365 days from issuance, in the case of standby Letters of Credit, provided, however, that any standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to 365 days in duration, and (ii) no more than 120 days from issuance, in the case of documentary Letters of Credit; (f) in the case of U.S. Letters of Credit, the Letter of Credit and payments thereunder are denominated in Dollars or any foreign currency acceptable to Agent and U.S. Issuing Bank and, unless otherwise specified by Agent or U.S. Issuing Bank (at their respective option) that it requires payment in Dollars calculated at the Spot Rate, payments thereunder are to be made in the same currency in which the Letter of Credit was denominated; (g) in the case of Canadian Letters of Credit, the Letter of Credit and payments thereunder are denominated in Dollars, Canadian Dollars, or any foreign currency acceptable to Agent and Canadian Issuing Bank and, unless otherwise specified by Agent or Canadian Issuing Bank (at their respective option) that it requires payment in Dollars or Canadian Dollars calculated at the Spot Rate, payments thereunder are to be made in the same currency in which the Letter of Credit was denominated; (h) in the case of U.K. Letters of Credit, the Letter of Credit and payments thereunder are denominated in Dollars, British Pounds, Euros, or any foreign currency acceptable to the Agent and U.K. Issuing Bank and, unless otherwise specified by Agent or U.K. Issuing Bank (at their respective option) that it requires payment in Dollars, British Pounds or Euros calculated at the Spot Rate, payments thereunder are to be made in the same currency in which the Letter of Credit was denominated, and (i) the form of the proposed Letter of Credit is satisfactory to Agent and the applicable Issuing Bank in their discretion.

**LC Documents:** all documents, instruments and agreements (including LC Requests and LC Applications) delivered by the Borrower Agent on behalf of a Borrower or by any other Person to an Issuing Bank or Agent in connection with the issuance, amendment or renewal of, or payment under, any Letter of Credit.

**LC Obligations:** the U.S. LC Obligations, the Canadian LC Obligations, and the U.K. LC Obligations.

**LC Request:** a request for issuance of a Letter of Credit, to be provided by the U.S. Borrowers, the Canadian Borrower, the U.K. Borrower, or the Borrower Agent, as applicable, to an Issuing Bank, in form satisfactory to Agent and such Issuing Bank.

**Lender Indemnitees:** Lenders and their officers, directors, employees, Affiliates, agents and attorneys.

**Lenders:** as defined in the preamble to this Agreement, including the U.S. Lenders, the Canadian Lenders, the U.K. Lenders, Agent in its capacity as a provider of Swingline Loans and any other Person who hereafter becomes a “Lender” pursuant to an Assignment and Acceptance or in accordance with **Section 2.1.7**.

**Lending Office:** the office designated as such by the applicable Lender at the time it becomes party to this Agreement or thereafter by notice to Agent and Borrower Agent.

Letter of Credit: any U.S. Letter of Credit, Canadian Letter of Credit, or U.K. Letter of Credit.

Leverage Ratio: means, as of any date of determination, the ratio of (a) the amount of Funded Debt as of such date, to (b) EBITDA for the most recently 12 month period ended for which financial statements have been delivered pursuant to **Section 10.1.1**, in each case, determined on a consolidated basis for Parent and its Subsidiaries.

LIBOR: for any Interest Period with respect to a LIBOR Loan, the per annum rate of interest, determined by Agent at approximately 11:00 a.m. (London time) two Business Days prior to commencement of such Interest Period, for a term comparable to such Interest Period, equal to (a) the applicable Screen Rate for the currency of that LIBOR Loan; or (b) if the Screen Rate is not available for any reason, the interest rate at which deposits in the applicable Available Currency in the approximate amount of the LIBOR Loan would be offered by Bank of America's London branch to major banks in the London interbank eurocurrency market; provided, that in no event shall LIBOR be less than zero. If the Board of Governors imposes a Reserve Percentage with respect to LIBOR deposits, then LIBOR shall be the foregoing rate, divided by 1 minus the Reserve Percentage.

LIBOR Loan: each set of LIBOR Revolver Loans or LIBOR Term Loans having a common length and commencement of Interest Period.

LIBOR Revolver Loan: a Revolver Loan that bears interest based on LIBOR.

LIBOR Term Loan: a Term Loan that bears interest based on LIBOR.

License: any license or agreement under which an Obligor or Subsidiary is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor: any Person from whom an Obligor obtains the right to use any Intellectual Property.

Lien: any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever in respect of property (including any conditional sale or other title retention agreement and any financing lease having substantially the same economic effect as any of the foregoing).

Lien Waiver: an agreement, in form and substance satisfactory to Agent, by which (unless, in each case, otherwise agreed to by Agent in its sole discretion) (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Agent, and agrees to deliver the Collateral to Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person

acknowledges Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Agent upon request; (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Agent the right, vis-à-vis such Licensor, to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License; and (e) for any Collateral held by Costco on consignment on behalf of a U.S. Domiciled Obligor, Costco acknowledges the applicable Obligor's ownership of such Collateral, acknowledges Agent's Lien on such Collateral, authorizes the filing of UCC financing statements naming Costco as consignee, the applicable Obligor as consignor, and Agent as such Obligor's assignee, and agrees to deliver the Collateral to Agent upon request.

Loan: a Revolver Loan or Term Loan.

Loan Account: the loan account established by each Lender on its books pursuant to **Section 5.8**.

Loan Documents: this Agreement, Other Agreements and Security Documents.

Mandatory Costs: the percentage rate per annum calculated by Agent in accordance with **Schedule 1.1A**.

Margin Stock: as defined in Regulation U of the Board of Governors.

Material Adverse Effect: (a) a material adverse change in, or a material adverse effect upon, the operations, business, Properties, condition (financial or otherwise) of Parent and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Borrower or Guarantor to perform its obligations under any Loan Document to which it is a party; (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Borrower or Guarantor of any Loan Document to which it is a party or on the validity or priority of Agent's Liens on the Collateral; or (d) the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, otherwise impairs the ability of Agent or any Lender to enforce or collect any Obligations or to realize upon any material portion of the Collateral.

Material Real Property: means any fee-owned real property that is owned by any U.S Domiciled Obligor with a fair market value in excess of \$15,000,000 (at the Second Amendment Third Amended and Restated Effective Date or, with respect to fee-owned real property acquired after the Second Amendment Third Amended and Restated Effective Date, at the time of acquisition, in each case, as reasonably estimated by the U.S. Borrowers in good faith), other than the property located at 2180 Rutherford Road, Carlsbad, CA 92008.

Material Subsidiary: at any time, any Subsidiary of Parent (other than an Obligor) (a) in which the aggregate Investments made by Parent and its Subsidiaries (excluding Investments in the nature of inter-company receivables payable by such Subsidiary arising in the Ordinary Course of Business for the sale of Inventory and provision of services but, in the case of Investments in a Foreign Subsidiary, including Investments in Subsidiaries of such Foreign Subsidiary other than any such receivables) exceed \$20,000,000 or (b) that had net annual sales during the four fiscal

quarters most recently ended (calculated on a Pro Forma Basis after giving effect to any Acquisition made during such period) of \$50,000,000 or more

**Maximum Canadian Facility Amount:** on any date of determination, the lesser of (i) the Canadian Revolver Commitments on such date and (ii) \$25,000,000 (or such lesser amount after giving effect to any reductions in the Commitments pursuant to and in accordance with **Section 2.1.4**); it being acknowledged and agreed that at no time can the sum of the Maximum Canadian Facility Amount plus the Maximum U.S. Facility Amount plus the Maximum U.K. Facility Amount exceed the Maximum Facility Amount in effect at such time.

**Maximum Facility Amount:** \$330,000,000, or such greater or lesser amount as shall then be in effect after giving effect to any reductions in the Commitments pursuant to and in accordance with **Section 2.1.4** and increases in the U.S. Revolver Commitments pursuant to and in accordance with **Section 2.1.7**.

**Maximum U.K. Facility Amount:** on any date of determination, the lesser of (i) the U.K. Revolver Commitments on such date and (ii) \$45,000,000 (or such lesser amount after giving effect to any reductions in the Commitments pursuant to and in accordance with **Section 2.1.4**); it being acknowledged and agreed that at no time can the sum of the Maximum Canadian Facility Amount plus the Maximum U.S. Facility Amount plus the Maximum U.K. Facility Amount exceed the Maximum Facility Amount in effect at such time.

**Maximum U.S. Facility Amount:** on any date of determination, the lesser of (i) the U.S. Revolver Commitments on such date and (ii) \$260,000,000 (or such greater or lesser amount after giving effect to any reductions in the Commitments pursuant to and in accordance with **Section 2.1.4** and increases in the Commitments pursuant to and in accordance with **Section 2.1.7**; it being acknowledged and agreed that at no time can the sum of the Maximum U.S. Facility Amount plus the Maximum Canadian Facility Amount plus the Maximum U.K. Facility Amount exceed the Maximum Facility Amount in effect at such time.

**Moody's:** Moody's Investors Service, Inc., and its successors.

**Mortgage:** a mortgage, deed of trust, deed of immovable hypothec or deed to secure debt pursuant to which an Obligor grants a Lien on its Real Estate to Agent, as security for the applicable Obligations.

**Multiemployer Plan:** any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

**Net Excess Availability:** as of any date of determination, an amount equal to the Availability minus the aggregate amount, if any, of all trade payables of Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

**Net Orderly Liquidation Value:** with respect to trademarks of any Person, the net orderly liquidation value of such trademarks expected to be realized at an orderly, negotiated sale held

within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of such trademarks performed by an appraiser and on terms satisfactory to Agent.

**Net Proceeds:** with respect to an Asset Disposition, proceeds (including, when received, any deferred or escrowed payments) received by an Obligor or Subsidiary in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (c) transfer or similar taxes; and (d) reserves for indemnities, until such reserves are no longer needed (after which, any such amounts previously held as reserves shall become Net Proceeds when received).

**New Lender:** as defined in **Section 5.9.15.**

**NOLV Percentage:** with respect to each category of each Borrower's Inventory (as determined by Agent from time to time in its discretion) the net orderly liquidation value of such Inventory, expressed as a percentage (such percentage to be adjusted seasonally at such times consistent with the most recently delivered appraisal, as determined by Agent), expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of such Inventory performed by an appraiser and on terms satisfactory to Agent.

**Notes:** each Revolver Note or other promissory note executed by a Borrower to evidence any Obligations.

**Notice of Borrowing:** a Notice of Borrowing to be provided by Borrower Agent to request a Borrowing of Loans, in form satisfactory to Agent.

**Notice of Conversion/Continuation:** a Notice of Conversion/Continuation to be provided by Borrower Agent to request a conversion or continuation of any Loans as LIBOR Loans or Canadian BA Rate Loans, in form satisfactory to Agent.

**Noticed Hedge:** Secured Bank Product Obligations arising under a Hedging Agreement.

**Obligations:** all (a) principal of and premium, if any, on the Loans, (b) U.S. LC Obligations and other obligations of the U.S. Facility Obligors with respect to Letters of Credit, (c) Canadian LC Obligations and other obligations of the Canadian Facility Obligors with respect to Letters of Credit, (d) U.K. LC Obligations and other obligations of the U.K. Facility Obligors with respect to Letters of Credit, (e) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under Loan Documents, (f) Secured Bank Product Obligations, and (g) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several; provided, that Obligations of an Obligor shall not include its Excluded Swap Obligations.

Obligor: each Borrower, Guarantor, or other Person that is liable for payment of any Obligations or that has granted a Lien in favor of Agent on its assets to secure any Obligations.

Obligor Group: a group consisting of (a) Canadian Facility Obligors, (b) U.S. Facility Obligors, or (c) U.K. Facility Obligors.

OFAC: Office of Foreign Assets Control of the U.S. Treasury Department.

Off-Balance Sheet Liabilities: with respect to any Person, the (a) monetary obligations of such Person under a so-called synthetic lease, off-balance sheet or tax retention lease, if such obligations are considered indebtedness for borrowed money for tax purposes but such lease is classified as an operating lease under GAAP, but in any case excluding any obligations (i) that are liabilities of any such Person as lessee under any operating lease so long as the terms of such operating lease do not require any payment by or on behalf of such Person at termination of such operating lease pursuant to a required purchase by or on behalf of such Person of the property or assets subject to such operating lease or (ii) under any arrangement pursuant to which such Person guarantees or otherwise assures any other Person of the value of the property or assets subject to such operating lease and (b) the monetary obligations under any sale and leaseback transaction which does not create a liability on the consolidated balance sheet of such Person.

Ordinary Course of Business: with respect to any Person, the ordinary course of business of such Person, consistent with past practices.

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, amalgamation or continuance, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, memorandum of association, articles of association, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

Original Agreement Closing Date: June 30, 2011.

Original Amended and Restated Loan Agreement: as defined in the recitals hereto.

Original Loan Agreement: as defined in the recitals hereto.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: [the Intercreditor Agreement](#); each Note; LC Document; Fee Letter; Lien Waiver; Borrowing Base Certificate, Compliance Certificate, financial statement or report delivered hereunder; or other document, instrument or agreement (other than this Agreement or a Security Document) now or hereafter delivered by an Obligor or other Person to Agent or a Lender in connection with any transactions relating hereto.

Other Taxes: all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

Overadvance: a Canadian Overadvance, U.S. Overadvance, or U.K. Overadvance, as the context requires.

Overadvance Loan: a Canadian Overadvance Loan and/or a U.S. Overadvance Loan, and/or a U.K. Overadvance Loan, as the context requires.

Parent: as defined in the preamble to this Agreement.

Participant: as defined in **Section 13.2**.

Participating Member State: each member state of the European Union that has Euro as its lawful currency so described in any EMU Legislation.

Patriot Act: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment Item: each check, draft or other item of payment payable to an Obligor, including those constituting proceeds of any Collateral.

PBA: the Pension Benefits Act (Ontario) or any other Canadian federal or provincial statute in relation to Canadian Pension Plans, and any regulations thereunder, as amended from time to time.

PBGC: the Pension Benefit Guaranty Corporation.

Pension Plan: 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 Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

Permitted Acquisition: any Acquisition by Parent or any of its Subsidiaries where:

- (a) the Board of Directors or authorized management committee of Parent or of the applicable Subsidiary and of the Person whose assets or Equity Interests are being acquired has approved such Acquisition;
- (b) the business acquired in connection with such Acquisition is engaged in one or more of the leisure goods, products and services businesses generally or any business activities that are substantially similar, related, incidental or complementary thereto;
- (c) both before and after giving effect to such Acquisition and the Loans and Letters of Credit (if any) requested to be made in connection therewith, each of the representations and warranties in the Loan Documents is true and correct in all material (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) respects (except (i) any such representation or warranty

which relates to a specified prior date and (ii) to the extent the Agent has been notified in writing by Borrower Agent that any representation or warranty is not correct and the Required Lenders have explicitly waived in writing compliance with such representation or warranty) and no Default or Event of Default exists, will exist, or would result therefrom;

(d) after giving effect to the Acquisition, the Parent and its Subsidiaries will continue to be in compliance with the covenants in this Agreement, determined on a Pro Forma Basis;

(e) the purchase consideration payable in respect of all Permitted Acquisitions (including the proposed Acquisition and including deferred payment obligations) shall not exceed the Acquisition Cap in the aggregate; provided, however, that no such Acquisition shall count against the Acquisition Cap if either: (i) (A) on a Pro Forma Basis after giving effect to such Acquisition, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount after giving effect to such Acquisition, and (C) the Fixed Charge Coverage Ratio, on a Pro Forma Basis after giving effect to such Acquisition (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a Pro Forma Basis after giving effect to such Acquisition, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Acquisition, and (C) no Term Loans are outstanding at the time such Acquisition is consummated and after giving effect to the payment of any consideration in connection with such Acquisition;

(f) as soon as available, but not less than 15 Business Days prior to such Acquisition, Borrower Agent has provided Agent (i) notice of such Acquisition and (ii) a copy of all available business and financial information reasonably requested by Agent including pro forma financial statements, statements of cash flow, financial covenant projections, and Availability projections;

(g) not later than: (i) 15 Business Days prior to the anticipated closing date of such Acquisition, Borrower Agent shall have provided Agent with the then current drafts of the acquisition agreement and other material documents relative to such Acquisition, and (ii) 3 Business Days prior to the anticipated closing date of such Acquisition, Borrower Agent shall have provided Agent with the final copies of the acquisition agreement and other material documents relative to such Acquisition;

(h) the assets being acquired (other than a *de minimis* amount of assets in relation to the assets being acquired) are located within the United States, Canada or the U.K., or the Person whose Equity Interests are being acquired is organized in a jurisdiction located within the United States, Canada or the U.K.; provided, however, that this clause (h) shall not be applicable to any Acquisition if either: (i) (A) on a Pro Forma Basis after giving effect to such Acquisition, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to

the Threshold Percentage of the Maximum Facility Amount after giving effect to such Acquisition, and (C) the Fixed Charge Coverage Ratio, on a Pro Forma Basis after giving effect to such Acquisition (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a Pro Forma Basis after giving effect to such Acquisition, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Acquisition, and (C) no Term Loans are outstanding at the time such Acquisition is consummated and after giving effect to the payment of any consideration in connection with such Acquisition; and

(i) concurrently with such Acquisition, any Person required to become a Guarantor or to execute or to deliver any Loan Document will do so in accordance with the requirements of this Agreement.

In no event will assets exceeding \$15,000,000 in Value acquired pursuant to a Permitted Acquisition constitute assets eligible for inclusion in the Borrowing Base prior to completion of a field examination, appraisal and other due diligence acceptable to Agent in its discretion, and if such satisfactory field examination, appraisal and due diligence is undertaken prior to the closing of such Acquisition, the assets acquired pursuant to such Acquisition may be taken into account in the applicable Borrowing Base (subject to all eligibility criteria) in determining whether the foregoing conditions are satisfied. Assets less than \$15,000,000 in Value acquired pursuant to a Permitted Acquisition shall constitute assets eligible for inclusion in the applicable Borrowing Base (subject to all eligibility criteria) on a temporary basis pending completion of a field examination, appraisal and other due diligence acceptable to Agent in its discretion.

Permitted Lien: as defined in **Section 10.2.1.**

Person: any individual, corporation, limited liability company, unlimited liability company, partnership, joint venture, joint stock company, land trust, business trust, unincorporated organization, Governmental Authority or other entity.

Plan: any employee benefit plan (as such term is defined in Section 3(3) of ERISA) established by an Obligor or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, an ERISA Affiliate.

PPSA: the Personal Property Security Act (Ontario) and the regulations thereunder; provided, however, if validity, perfection and effect of perfection and non-perfection of Agent's security interest in and Lien on any Collateral are governed by the personal property security laws of any jurisdiction other than Ontario, PPSA shall mean those personal property security laws (including the Civil Code of Quebec) in such other jurisdiction for the purposes of the provisions hereof relating to such validity, perfection, and effect of perfection and non-perfection and for the definitions related to such provisions, as from time to time in effect.

Pro Forma Basis: with respect to compliance with any test or covenant hereunder, in connection with or after the occurrence of an Acquisition, compliance with such covenant or test

after giving effect to any such Acquisition as if such Acquisition had occurred on the first day of the relevant test period (including pro forma adjustments arising out of events which are directly attributable to the proposed Acquisition, are factually supportable and are expected to have a continuing impact, in each case to be mutually and reasonably agreed upon by Borrower Agent and Agent).

Pro Rata: (a) with respect to any U.S. Lender and in reference to its U.S. Revolver Commitment or other matters (including (A) payments of principal, accrued interest and fees related thereto, (B) participations in U.S. LC Obligations and U.S. Swingline Loans, and (C) increases or reductions to the U.S. Revolver Commitments pursuant to **Section 2.1.4** or **2.1.7**) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the U.S. Revolver Commitments are outstanding, by dividing the amount of such U.S. Lender's U.S. Revolver Commitment by the aggregate amount of all U.S. Revolver Commitments, and (ii) at any other time, by dividing the amount of such U.S. Lender's U.S. Revolver Loans and U.S. LC Obligations by the aggregate amount of all U.S. Revolver Loans and U.S. LC Obligations; (b) with respect to any Canadian Lender and in reference to its Canadian Revolver Commitment, Canadian Facility Obligations or other matters (including (A) payments of principal, accrued interest and fees related thereto, (B) participations in Canadian LC Obligations and Canadian Swingline Loans, (C) reductions to the Canadian Revolver Commitments pursuant to **Section 2.1.4**, and (D) obligations to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of the Canadian Facility Obligors or to indemnify any Indemnitees for Claims relating to the Canadian Facility Obligors) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the Canadian Revolver Commitments are outstanding, by dividing such Canadian Lender's Canadian Revolver Commitment by the aggregate amount of all Canadian Revolver Commitments, and (ii) at any other time, by dividing the amount of such Canadian Lender's Canadian Revolver Loans and Canadian LC Obligations by the aggregate amount of all Canadian Revolver Loans and Canadian LC Obligations; (c) with respect to any U.K. Lender and in reference to its U.K. Revolver Commitment, U.K. Facility Obligations or other matters (including (A) payments of principal, accrued interest and fees related thereto, (B) participations in U.K. LC Obligations and U.K. Swingline Loans, (C) reductions to the U.K. Revolver Commitments pursuant to **Section 2.1.4**, and (D) obligations to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of the U.K. Facility Obligors or to indemnify any Indemnitees for Claims relating to the U.K. Facility Obligors) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the U.K. Revolver Commitments are outstanding, by dividing such U.K. Lender's U.K. Revolver Commitment by the aggregate amount of all U.K. Revolver Commitments, and (ii) at any other time, by dividing the amount of such U.K. Lender's U.K. Revolver Loans and U.K. LC Obligations by the aggregate amount of all U.K. Revolver Loans and U.K. LC Obligations; (d) with respect to any U.S. Lender and in reference to its Term Loan Commitment or other matters (including payments of principal, accrued interest and fees related thereto) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the Term Loan Commitments are outstanding, by dividing the amount of such U.S. Lender's Term Loan Commitment by the aggregate amount of all Term Loan Commitments, and (ii) at any other time, by dividing the amount of such U.S. Lender's Term Loans and by the aggregate amount of all Term Loans; (e) with respect to any U.S. Lender and in reference to U.S. Facility Obligations or other matters (including obligations to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of the U.S. Facility Obligors or to indemnify any Indemnitees for Claims relating to the U.S. Facility Obligors) relating thereto

which, in each case, are not governed by clause (a) or clause (d) preceding of this definition (as reasonably determined by Agent from time to time), a percentage (carried out to the ninth decimal place) determined by dividing the amount of such U.S. Lender's unused U.S. Revolver Commitment, unused Term Loan Commitment, and outstanding U.S. Revolver Loans, U.S. LC Obligations, and Term Loans, by the aggregate amount of all unused U.S. Revolver Commitments, all unused Term Loan Commitments, and all U.S. Revolver Loans, U.S. LC Obligations, and Term Loans; and (f) with respect to any Lender and in reference to any other matter relating to this Agreement or any other Loan Document which is not governed by clause (a), clause (b), clause (c), clause (d), or clause (e) preceding of this definition (as reasonably determined by Agent from time to time), a percentage (carried out in the ninth decimal place) determined by dividing the amount of such Lender's unused Revolver Commitments, unused Term Loan Commitment, and outstanding Loans and LC Obligations, by the aggregate amount of all unused Revolver Commitments, all unused Term Loan Commitments, and all outstanding Loans and LC Obligations.

**Proceeds:** as defined in **Section 7.1.**

**Proceeds of Crime Act:** the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) (or any successor statute), as amended from time to time, and includes all regulations thereunder.

**Project Max Commitment Letter:** that certain Commitment Letter, dated as of the First Amendment to Third Amended and Restated Effective Date, by and among Parent, Bank of America, N.A. (or any of its designated affiliates), JPMorgan Chase Bank, N.A. (together with any of its designated affiliates) and any Additional Lead Arranger (as defined therein) and any Additional Initial Lender (as defined therein) appointed in accordance with the terms thereof].

**Properly Contested:** with respect to any obligation of any Person, (a) the obligation is subject to a bona fide dispute regarding amount or such Person's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not have a Material Adverse Effect; (e) no Lien is imposed on assets of such Person or its Affiliates in an aggregate amount in excess of \$1,000,000 for all such Liens, unless bonded and stayed to the reasonable satisfaction of Agent; and (f) if the obligation results from entry of a judgment or other order in an aggregate amount in excess of \$1,000,000 for all such obligations, such judgment or order is stayed pending appeal or other judicial review.

**Property:** any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

**Protective Advances:** as defined in **Section 2.1.6.**

**Qualified ECP:** an Obligor with total assets exceeding \$10,000,000, or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of such Act.

**RCRA:** the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon.

Related Real Estate Documents: with respect to any Real Estate subject to a Mortgage, the following, in form and substance reasonably satisfactory to Agent (or such other Persons as expressly set forth below): (a) all information requested by Agent or any Lender for due diligence and required for Agent or any Lender to comply with Flood Laws; and (b) (i) a mortgagee title policy (or binder therefor) covering Agent's interest under the Mortgage, by an insurer reasonably acceptable to Agent, which must be fully paid as of the date ~~the U.S. Real Estate Formula Amount is first included in the calculation of the U.S. Borrowing Base of the applicable Mortgage~~; (ii) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as Agent may reasonably require and which would be customarily obtained by a lender in connection with a mortgage financing of a property such as the Real Estate with respect to other Persons having an interest in the Real Estate; (iii) a current, as-built survey of the Real Estate and certified by a licensed surveyor reasonably acceptable to Agent; (iv) a life-of-loan flood hazard determination and, if any Real Estate is located in a special flood hazard zone, flood insurance documentation and coverage as required by Flood Laws; (v) a current appraisal of the Real Estate, prepared by an appraiser acceptable to Agent, and in form and substance satisfactory to all Lenders; (vi) an environmental assessment, prepared by environmental engineers acceptable to Agent, a customary environmental indemnity agreement if appropriate, and such other reports, certificates, studies or data as Agent may reasonably require, all in form and substance satisfactory to all Lenders; and (vii) such other documents, legal opinions, instruments or agreements as Agent may reasonably require with respect to the Real Estate and Mortgage and which are customary for a mortgage financing transaction.

Report: as defined in **Section 12.2.3**.

Reportable Event: 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.

Reporting Trigger Period: the period (a) commencing on the day that an Event of Default occurs, or Net Excess Availability is less than, at any time, an amount equal to 10% of the Maximum Facility Amount; and (b) continuing until, during the preceding 30 consecutive days, no Event of Default has existed and Net Excess Availability has been greater than, at all times, an amount equal to 10% of the Maximum Facility Amount.

Required Lenders: Lenders (subject to **Section 4.2**) having unused Revolver Commitments, unused Term Loan Commitments, and outstanding Loans and LC Obligations, in excess of 50% of the aggregate amount of all unused Revolver Commitments, all unused Term Loan Commitments, and all outstanding Loans and LC Obligations; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more Lenders, "Required Lenders" must include at least 3 Lenders, and (ii) less than 3 Lenders, "Required Lenders" must include all Lenders.

Reserve Percentage: the reserve percentage (expressed as a decimal, rounded up to the nearest 1/16th of 1%) applicable to member banks under regulations issued by the Board of Governors for determining the maximum reserve requirement for Eurocurrency liabilities.

Reset Date: as defined **Section 5.13**.

Restricted Assets: any of the following Property of any Obligor solely to the extent there are any Term Loan Commitments or Term Loans outstanding: (a) all Real Estate; (b) all Intellectual Property; (c) all Equity Interests of Top Golf.

Restrictive Agreement: an agreement (other than a Loan Document) that conditions or restricts the right of any Borrower, Subsidiary or other Obligor to incur or repay Borrowed Money, to grant Liens on any assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Borrowed Money, or to repay any intercompany Debt.

Revolver Commitment: a U.S. Revolver Commitment and/or a Canadian Revolver Commitment and/or a U.K. Revolver Commitment, as the context requires. “Revolver Commitments” means the aggregate of the U.S. Revolver Commitments, the Canadian Revolver Commitments, and the U.K. Revolver Commitments.

Revolver Facilities: as defined in **Section 14.11(a)(vi)**.

Revolver Loan: a U.S. Revolver Loan and/or a Canadian Revolver Loan and/or a U.K. Revolver Loan, as the context requires.

Revolver Notes: collectively, the U.S. Revolver Notes, the Canadian Revolver Notes, and the U.K. Revolver Notes.

Royalties: all royalties, fees, expense reimbursement and other amounts payable by an Obligor or a Subsidiary under a License.

S&P: Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

Sanction: any sanction administered or enforced by the U.S. government (including OFAC), United Nations Security Council, European Union, U.K. government, Canadian government or other sanctions authority.

Screen Rate: in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters.

SEC: the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

Second Amended and Restated Loan Agreement: as defined in the recitals hereto.

Second Amended Original Closing Date: as defined in the recitals hereto.

Second Amendment to Third Amended and Restated Effective Date: January 4, 2019.

Secured Bank Product Obligations: Bank Product Debt owing to a Secured Bank Product Provider, up to the maximum amount (in the case of any Secured Bank Product Provider other than Bank of America and its Affiliates) specified by such provider in writing to Agent, which amount may be established or increased (by further written notice to Agent from time to time) as long as no Default or Event of Default exists and no Overadvance would result from establishment of a Canadian Bank Product Reserve, U.S. Bank Product Reserve, or U.K. Bank Product Reserve, as applicable, for such amount and all other Secured Bank Product Obligations; provided, that Secured Bank Product Obligations of an Obligor shall not include its Excluded Swap Obligations.

Secured Bank Product Provider: (a) Bank of America or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender that is providing a Bank Product, provided such provider delivers written notice to Agent, in form and substance satisfactory to Agent, by the later of the Closing Date or 10 days following creation of the Bank Product, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 12.13**.

Secured Parties: Canadian Facility Secured Parties and/or U.S. Facility Secured Parties and/or U.K. Facility Secured Parties, as the context requires.

Security Documents: this Agreement, the Guarantees, Mortgages, IP Assignments, Canadian Security Agreements, U.K. Security Agreements, Deposit Account Control Agreements, and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Senior Officer: the chairman of the board, director, president, chief executive officer, chief financial officer or treasurer of a Borrower or, if the context requires, an Obligor.

Settlement Report: a report delivered by Agent to the Applicable Lenders summarizing the Revolver Loans and, if applicable, participations in LC Obligations outstanding as of a given settlement date, allocated to the Applicable Lenders on a Pro Rata basis in accordance with their Revolver Commitments.

Solidary Claim: as defined in **Section 12.1.1(b)**.

Solvent: as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not “insolvent” within the meaning of Section 101(32) of the U.S.

Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. “Fair salable value” means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase. In addition to the foregoing, “Solvent” means, with respect to any Canadian Subsidiary, that such Canadian Subsidiary is (i) adequately capitalized, (ii) owns assets, the value of which, on a going concern basis, exceeds the liabilities of such Person, (iii) will have sufficient working capital to pay its debts as they become due, (iv) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either the present or future creditors of such Subsidiary or any of its Affiliates, and (v) is not an “insolvent person” as defined in the Bankruptcy and Insolvency Act (Canada). “Solvent” means, with respect to any U.K. Subsidiary, it is not and is not deemed for the purpose of and under the Insolvency Act 1986 to be unable to pay its debts as they fall due (other than under section 123(1)(a) of the Insolvency Act 1986).

Specified Obligor: an Obligor that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to **Section 5.11**).

Spot Rate: the exchange rate, as determined by Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source designated by Agent) as of the end of the preceding business day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding business day in Agent’s principal foreign exchange trading office for the first currency.

Subsidiary: any entity at least 50% of whose voting securities or Equity Interests are owned by the Parent (including indirect ownership by the Parent through other entities in which the Parent directly or indirectly owns 50% of the voting securities or Equity Interests).

Supermajority Lenders: Lenders (subject to **Section 4.2**) having (a) Revolver Commitments in excess of 75% of the aggregate Revolver Commitments; and (b) if the Revolver Commitments have terminated, Revolver Loans and LC Obligations in excess of 75% of all outstanding Revolver Loans and LC Obligations; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation.

Swap Obligations: with respect to an Obligor, its obligations under a Hedging Agreement that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

Swingline Loans: the Canadian Swingline Loans, the U.S. Swingline Loans, and the U.K. Swingline Loans.

TARGET Day: any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be

operative, such other payment system (if any) determined by the Agent acting reasonably to be a suitable replacement) is open for the settlement of payments in Euro.

Tax Credit: a credit against, relief or remission for, or repayment of any Tax.

Tax Deduction: as defined in **Section 5.9.2**.

Taxes: 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: a loan made by a U.S. Lender to the U.S. Borrowers pursuant to **Section 2.5**, which Loan shall be denominated in Dollars and shall be either a U.S. Base Rate Loan or a LIBOR Loan, in each case as selected by Borrower Agent.

Term Loan Cap: as of any date of determination, 18% of the Net Orderly Liquidation Value of the Company Trademark, rounded up to the nearest million in Agent's sole discretion.

Term Loan Collateral Agent: as defined in the Intercreditor Agreement.

Term Loan Commitment: for any U.S. Lender, the obligation of such U.S. Lender to make a Term Loan hereunder, up to the principal amount shown on **Schedule 1.1**. "Term Loan Commitments" means the aggregate amount of such commitments of all Lenders.

Term Loan Commitment Termination Date: the earliest of (a) the Facility Termination Date, (b) the date on which the Borrower Agent terminates the Term Loan Commitments pursuant to **Section 2.5.4**, (c) the date that is six months after the Closing Date, and (d) the date on which the Term Loan Commitments are terminated pursuant to **Section 11.2**.

Term Loan Maturity Date: the earlier of (a) the Facility Termination Date, and (b) the date that is the four year anniversary of the making of the Terms Loans pursuant to **Section 2.5**.

Term Loan Unused Commitment Fee Rate: a per annum rate equal to 0.50%.

Termination Event: (a) the whole or partial withdrawal of a Canadian Subsidiary from a Canadian Pension Plan during a plan year; or (b) the filing of a notice of interest to terminate in whole or in part a Canadian Pension Plan or the treatment of a Canadian Pension Plan amendment as a termination or partial termination; or (c) the institution of proceedings by any Governmental Authority to terminate in whole or in part or have a trustee appointed to administer a Canadian Pension Plan; or (d) any other event or condition which might constitute grounds for the termination of or winding up, or partial termination of or winding up, or the appointment of a trustee to administer, any Canadian Pension Plan.

Third Amendment to Second Amended and Restated Effective Date: June 23, 2014.

Threshold Percentage: (a) 15% at any time no Term Loans are outstanding; (b) 17.5% at any time there are Term Loans outstanding in an aggregate principal amount of less than

\$15,000,000; and (c) 20% at any time there are Term Loans outstanding in an aggregate principal amount equal to \$15,000,000 or more.

Top Golf: Topgolf International, Inc., a Delaware corporation.

Top Golf Blocked Account: as defined in the definition of Top Golf Proceeds.

Top Golf Proceeds: cash proceeds received by Parent in connection with any: (a) sale of all or a portion of the Equity Interests of Top Golf owned by Parent, or (b) dividend received by Parent from Top Golf on account of Parent's ownership interest in Top Golf; provided that (i) Parent elects to designate such proceeds as Top Golf Proceeds by at least five (5) Business Days (or such lesser time as approved by Agent in its sole discretion) prior written notice (such notice, the "Top Golf Proceeds Notice") to Agent of the occurrence of such transaction which will give rise to such cash proceeds; (ii) Parent sends written notice to Agent on the Business Day prior to the consummation of such transaction which will give rise to such cash proceeds; (iii) on the day such cash proceeds are received by Parent, either (in accordance with Parent's election made in the Top Golf Proceeds Notice): (A) Parent deposits all of such proceeds in a separate Deposit Account (such Deposit Account, the "Top Golf Blocked Account"), and provides evidence to Agent, in form and substance satisfactory to Agent, of such deposit, or (B) Agent establishes or modifies, as applicable, the U.S. Top Golf Reserve, the U.K. Top Golf Reserve and the Canadian Top Golf Reserve; (iv) the Top Golf Blocked Account shall not contain any other funds other than Top Golf Proceeds; (v) Parent may remove Top Golf Proceeds from the Top Golf Blocked Account, provided, however that (A) once removed other than (1) to consummate Common Stock Repurchases or pay dividends on Parent's common stock, in each case in accordance with **Section 10.2.6(g)(A)** on the date of such removal or (2) to make Investments in accordance with **Section 10.2.2(k)(A)** on the date of such removal, such funds shall no longer constitute Top Golf Proceeds, and (B) Parent shall provide Agent (1) three (3) Business Days' prior written notice of such removal, and (2) evidence of the removal of such funds from the Top Golf Blocked Account within two (2) Business Days of such removal; (vi) Parent shall provide Agent with copies of all monthly statements with respect to the Top Golf Blocked Account and such other information with respect to such Deposit Account as reasonably requested by Agent from time to time; and (vii) the Top Golf Blocked Account shall be subject to a Deposit Account Control Agreement prior to any Top Golf Proceeds being deposited into the Top Golf Blocked Account.

Top Golf Proceeds Notice: as defined in the definition of Top Golf Proceeds.

Total Revolver Exposure: as of any date of determination, the sum of the U.S. Revolver Exposure plus the Canadian Revolver Exposure plus the U.K. Revolver Exposure.

Transferee: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

Travis Mathew Retail: Travis Mathew Retail, LLC, a California limited liability company.

Treaty Lender: a Lender which: (a) is treated as a resident of a Treaty State for the purposes of a Treaty; and (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected.

Treaty State: a jurisdiction having a double taxation agreement (a “Treaty”) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

Type: any type of a Loan (*i.e.*, a LIBOR Loan, a U.S. Base Rate Loan, a Canadian BA Rate Loan, a Canadian Base Rate Loan, a Canadian Prime Rate Loan, or a U.K. Base Rate Loan) and, in the case of LIBOR Loans and Canadian BA Rate Loans, the same Interest Period.

UCC: the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

Unfunded Pension Liability: the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year and includes any unfunded liability or solvency deficiency as determined for the purposes of the PBA in respect of any Canadian Pension Plan.

uPlay: uPlay, Inc., a Delaware corporation.

U.K./Canadian Allocable Amount: as defined in **Section 5.11**.

U.K./Canadian Guarantor Payment: as defined in **Section 5.11**.

U.K. and United Kingdom: the United Kingdom of Great Britain and Northern Ireland.

U.K. Accounts Formula Amount: (a) as of any date of determination within the period beginning on May 1 through and including October 31 of each Fiscal Year, 85% of the Value of Eligible Accounts of the U.K. Borrower; and (b) as of any date of determination within the period beginning on November 1 through and including April 30 of each Fiscal Year, 90% of the Value of Eligible Accounts of the U.K. Borrower.

U.K. Availability: as of any date of determination, the U.K. Borrowing Base as of such date of determination minus the aggregate principal amount of all U.K. Revolver Loans outstanding on such date of determination.

U.K. Availability Reserve: the sum (without duplication) of (a) the Inventory Reserve with respect to the U.K. Borrower’s Inventory; (b) the U.K. Rent and Charges Reserve; (c) the U.K. LC Reserve; (d) the U.K. Bank Product Reserve; (e) all accrued Royalties of the U.K. Domiciled Obligors, whether or not then due and payable by a U.K. Domiciled Obligor; (f) the aggregate amount of liabilities secured by Liens upon U.K. Facility Collateral that are senior to the Agent’s Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (g) the U.K. Dilution Reserve; (h) the U.K. Top Golf Reserve; and (i) such additional reserves, in such amounts and with respect to such matters, as Agent in its Credit Judgment may elect to impose from time to time with respect to the U.K. Borrowing Base.

**U.K. Bank Product Reserve:** the aggregate amount of reserves established by Agent from time to time in its discretion in respect of Secured Bank Product Obligations owing by the U.K. Domiciled Obligors and their Subsidiaries.

**U.K. Base Rate:** for any day, the reference rate for U.K. Base Rate Loans, being a fluctuating rate of interest per annum equal to the rate of interest in effect for such day as announced from time to time by the local branch of Bank of America in the jurisdiction in which such currency is funded as its “base rate” with respect to such currency. Any change in such rate shall take effect at the opening of business on the day of such change.

**U.K. Base Rate Loan:** a U.K. Revolver Loan, or portion thereof, funded in Dollars and bearing interest calculated by reference to U.K. Base Rate.

**U.K. Borrower:** as defined in the preamble to this Agreement.

**U.K. Borrowing Base:** on any date of determination, an amount equal to the lesser of (a) the result of: (i) the Maximum U.K. Facility Amount, minus (ii) the U.K. LC Reserve, minus (iii) the U.K. Top Golf Reserve; or (b) the result of: (i) the U.K. Accounts Formula Amount, plus (ii) the U.K. Inventory Formula Amount, plus (iii) 100% of the amount of U.K. Pledged Cash, minus (iv) the U.K. Availability Reserve.

**U.K. Borrowing Base Certificate:** a certificate, in form and substance satisfactory to Agent, by which the U.K. Borrower certifies calculation of the U.K. Borrowing Base.

**U.K. Cash Collateral Account:** a demand deposit, money market or other account established by Agent at Bank of America, N.A. (London Branch) or such other financial institution as Agent may select in its discretion, which account shall be for the benefit of the U.K. Facility Secured Parties and shall be subject to Agent’s Liens securing the U.K. Facility Obligations.

**U.K. Dilution Reserve:** as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts of the U.K. Borrower by 1% for each whole percentage point (or portion thereof) by which the Dilution Percent is in excess of 5.0%.

**U.K. Domiciled Obligor:** each U.K. Subsidiary which is at any time an Obligor, and “**U.K. Domiciled Obligors**” means all such Persons, collectively.

**U.K. Dominion Account:** a special account established by the U.K. Borrower at Bank of America, N.A. (London Branch) or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes at all times.

**U.K. Eligible Foreign Account:** an Account of the U.K. Borrower that is owed by an Account Debtor that is organized or has its principal offices or assets in a jurisdiction (a) that has been a Participating Member State since before May 2004 or (b) that is listed on **Schedule 1.1C**.

**U.K. Expeditors Reserve:** as of any date of determination, the aggregate amount of accounts payable owed by any U.K. Facility Obligor to Expeditors, as determined by Agent in its Credit Judgment.

**U.K. Facility Collateral**: all Collateral that now or hereafter secures (or is intended to secure) any of the U.K. Facility Obligations, including Property of each U.K. Domiciled Obligor, each U.S. Domiciled Obligor, and each Canadian Domiciled Obligor.

**U.K. Facility Guarantee**: each guarantee agreement (including this Agreement) at any time executed by a U.K. Facility Guarantor in favor of Agent guaranteeing all or any portion of the U.K. Facility Obligations.

**U.K. Facility Guarantor**: Parent, each U.K. Subsidiary, each Canadian Subsidiary, and each U.S. Subsidiary (other than uPlay unless uPlay becomes a Guarantor in accordance with Section 10.2.15) and each other Person (if any) who guarantees payment and performance of any U.K. Facility Obligations.

**U.K. Facility Obligations**: all Obligations of the U.K. Facility Obligors (excluding, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of any U.S. Facility Obligations).

**U.K. Facility Obligor**: each of the U.K. Borrower or any U.K. Facility Guarantor, and "**U.K. Facility Obligors**" means all of such Persons, collectively.

**U.K. Facility Secured Parties**: the Agent, the U.K. Issuing Bank, the U.K. Lenders and the Secured Bank Product Providers who provide Bank Products to the U.K. Facility Obligors and their Subsidiaries.

**U.K. Inventory Formula Amount**: as of any date of determination, the lesser of (a) the sum of (i) with respect to Eligible Inventory that has been owned by the U.K. Borrower for less than one (1) calendar year as of the applicable date of determination, (A) for the period beginning on March 1 through and including September 30 of each Fiscal Year, 65% of the Value of such U.K. Borrower's Eligible Inventory, (B) for the period beginning on October 1 through and including February 28 (or February 29, as applicable) of each Fiscal Year, 75% of the Value of such U.K. Borrower's Eligible Inventory, plus (ii) with respect to Eligible Inventory that has been owned by the U.K. Borrower for more than one (1) calendar year, as of the applicable date of determination, 50% of the Value of such U.K. Borrower's Eligible Inventory; or (b) 85% of the NOLV Percentage of the Value of the U.K. Borrower's Eligible Inventory. Notwithstanding the foregoing, the aggregate amount of the U.K. Inventory Formula Amount which may be attributed to Eligible In-Transit Inventory (the "**U.K. In-Transit Availability**") shall not exceed \$2,000,000; provided that, the U.K. In-Transit Availability (after taking into effect the previous proviso) shall be reduced by the U.K. Expeditors Reserve if, as of any date of determination, either (I) U.K. Net Excess Availability is less than 10% of the Maximum U.K. Facility Amount, or (II) there are any accounts payable owed by any U.K. Facility Obligor to Expeditors which are aged in excess of historical levels (except in cases of good faith disputes).

**U.K. Issuing Bank**: Bank of America or an Affiliate of Bank of America.

**U.K. LC Obligations**: the sum (without duplication) of (a) all amounts owing by the U.K. Borrower for any drawings under Letters of Credit; (b) the stated amount of all outstanding Letters of Credit issued for the account of the U.K. Borrower, which if such Letter of Credit is denominated in a currency other than Dollars, British Pounds or Euros, may be stated by Agent (at

its option) in Dollars, British Pounds or Euros calculated at the Spot Rate; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account of the U.K. Borrower.

**U.K. LC Reserve:** the aggregate of all U.K. LC Obligations, other than those that have been Cash Collateralized.

**U.K. Lenders:** each Lender that has issued a U.K. Revolver Commitment (provided that such Person or an Affiliate of such Person also has a U.S. Revolver Commitment).

**U.K. Letter of Credit Subline:** \$2,000,000.

**U.K. Letters of Credit:** any standby or documentary letter of credit issued by the U.K. Issuing Bank for the account of the U.K. Borrower, or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Agent or the U.K. Issuing Bank for the benefit of the U.K. Borrower.

**U.K. Net Excess Availability:** as of any date of determination, an amount equal to the U.K. Availability minus the aggregate amount, if any, of all trade payables of U.K. Domiciled Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of U.K. Domiciled Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

**U.K. Non-Bank Lender:** means:

(a) where a Lender becomes a party to this Agreement on the day on which this Agreement is entered into, any Lender listed in **Schedule 1.1D**; and

(b) where a Lender becomes a party to this Agreement after the day on which this Agreement is entered into, a Lender which gives a U.K. Tax Confirmation in the assignment notice which it executes pursuant to, or in connection with, **Section 13.3** below.

**U.K. Overadvance:** as defined in **Section 2.15**.

**U.K. Overadvance Loan:** a U.K. Revolver Loan made to the U.K. Borrower when a U.K. Overadvance exists or is caused by the funding thereof.

**U.K. Overadvance Loan Balance:** on any date, the amount by which the aggregate U.K. Revolver Exposure exceeds the amount of the U.K. Borrowing Base on such date.

**U.K. Pledged Cash:** the funds maintained in a blocked Deposit Account or securities account of the U.K. Borrower subject to a Deposit Account Control Agreement or securities account control agreement, as applicable, which give Agent at all times exclusive access and control for withdrawal purposes to the exclusion of the U.K. Borrower and precluding the U.K. Borrower from withdrawing or otherwise giving any instructions in connection therewith and which may not be withdrawn without the Agent's prior written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such withdrawal, no Default or Event of Default shall have occurred and be continuing and (ii) immediately after such withdrawal (for clarification, including after giving effect to any recalculation of the U.K. Borrowing Base upon

giving effect to such withdrawal), U.K. Availability would be a positive number), and which are subject to effective security documents, in form and substance satisfactory to Agent, that provide Agent with an unencumbered perfected first priority/ranking security interest in and Lien on such funds.

**U.K. Qualified Lender:**

(i) a Lender (other than a Lender within paragraph (ii) below) which is beneficially entitled to interest payable to that Lender in respect of any advance under the Loan Documents and is:

(A) a Lender:

(1) which is a bank (as defined for the purpose of section 879 of the Income Tax Act 2007 (United Kingdom) ("ITA") making an advance under the Loan Documents; or

(2) in respect of an advance made under the Loan Documents by a person that was a bank (as defined for the purpose of section 879 of ITA) at the time that that advance was made

and with respect to (i)(A)(1) and (i)(A)(2), which is within the charge to U.K. corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the Corporation Taxes Act 2009 (United Kingdom) ("CTA"); or

(B) a Lender which is:

(1) a company resident in the U.K. for U.K. tax purposes;

(2) a partnership each member of which is:

(a) a company so resident in the U.K.; or

(b) a company not so resident in the U.K. which carries on a trade in the U.K. through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

(3) a company not so resident in the U.K. which carries on a trade in the U.K. through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or

(C) a Treaty Lender; or

(ii) a building society (as defined for the purposes of section 880 of ITA) making an advance under the Loan Documents.

**U.K. Reimbursement Date:** as defined in **Section 2.2.2.**

**U.K. Rent and Charges Reserve:** the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any U.K. Facility Collateral or could assert a Lien on any U.K. Facility Collateral; and (b) a reserve at least equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

**U.K. Required Lenders:** U.K. Lenders (subject to **Section 4.2**) having (a) U.K. Revolver Commitments in excess of 50% of the aggregate U.K. Revolver Commitments; and (b) if the U.K. Revolver Commitments have terminated, U.K. Revolver Loans and U.K. LC Obligations in excess of 50% of all outstanding U.K. Revolver Loans and U.K. LC Obligations; provided, however, that the U.K. Revolver Commitments and U.K. Revolver Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more U.K. Lenders, "U.K. Required Lenders" must include at least 3 U.K. Lenders, and (ii) less than 3 U.K. Lenders, "U.K. Required Lenders" must include all U.K. Lenders.

**U.K. Revolver Commitment:** for any U.K. Lender, its obligation to make U.K. Revolver Loans and to participate in U.K. LC Obligations, in the applicable Available Currencies, up to the maximum principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party, as such U.K. Revolver Commitment may be adjusted from time to time in accordance with the provisions of **Sections 2.1.4 or 11.2.** "**U.K. Revolver Commitments**" means the aggregate amount of such commitments of all U.K. Lenders.

**U.K. Revolver Commitment Termination Date:** the earliest of (a) the U.S. Revolver Commitment Termination Date (without regard to the reason therefor), (b) the date on which the Borrower Agent terminates or reduces to zero all of the U.K. Revolver Commitments pursuant to **Section 2.1.4**, and (c) the date on which the U.K. Revolver Commitments are terminated pursuant to **Section 11.2.**

**U.K. Revolver Exposure:** on any date, an amount equal to the sum of the Dollar Equivalent of the U.K. Revolver Loans outstanding on such date plus the U.K. LC Obligations on such date.

**U.K. Revolver Loan:** a Revolver Loan made by U.K. Lenders to the U.K. Borrower pursuant to **Section 2.1.1(c)**, which Revolver Loan shall be either a U.K. Base Rate Loan (which shall be denominated in Dollars only) or a LIBOR Loan (which may be denominated in Dollars, British Pounds or Euros, as selected by the Borrower Agent), and any U.K. Swingline Loan, U.K. Overadvance Loan or Protective Advance made to or owed by the U.K. Borrower.

**U.K. Revolver Notes:** a promissory note executed by the U.K. Borrower in favor of a U.K. Lender in the form of **Exhibit A-3**, in the amount of such U.K. Lender's U.K. Revolver Commitment.

**U.K. Security Agreement:**

- (a) the security agreements dated as of the date hereof made by each U.K. Domiciled Obligor in favor of the Agent;

- (b) the debenture dated 15 June 2012 and made by the U.K. Borrower in favor of the Agent;
- (c) the supplemental debenture dated 18 December 2013 and made by the U.K. Borrower in favor of the Agent;
- (d) the debenture dated 15 June 2012 and made by Callaway Golf European Holding Company Limited in favor of the Agent; and
- (e) any other debenture, deed of charge or other similar agreement, instrument or document governed by the laws of England and Wales, Scotland or Northern Ireland, in each case now or hereafter securing (or given with the interest to secure) the U.K. Facility Obligations.

**U.K. Subsidiary:** a Subsidiary of Parent incorporated or organized under the laws of England and Wales.

**U.K. Swingline Loan:** any Borrowing of U.K. Base Rate Loans funded with Agent's funds, until such Borrowing is settled among the U.K. Lenders or repaid by the U.K. Borrower.

**U.K. Tax Confirmation:** means a confirmation by a Lender that the person beneficially entitled to interest payable to it in respect of an advance under a Loan Document is either:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
  - (i) a company so resident in the United Kingdom; or
  - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of Section 19 of CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of CTA; or
- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of Section 19 of CTA) of that company.

**U.K. Tax Payment:** as defined in **Section 5.9.14.**

**U.K. Top Golf Reserve:** a reserve established by Agent at Parent's request in accordance with the definition of Top Golf Proceeds, in an initial amount as of such establishment equal to \$0. The U.K. Top Golf Reserve (a) shall be reduced on a dollar for dollar basis for the amount expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)(ii)(D)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)(ii)(D)**; (b) may be permanently reduced from time to time upon Parent's written request

to Agent; and (c) subject to Agent's written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such adjustment, no Default or Event of Default shall have occurred and be continuing, and (ii) immediately after such adjustment (for clarification, including after giving effect to any recalculation of the Canadian Borrowing Base and U.S. Borrowing Base upon giving effect to such adjustment), Canadian Availability and U.S. Availability would be a positive number), may be reallocated on a dollar for dollar basis to the Canadian Top Golf Reserve and/or the U.S. Top Golf Reserve upon Parent's written request to Agent; provided, however, that once reduced pursuant to clause (b) above, the U.K. Top Golf Reserve may not be increased. The parties agree that the U.K. Top Golf Reserve shall never be less than zero (-0-). For clarification, the aggregate amount of the Canadian Top Golf Reserve, the U.K. Top Golf Reserve, and the U.S. Top Golf Reserve may not exceed an amount equal to the aggregate amount of Top Golf Proceeds received by Parent as reflected in all Top Golf Proceeds Notices (less any amounts Parent elects to deposit into the Top Golf Blocked Account) less all amounts expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)** and less all permanent reductions elected by Parent pursuant to clause (b) of each of the definitions of Canadian Top Golf Reserve, U.K. Top Golf Reserve, and U.S. Top Golf Reserve.

**U.K. Unused Line Fee Rate:** a per annum rate equal to 0.25%.

**U.S. Accounts Formula Amount:** (a) as of any date of determination within the period beginning on May 1 through and including October 31 of each Fiscal Year, 85% of the Value of Eligible Accounts of the U.S. Borrowers; and (b) as of any date of determination within the period beginning on November 1 through and including April 30 of each Fiscal Year, 90% of the Value of Eligible Accounts of the U.S. Borrowers.

**U.S. Availability:** as of any date of determination, the U.S. Borrowing Base as of such date of determination minus the aggregate principal amount of U.S. Revolver Loans outstanding on such date of determination.

**U.S. Availability Reserve:** the sum (without duplication) of (a) the Inventory Reserve with respect to the U.S. Borrowers' Inventory; (b) the U.S. Rent and Charges Reserve; (c) the U.S. LC Reserve; (d) the U.S. Bank Product Reserve; (e) all accrued Royalties of the U.S. Facility Obligors, whether or not then due and payable by a U.S. Facility Obligor; (f) the aggregate amount of liabilities secured by Liens upon U.S. Facility Collateral that are senior to the Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (g) the U.S. Dilution Reserve; (h) the Canadian Overadvance Loan Balance, if any, outstanding on such date, and the U.K. Overadvance Loan Balance, if any, outstanding on such date; (i) the U.S. Top Golf Reserve; and (j) such additional reserves, in such amounts and with respect to such matters, as Agent in its Credit Judgment may elect to impose from time to time with respect to the U.S. Borrowing Base.

**U.S. Bank Product Reserve:** the aggregate amount of reserves established by Agent from time to time in its discretion in respect of Secured Bank Product Obligations owing by the U.S. Domiciled Obligors and their Subsidiaries.

**U.S. Bankruptcy Code:** Title 11 of the United States Code.

**U.S. Base Rate:** for any day, a per annum rate equal to the greater of (a) the U.S. Prime Rate for such day; (b) the Federal Funds Rate for such day, plus 0.50%; or (c) LIBOR for a 30 day interest period as determined on such day, plus 1.0%.

**U.S. Base Rate Loan:** a Loan that bears interest based on the U.S. Base Rate.

**U.S. Base Rate Revolver Loan:** a Revolver Loan that bears interest based on the U.S. Base Rate.

**U.S. Borrowers:** as defined in the preamble to this Agreement.

**U.S. Borrowing Base:** on any date of determination, an amount equal to the lesser of (a) the result of: (i) the Maximum U.S. Facility Amount, minus (ii) the U.S. LC Reserve, minus (iii) the Canadian Overadvance Loan Balance, if any, outstanding on such date, minus (iv) the U.K. Overadvance Loan Balance, if any, outstanding on such date, minus (v) the U.S. Top Golf Reserve; or (b) the result of: (i) the U.S. Accounts Formula Amount, plus (ii) the U.S. Inventory Formula Amount, plus (iii) the U.S. Trademark Formula Amount, plus (iv) the U.S. Real Estate Formula Amount, plus (v) 100% of the amount of U.S. Pledged Cash, minus (vi) the U.S. Availability Reserve; provided, that clauses (b)(iii) and (b)(iv) above may be removed from such calculation in accordance with **Sections 2.1.4(c)** and **(d)** respectively.

**U.S. Borrowing Base Certificate:** a certificate, in form and substance satisfactory to Agent, by which the U.S. Borrowers certify calculation of the U.S. Borrowing Base.

**U.S. Cash Collateral Account:** a demand deposit, money market or other account established by Agent at Bank of America or such other financial institution as Agent may select in its discretion, which account shall be for the benefit of the U.S. Facility Secured Parties and shall be subject to Agent's Liens securing the U.S. Facility Obligations.

**U.S. Dilution Reserve:** as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts of the U.S. Borrowers by one (1) percentage point for each whole percentage point (or portion thereof) by which the Dilution Percent is in excess of 5.0%.

**U.S. Domiciled Obligor:** each of the Parent, any U.S. Borrower or any U.S. Subsidiary which it is at any time an Obligor, and "**U.S. Domiciled Obligors**" means all such Persons, collectively.

**U.S. Dominion Account:** a special account established by the U.S. Borrowers at Bank of America or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes during any Dominion Trigger Period.

**U.S. Expeditors Reserve:** as of any date of determination, the aggregate amount of accounts payable owed by any U.S. Facility Obligor to Expeditors, as determined by Agent in its Credit Judgment.

**U.S. Facility Collateral:** all Collateral that now or hereafter secures (or is intended to secure) any of the U.S. Facility Obligations, including Property of each U.S. Domiciled Obligor.

**U.S. Facility Guarantee:** each guarantee agreement (including this Agreement) at any time executed by a U.S. Facility Guarantor in favor of Agent guaranteeing all or any portion of the U.S. Facility Obligations.

**U.S. Facility Guarantor:** each U.S. Subsidiary other than uPlay (unless uPlay becomes a Guarantor in accordance with **Section 10.2.15**) and each other Person (if any) who guarantees payment and performance of any U.S. Facility Obligations.

**U.S. Facility Obligations:** all Obligations of the U.S. Facility Obligors (including, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of the Canadian Facility Obligations and U.K. Facility Obligations).

**U.S. Facility Obligor:** each of any U.S. Borrower or any U.S. Facility Guarantor, and “**U.S. Facility Obligors**” means all of such Persons, collectively.

**U.S. Facility Secured Parties:** the Agent, the U.S. Issuing Bank, the U.S. Lenders and the Secured Bank Product Providers who provide Bank Products to the U.S. Facility Obligors and their Subsidiaries.

**U.S. Inventory Formula Amount:** as of any date of determination, the lesser of (a) the sum of (i) with respect to Eligible Inventory that has been owned by a U.S. Borrower for less than one (1) calendar year as of the applicable date of determination, (A) for the period beginning on March 1 through and including September 30 of each Fiscal Year, 65% of the Value of such U.S. Borrowers’ Eligible Inventory, (B) for the period beginning on October 1 through and including February 28 (or February 29, as applicable) of each Fiscal Year, 75% of the Value of such U.S. Borrowers’ Eligible Inventory, plus (ii) with respect to Eligible Inventory that has been owned by a U.S. Borrower for more than one (1) calendar year, as of the applicable date of determination, 50% of the Value of such U.S. Borrowers’ Eligible Inventory; or (b) 85% of the NOLV Percentage of the Value of the U.S. Borrowers’ Eligible Inventory. Notwithstanding the foregoing, (1) the aggregate amount of the U.S. Inventory Formula Amount which may be attributed to Eligible In-Transit Inventory (the “**U.S. In-Transit Availability**”) shall not exceed \$25,000,000; provided that, the U.S. In-Transit Availability (after taking into effect the previous proviso) shall be reduced by the U.S. Expeditors Reserve if, as of any date of determination, either (I) U.S. Net Excess Availability is less than 10% of the Maximum U.S. Facility Amount, or (II) there are any accounts payable owed by any U.S. Facility Obligor to Expeditors which are aged in excess of historical levels (except in cases of good faith disputes); and (2) so long as there is no Lien Waiver then in place with respect thereto, the aggregate amount of the U.S. Inventory Formula Amount which may be attributed to Eligible Costco Inventory shall not exceed \$20,000,000.

**U.S. Issuing Bank:** Bank of America or an Affiliate or branch of Bank of America

**U.S. LC Obligations:** the sum (without duplication) of (a) all amounts owing by the U.S. Borrowers for any drawings under Letters of Credit; (b) the stated amount of all outstanding Letters of Credit issued for the account of any U.S. Borrower, which if such Letter of Credit is denominated in a currency other than Dollars, may be stated by Agent (at its option) in Dollars

calculated at the Spot Rate; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account of any U.S. Borrower.

**U.S. LC Reserve:** the aggregate of all U.S. LC Obligations, other than those that have been Cash Collateralized.

**U.S. Lenders:** Bank of America and each other Lender (other than Canadian Lenders or U.K. Lenders) party hereto.

**U.S. Letter of Credit Subline:** \$20,000,000.

**U.S. Letters of Credit:** any standby or documentary letter of credit issued by the U.S. Issuing Bank for the account of the U.S. Borrowers (or any U.S. Borrower), or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Agent or the U.S. Issuing Bank for the benefit of any U.S. Borrower, and shall include the Existing Letters of Credit.

**U.S. Net Excess Availability:** as of any date of determination, an amount equal to the U.S. Availability minus the aggregate amount, if any, of all trade payables of U.S. Domiciled Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of U.S. Domiciled Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

**U.S. Overadvance:** as defined in **Section 2.1.5.**

**U.S. Overadvance Loan:** a U.S. Revolver Loan made to the U.S. Borrowers or the amount owed by the U.S. Borrowers when a U.S. Overadvance exists or is caused by the funding thereof.

**U.S. Pledged Cash:** the funds maintained in a blocked Deposit Account or securities account of a U.S. Borrower subject to a Deposit Account Control Agreement or securities account control agreement, as applicable, which give Agent at all times exclusive access and control for withdrawal purposes to the exclusion of the U.S. Borrowers and precluding the U.S. Borrowers from withdrawing or otherwise giving any instructions in connection therewith and which may not be withdrawn without the Agent's prior written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such withdrawal, no Default or Event of Default shall have occurred and be continuing and (ii) immediately after such withdrawal (for clarification, including after giving effect to any recalculation of the U.S. Borrowing Base upon giving effect to such withdrawal), U.S. Availability would be a positive number), and which are subject to effective security documents, in form and substance satisfactory to Agent, that provide Agent with an unencumbered perfected first priority/ranking security interest in and Lien on such funds.

**U.S. Prime Rate:** the rate of interest announced by Bank of America from time to time as its prime rate. Such rate is set by Bank of America on the basis of various factors, including its 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 rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

**U.S. Real Estate Formula Amount:** as of any date of determination, the lesser of (a) 80% of the fair market value of the Eligible Real Estate, as determined from the most recent appraisal of such Real Estate performed by an appraiser and on terms satisfactory to Agent; or (b) \$28,600,000 (such amount in this clause (b) to be reduced by \$476,666.67 on the first day of each calendar quarter occurring after the Closing Date, commencing with the calendar quarter beginning on April 1, 2018).

**U.S. Reimbursement Date:** as defined in **Section 2.3.2.**

**U.S. Rent and Charges Reserve:** the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any U.S. Facility Collateral or could assert a Lien on any U.S. Facility Collateral; and (b) a reserve at least equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

**U.S. Required Lenders:** U.S. Lenders (subject to **Section 4.2**) having (a) U.S. Revolver Commitments in excess of 50% of the aggregate U.S. Revolver Commitments; and (b) if the U.S. Revolver Commitments have terminated, U.S. Revolver Loans and U.S. LC Obligations in excess of 50% of all outstanding U.S. Revolver Loans and U.S. LC Obligations; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more U.S. Lenders with U.S. Revolver Commitments or outstanding U.S. Revolver Loans or U.S. LC Obligations, "U.S. Required Lenders" must include at least 3 such U.S. Lenders, and (ii) less than 3 U.S. Lenders with U.S. Revolver Commitments or outstanding U.S. Revolver Loans or U.S. LC Obligations, "U.S. Required Lenders" must include all such U.S. Lenders.

**U.S. Required Term Lenders:** U.S. Lenders (subject to **Section 4.2**) having (a) Term Loan Commitments in excess of 50% of the aggregate Term Loan Commitments; and (b) if the Term Loan Commitments have terminated, Term Loans in excess of 50% of all outstanding Term Loans; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more U.S. Lenders with Term Loan Commitments or outstanding Term Loans, "U.S. Required Term Lenders" must include at least 3 such U.S. Lenders, and (ii) less than 3 U.S. Lenders with Term Loan Commitments or outstanding Term Loans, "U.S. Required Term Lenders" must include all such U.S. Lenders.

**U.S. Revolver Commitment:** for any U.S. Lender, its obligation to make U.S. Revolver Loans and to participate in U.S. LC Obligations up to the maximum principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party, as such U.S. Revolver Commitment may be adjusted from time to time in accordance with the provisions of **Sections 2.1.4, 2.1.7, or 11.2.** "**U.S. Revolver Commitments**" means the aggregate amount of such commitments of all U.S. Lenders.

**U.S. Revolver Commitment Termination Date:** the earliest of (a) the Facility Termination Date, (b) the date on which the Borrower Agent terminates or reduces to zero the U.S. Revolver Commitments pursuant to **Section 2.1.4**, and (c) the date on which the U.S. Revolver Commitments are terminated pursuant to **Section 11.2.**

**U.S. Revolver Exposure:** on any date, an amount equal to the sum of the U.S. Revolver Loans outstanding on such date plus the U.S. LC Obligations on such date.

**U.S. Revolver Loan:** a Revolver Loan made by a U.S. Lender to a U.S. Borrower pursuant to **Section 2.1.1(a)**, which Loan shall be denominated in Dollars and shall be either a U.S. Base Rate Revolver Loan or a LIBOR Loan, in each case as selected by Borrower Agent, and any U.S. Swingline Loan, U.S. Overadvance Loan or Protective Advance made to or owed by the U.S. Borrowers.

**U.S. Revolver Notes:** a promissory note executed by U.S. Borrowers in favor of a U.S. Lender in the form of **Exhibit A-2**, in the amount of such U.S. Lender's U.S. Revolver Commitment.

**U.S. Subsidiary:** a Subsidiary of Parent that is organized under the laws of a state of the United States or the District of Columbia.

**U.S. Swingline Loan:** any Borrowing of U.S. Base Rate Revolver Loans funded with Agent's funds, until such Borrowing is settled among the U.S. Lenders or repaid by the U.S. Borrowers.

**U.S. Top Golf Reserve:** a reserve established by Agent at Parent's request in accordance with the definition of Top Golf Proceeds, in an initial amount as of such establishment equal to the amount of the Top Golf Proceeds received as of the date of such establishment. The U.S. Top Golf Reserve (a) shall be reduced on a dollar for dollar basis for the amount expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)(ii)(B)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)(ii)(B)**; (b) may be permanently reduced from time to time upon Parent's written request to Agent; and (c) subject to Agent's written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such adjustment, no Default or Event of Default shall have occurred and be continuing, and (ii) immediately after such adjustment (for clarification, including after giving effect to any recalculation of the Canadian Borrowing Base and U.K. Borrowing Base upon giving effect to such adjustment), Canadian Availability and U.K. Availability would be a positive number), may be reallocated on a dollar for dollar basis to the Canadian Top Golf Reserve and/or the U.K. Top Golf Reserve upon Parent's written request to Agent; provided, however, that once reduced pursuant to clause (b) above, the U.S. Top Golf Reserve may not be increased. The parties agree that the U.S. Top Golf Reserve shall never be less than zero (-0-). For clarification, the aggregate amount of the Canadian Top Golf Reserve, the U.K. Top Golf Reserve, and the U.S. Top Golf Reserve may not exceed an amount equal to the aggregate amount of Top Golf Proceeds received by Parent as reflected in all Top Golf Proceeds Notices (less any amounts Parent elects to deposit into the Top Golf Blocked Account) less all amounts expended in connection with (x) any Common Stock Repurchase made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)** and less all

permanent reductions elected by Parent pursuant to clause (b) of each of the definitions of Canadian Top Golf Reserve, U.K. Top Golf Reserve, and U.S. Top Golf Reserve.

**U.S. Trademark Formula Amount:** as of any date of determination, the lesser of (a) 42% of the Net Orderly Liquidation Value of the Company Trademark; or (b) \$70,000,000 (such amount in this clause (b) to be permanently reduced by \$1,666,666.67 on the first day of each calendar quarter occurring after the Closing Date, commencing with the calendar quarter beginning on April 1, 2018, until such amount (for the avoidance of doubt, at all times) is less than or equal to the lesser of (i) \$50,000,000 and (ii) 30% of the Net Orderly Liquidation Value of the Company Trademark).

**U.S. Unused Line Fee Rate:** a per annum rate equal to 0.25%.

**Value:** (a) for Inventory, its Dollar Equivalent value determined on the basis of the lower of cost or market, calculated on a first-in, first-out basis, and excluding any portion of cost attributable to intercompany profit among Borrowers and their Affiliates; and (b) for an Account, its Dollar Equivalent face amount, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could be claimed by the Account Debtor or any other Person.

**Wage Earner Protection Act Reserve:** on any date of determination, a reserve established from time to time by Agent in its Credit Judgment in such amount as Agent determines reflects the amounts that may become due under the *Wage Earner Protection Program Act* (Canada) with respect to the employees of any Obligor employed in Canada which would give rise to a Lien with priority under Applicable Law over the Lien of Agent.

**Write-Down and Conversion Powers:** the write-down and conversion powers of the applicable EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which powers are described in the EU Bail-In Legislation Schedule.

**1.2 Accounting Terms.** Under the Loan Documents (except as otherwise specified herein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of Obligors delivered to Agent before the Original Agreement Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if Obligors' certified public accountants concur in such change, the change is disclosed to Agent, and **Section 10.3** and any other provision hereof are amended in a manner satisfactory to Required Lenders to take into account the effects of the change, if any. No calculations under the Loan Documents shall give effect to any such change prior to any such amendment.

**1.3 Uniform Commercial Code/PPSA.** As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: "Chattel Paper," "Commercial Tort Claim," "Equipment," "Goods," "Instrument," "Investment Property," "Letter-of-Credit Right" and "Supporting Obligation" and, as such terms relate to any such

Property of any Canadian Domiciled Obligor, such terms shall refer to such Property as defined in the PPSA (to the extent such terms are defined therein).

**1.4 Certain Matters of Construction.** The terms “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, “from” means “from and including,” and “to” and “until” each mean “to but excluding.” The terms “including” and “include” shall mean “including, without limitation” and, for purposes of each Loan Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to (a) laws or statutes include all related rules, regulations, interpretations, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Loan Documents); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and assigns; (f) except as otherwise specified herein, time of day means time of day at Agent’s notice address under **Section 14.3.1**; or (g) discretion of Agent, any Issuing Bank or any Lender mean the sole and absolute discretion of such Person. Except as expressly otherwise provided herein, all calculations of Value, fundings of Loans, issuances of Letters of Credit and payments of Obligations shall be in Dollars and, unless the context otherwise requires, all determinations (including calculations of Borrowing Base and financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Agent (and not necessarily calculated in accordance with GAAP). Obligors shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by Agent, any Issuing Bank or any Lender under any Loan Documents. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Whenever the phrase “to the best of an Obligor’s knowledge” or words of similar import are used in any Loan Documents, it means actual knowledge of a Senior Officer of such Obligor, or knowledge that a Senior Officer of such Obligor would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter to which such phrase relates.

**1.5 Calculations.** All references in the Loan Documents to Loans, Letters of Credit, Obligations, Borrowing Base components and other amounts shall be denominated in Dollars, unless expressly provided otherwise. The Dollar equivalent of any amounts denominated or reported under a Loan Document in a currency other than Dollars shall be determined by Agent on a daily basis, based on the current Spot Rate. Borrowers shall report Value and other Borrowing Base components to Agent in the currency invoiced by Obligors or shown in Obligors’ financial records, and unless expressly provided otherwise, shall deliver financial statements and calculate financial covenants in Dollars. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than Dollars, Obligors shall repay such Obligation in such other currency.

**1.6 Interpretation (Quebec).** For purposes of any Collateral located in the Province of Quebec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) “personal property” shall be deemed to include “movable property”, (b) “real property” shall be deemed to include “immovable property”, (c) “tangible property” shall be deemed to include “corporeal property”, (d) “intangible property” shall be deemed to include “incorporeal property”, (e) “security interest” and “mortgage” shall be deemed to include a “hypothec”, (f) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (g) all references to “perfection” of or “perfected” Liens shall be deemed to include a reference to the “opposability” of such Liens to third parties, (h) any “right of offset”, “right of setoff” or similar expression shall be deemed to include a “right of compensation”, (i) “goods” shall be deemed to include “corporeal movable property” other than chattel paper, documents of title, instruments, money and securities, (j) an “agent” shall be deemed to include a “mandatary” (k) “construction liens” shall be deemed to include “legal hypothecs”, (l) “joint and several” shall be deemed to include “solidary”, (m) “gross negligence or willful misconduct” shall be deemed to be “intentional or gross fault”, (n) “beneficial ownership” shall be deemed to include “ownership on behalf of another as mandatary”, (o) “servitude” shall be deemed to include “easement”, (p) “priority” shall be deemed to include “prior claim”, (q) “survey” shall be deemed to include “certificate of location and plan”, and (r) “fee simple title” shall be deemed to include “absolute ownership”. For purposes of greater certainty, the reference to the “Loan Agreement” in the deed of hypothec dated November 3, 2017 executed by the Canadian Borrower in favour of the Agent means this Agreement.

## SECTION 2. CREDIT FACILITIES

### 2.1 Revolver Commitments.

#### 2.1.1. Revolver Loans.

(a) **U.S. Revolver Loans to U.S. Borrowers.** Each U.S. Lender agrees, severally and not jointly with the other U.S. Lenders, upon the terms and subject to the conditions set forth herein, to make U.S. Revolver Loans to the U.S. Borrowers on any Business Day during the period from the Closing Date to the U.S. Revolver Commitment Termination Date, not to exceed in aggregate principal amount outstanding at any time such U.S. Lender’s U.S. Revolver Commitment at such time, which U.S. Revolver Loans may be repaid and reborrowed in accordance with the terms and provisions of this Agreement; provided, however, that such U.S. Lenders shall have no obligation to the U.S. Borrowers whatsoever to honor any request for a U.S. Revolver Loan on or after the U.S. Revolver Commitment Termination Date or if the amount of the proposed U.S. Revolver Loan exceeds U.S. Availability on the proposed funding date for such U.S. Revolver Loan. Each Borrowing of U.S. Revolver Loans shall be funded by the U.S. Lenders on a Pro Rata basis. The U.S. Revolver Loans shall bear interest as set forth in **Section 3.1**. Each U.S. Revolver Loan shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of U.S. Base Rate Revolver Loans or LIBOR Revolver Loans. The U.S. Revolver Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all

of the U.S. Facility Collateral. U.S. Borrowers shall be jointly and severally liable to pay all of the U.S. Revolver Loans. Each U.S. Revolver Loan shall be funded and repaid in Dollars.

(b) Canadian Revolver Loans to Canadian Borrower. Each Canadian Lender agrees, severally and not jointly with the other Canadian Lenders, upon the terms and subject to the conditions set forth herein, to make Canadian Revolver Loans to the Canadian Borrower on any Business Day during the period from the Closing Date to the Canadian Revolver Commitment Termination Date, not to exceed in aggregate principal amount outstanding at any time such Canadian Lender's Canadian Revolver Commitment at such time, which Canadian Revolver Loans may be repaid and reborrowed in accordance with the terms and provisions of this Agreement; provided, however, that such Canadian Lenders shall have no obligation to the Canadian Borrower whatsoever to honor any request for a Canadian Revolver Loan on or after the Canadian Revolver Commitment Termination Date or if the amount of the proposed Canadian Revolver Loan exceeds Canadian Availability on the proposed funding date for such Canadian Revolver Loan. Each Borrowing of Canadian Revolver Loans shall be funded by the Canadian Lenders on a Pro Rata basis. The Canadian Revolver Loans shall bear interest as set forth in **Section 3.1**. Each Canadian Revolver Loan shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of Canadian Prime Rate Loans or Canadian BA Rate Loans if denominated in Canadian Dollars, or shall consist entirely of Canadian Base Rate Loans or LIBOR Loans if denominated in Dollars. The Canadian Revolver Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all of the Canadian Facility Collateral. Each Canadian Revolver Loan shall be funded in Canadian Dollars or, at the option of the Borrower Agent, Dollars and repaid in the same currency as such underlying Canadian Revolver Loan was made.

(c) U.K. Revolver Loans to U.K. Borrower. Each U.K. Lender agrees, severally and not jointly with the other U.K. Lenders, upon the terms and subject to the conditions set forth herein, to make U.K. Revolver Loans to the U.K. Borrower on any Business Day during the period from the Closing Date to the U.K. Revolver Commitment Termination Date, not to exceed in aggregate principal amount outstanding at any time such U.K. Lender's U.K. Revolver Commitment at such time, which U.K. Revolver Loans may be repaid and reborrowed in accordance with the terms and provisions of this Agreement; provided, however, that such U.K. Lenders shall have no obligation to the U.K. Borrower whatsoever to honor any request for a U.K. Revolver Loan on or after the U.K. Revolver Commitment Termination Date or if the amount of the proposed U.K. Revolver Loan exceeds U.K. Availability on the proposed funding date for such U.K. Revolver Loan. Each Borrowing of U.K. Revolver Loans shall be funded by the U.K. Lenders on a Pro Rata basis. The U.K. Revolver Loans shall bear interest as set forth in **Section 3.1**. Each U.K. Revolver Loan shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of U.K. Base Rate Loans or LIBOR Loans (provided, that U.K. Base Rate Loans shall only be denominated in Dollars). The U.K. Revolver Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all of the U.K. Facility Collateral. Each U.K. Revolver Loan shall be funded in Dollars, British Pounds and/or Euro (in the case of LIBOR Loans) and Dollars only (in the case of U.K. Base Rate Loans) and shall be repaid in the same currency as such underlying U.K. Revolver Loan was made.

(d) **Maximum Total Revolver Exposure.** Notwithstanding anything to the contrary contained in this **Section 2.1.1**, in no event shall any Borrower be entitled to receive a Revolver Loan if, at the time of the proposed funding of such Loan (and after giving effect thereto and all pending requests for Loans), the Total Revolver Exposure exceeds (or would exceed) the lesser of the Maximum Facility Amount and the Revolver Commitments.

2.1.2. **Revolver Notes.** The Revolver Loans made by each Lender and interest accruing thereon shall be evidenced by the records of Agent and such Lender. At the request of any Lender, the U.S. Borrowers and/or the Canadian Borrower and/or the U.K. Borrower shall execute and deliver a U.S. Revolver Note and/or a Canadian Revolver Note and/or a U.K. Revolver Note, respectively, to such Lender in the amount of such Lender's applicable Revolver Commitment(s).

2.1.3. **Use of Proceeds.** The proceeds of Revolver Loans shall be used by Borrowers solely (a) to satisfy existing Debt on the Original Agreement Closing Date; (b) to pay fees and transaction expenses associated with the closing of this credit facility; (c) to pay Obligations in accordance with this Agreement; and (d) for working capital and other lawful corporate purposes of Borrowers. Borrowers shall not, directly or indirectly, use any Letter of Credit or Loan proceeds, nor use, lend, contribute or otherwise make available any Letter of Credit or Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any country or territory, that, at the time of issuance of the Letter of Credit or funding of the Loan, is the target of a Sanction; or (ii) in any manner that would result in a violation of a Sanction by any Person (including any Secured Party or other individual or entity participating in the transaction) or in violation of Anti-Corruption Laws.

2.1.4. **Voluntary Reduction or Termination of Revolver Commitments.**

(a) The Canadian Revolver Commitments shall terminate on the Canadian Revolver Commitment Termination Date, the U.K. Revolver Commitments shall terminate on the U.K. Revolver Commitment Termination Date, and the U.S. Revolver Commitments shall terminate on the U.S. Revolver Commitment Termination Date, in each case, unless sooner terminated in accordance with this Agreement. Upon at least 10 days' prior written notice to Agent from the Borrower Agent, (i) U.S. Borrowers may, at their option, terminate the U.S. Revolver Commitments and this credit facility and/or (ii) the Canadian Borrower may, at its option, terminate the Canadian Revolver Commitments and/or (iii) the U.K. Borrower may, at its option, terminate the U.K. Revolver Commitments, in each case, without premium or penalty (other than funding losses payable pursuant to **Section 3.9**). If the U.S. Borrowers elect to reduce to zero or terminate the U.S. Revolver Commitments pursuant to the previous sentence, the Canadian Revolver Commitments and U.K. Revolver Commitments shall automatically terminate concurrently with the termination of the U.S. Revolver Commitments. Any notice of termination given by Borrowers pursuant to this **Section 2.1.4** shall be irrevocable but may be conditioned on a refinancing or another material event. On the Canadian Revolver Commitment Termination Date, the Canadian Borrower shall make Full Payment of all Canadian Facility Obligations. On the U.K. Revolver Commitment Termination Date, the U.K. Borrower shall make Full Payment of all U.K. Facility Obligations. On the U.S. Revolver Commitment Termination Date, the U.S. Borrowers shall make Full Payment of all U.S. Facility Obligations.

(b) So long as (i) no Default or Event of Default then exists or would result therefrom, and (ii) no U.S. Overadvance, Canadian Overadvance, or U.K. Overadvance then exists or would result therefrom, the Borrower Agent may permanently and irrevocably reduce the Maximum Facility Amount by giving Agent at least 10 days' prior irrevocable written notice thereof from a Senior Officer of the Borrower Agent, which notice shall (A) specify the date (which shall be a Business Day) and amount of such reduction (which shall be in a minimum amount of \$10,000,000 and increments of \$5,000,000 in excess thereof), (B) specify the allocation of such reduction to, and the corresponding reductions of, each of the Maximum U.S. Facility Amount and/or the Maximum Canadian Facility Amount and/or the Maximum U.K. Facility Amount (and the respective U.S. Revolver Commitments, Canadian Revolver Commitments, and the U.K. Revolver Commitments of the U.S. Lenders, the Canadian Lenders, and the U.K. Lenders, respectively, in respect thereof, each of which shall be allocated to such Lenders on a Pro Rata basis at the time of such reduction) and (C) certify the satisfaction of the foregoing conditions precedent (including calculations thereof in reasonable detail) both as of the date of such certificate and as of the effective date of any such proposed reduction. In addition to and without limiting the generality of the foregoing, (1) each reduction in the Maximum U.S. Facility Amount and the U.S. Revolver Commitments shall in no event exceed U.S. Availability and shall be in a minimum amount of \$5,000,000 and increments of \$1,000,000 in excess thereof, (2) each reduction in the Maximum Canadian Facility Amount and the Canadian Revolver Commitments shall in no event exceed Canadian Availability and shall be in a minimum amount of \$5,000,000 and increments of \$1,000,000 in excess thereof, and (3) each reduction in the Maximum U.K. Facility Amount and the U.K. Revolver Commitments shall in no event exceed U.K. Availability and shall be in a minimum amount of \$5,000,000 and increments of \$1,000,000 in excess thereof.

(c) ~~Upon at least 10 days' prior written notice to Agent from the Borrower Agent, U.S. Borrowers may, at their option, permanently remove the U.S. Trademark Formula Amount from the calculation of the U.S. Borrowing Base, without premium or penalty (other than funding losses payable pursuant to Section 3.9) so long as (i) no Term Loans or Term Loan Commitments are outstanding, and (ii) no U.S. Overadvance, Canadian Overadvance, or U.K. Overadvance then exists or would result therefrom. Any notice of removal given by Borrowers pursuant to this Section 2.1.4(e) shall be irrevocable. Agent and the Lenders agree that Agent shall release any Liens with respect to the Obligors' Intellectual Property to the extent the U.S. Trademark Formula Amount is removed from the calculation of the U.S. Borrowing Base in accordance with this Section 2.1.4(e) and so long as no Default or Event of Default has occurred and is continuing.~~Intentionally Omitted.

(d) Upon at least 10 days' prior written notice to Agent from the Borrower Agent, U.S. Borrowers may, at their option, permanently remove the U.S. Real Estate Formula Amount from the calculation of the U.S. Borrowing Base, without premium or penalty (other than funding losses payable pursuant to Section 3.9). Any notice of removal given by Borrowers pursuant to this **Section 2.1.4(d)** shall be irrevocable. Agent and the Lenders agree that Agent shall release any Liens with respect to the Eligible Real Estate to the extent the U.S. Real Estate Formula Amount is removed from the calculation of the U.S. Borrowing Base in accordance with this **Section 2.1.4(d)** and so long as no Default or Event of Default has occurred and is continuing.

2.1.5. **Overadvances.** If the aggregate U.S. Revolver Loans exceed the U.S. Borrowing Base (a "U.S. Overadvance") at any time, the excess amount shall be payable by U.S.

Borrowers **on demand** by Agent, but all such U.S. Revolver Loans shall nevertheless constitute U.S. Facility Obligations secured by the U.S. Facility Collateral. If the aggregate Canadian Revolver Loans exceed the Canadian Borrowing Base (a “Canadian Overadvance”) at any time, the excess amount shall be payable by Canadian Borrower **on demand** by Agent, but all such Canadian Revolver Loans shall nevertheless constitute Canadian Facility Obligations secured by the Canadian Facility Collateral. If the aggregate U.K. Revolver Loans exceed the U.K. Borrowing Base (a “U.K. Overadvance”) at any time, the excess amount shall be payable by the U.K. Borrower **on demand** by Agent, but all such U.K. Revolver Loans shall nevertheless constitute U.K. Facility Obligations secured by the U.K. Facility Collateral. Agent may require the Applicable Lenders to honor requests for Overadvance Loans and to forbear from requiring the applicable Borrowers to cure an Overadvance, (a) when no other Event of Default is known to Agent, as long as (i) the Overadvance does not continue for more than 30 consecutive days (and no Overadvance may exist for at least five consecutive days thereafter before further Overadvance Loans are required), and (ii) the Overadvance is not known by Agent to exceed 7.5% of the U.S. Borrowing Base with respect to the U.S. Borrowers, 7.5% of the Canadian Borrowing Base with respect to the Canadian Borrower, or 7.5% of the U.K. Borrowing Base with respect to the U.K. Borrower; and (b) regardless of whether an Event of Default exists, if Agent discovers an Overadvance not previously known by it to exist, as long as from the date of such discovery the Overadvance does not continue for more than 30 consecutive days. In no event shall Overadvance Loans be required that would cause the outstanding U.S. Revolver Exposure to exceed the aggregate U.S. Revolver Commitments, the outstanding Canadian Revolver Exposure to exceed the aggregate Canadian Revolver Commitments, or the outstanding U.K. Revolver Exposure to exceed the aggregate U.K. Revolver Commitments. Any funding of an Overadvance Loan or sufferance of an Overadvance shall not constitute a waiver by Agent or Lenders of the Event of Default caused thereby. In no event shall any Borrower or other Obligor be deemed a beneficiary of this Section nor authorized to enforce any of its terms. Required Lenders may at any time revoke Agent’s authority to knowingly make further Overadvance Loans by written notice to Agent.

2.1.6. **Protective Advances.** Agent shall be authorized, in its discretion, at any time that any conditions in **Section 6** are not satisfied, and without regard to the aggregate U.S. Revolver Commitments, the Canadian Revolver Commitments, or the U.K. Revolver Commitments, to make U.S. Base Rate Revolver Loans, Canadian Prime Rate Loans, and U.K. Base Rate Loans, as applicable (each a “Protective Advance”) (a) up to an aggregate amount of (i) 10% of the aggregate Canadian Revolver Commitments (minus the aggregate amount of any outstanding Canadian Overadvances), with respect to the Canadian Borrower, (ii) 10% of the aggregate U.S. Revolver Commitments (minus the aggregate amount of any outstanding U.S. Overadvances), with respect to the U.S. Borrowers, or (iii) 10% of the aggregate U.K. Revolver Commitments (minus the aggregate amount of any outstanding U.K. Overadvances), with respect to the U.K. Borrower, in each case, outstanding at any time, if Agent deems such Loans necessary or desirable to preserve or protect Collateral, or to enhance the collectibility or repayment of Obligations; or (b) to pay any other amounts chargeable to Obligors under any Loan Documents, including costs, fees and expenses. Each Applicable Lender shall participate in each Protective Advance on a Pro Rata basis. Required Lenders may at any time revoke Agent’s authority to make further Protective Advances under clause (a) by written notice to Agent. Absent such revocation, Agent’s determination that funding of a Protective Advance is appropriate shall be conclusive. All Protective Advances made by Agent with respect to U.S. Borrowers shall be U.S. Facility

Obligations, secured by the U.S. Facility Collateral and shall be treated for all purposes as Extraordinary Expenses. All Protective Advances made by Agent with respect to Canadian Borrower shall be Canadian Facility Obligations, secured by the Canadian Facility Collateral and shall be treated for all purposes as Extraordinary Expenses. All Protective Advances made by Agent with respect to the U.K. Borrower shall be U.K. Facility Obligations, secured by the U.K. Facility Collateral and shall be treated for all purposes as Extraordinary Expenses. In no event shall Protective Advances be made by Agent if it would cause the outstanding U.S. Revolver Exposure to exceed the aggregate U.S. Revolver Commitments, the outstanding Canadian Revolver Exposure to exceed the aggregate Canadian Revolver Commitments, or the outstanding U.K. Revolver Exposure to exceed the aggregate U.K. Revolver Commitments.

**2.1.7. Increase in U.S. Revolver Commitments.** Borrowers may request an increase in the aggregate U.S. Revolver Commitments from time to time upon notice to Agent, as long as (a) the requested increase is in a minimum amount of \$10,000,000 and is offered on the same terms as the existing U.S. Revolver Commitments, except for fees mutually agreed upon by Borrowers and Agent, (b) increases under this Section do not exceed \$150,000,000 in the aggregate and no more than 3 increases are made, (c) no reduction in Revolver Commitments pursuant to **Section 2.1.4** has occurred prior to the requested increase, and (d) no Default or Event of Default shall have occurred and be continuing at the time of such increase or result therefrom. Agent shall promptly notify U.S. Lenders of the requested increase and, within 10 Business Days thereafter, each U.S. Lender shall notify Agent if and to what extent such Lender commits to increase its U.S. Revolver Commitment. Any U.S. Lender not responding within such period shall be deemed to have declined an increase. If U.S. Lenders fail to commit to the full requested increase, Eligible Assignees may issue additional U.S. Revolver Commitments and become U.S. Lenders hereunder. Agent may allocate, in its discretion, the increased U.S. Revolver Commitments among committing U.S. Lenders and, if necessary, Eligible Assignees. Provided the conditions set forth in **Section 6.2** are satisfied, total U.S. Revolver Commitments shall be increased by the requested amount (or such lesser amount committed by U.S. Lenders and Eligible Assignees) on a date agreed upon by Agent and Borrower Agent, but no later than 45 days following Borrowers' increase request. Agent, Borrowers, and new and existing Lenders shall execute and deliver such documents and agreements as Agent deems appropriate to evidence the increase in and allocations of U.S. Revolver Commitments. On the effective date of an increase, all outstanding U.S. Revolver Loans, U.S. LC Obligations and other exposures under the U.S. Revolver Commitments shall be reallocated among U.S. Lenders, and settled by Agent if necessary, in accordance with U.S. Lenders' adjusted shares of such U.S. Revolver Commitments.

## **2.2 U.K. Letter of Credit Facility.**

**2.2.1. Issuance of U.K. Letters of Credit.** U.K. Issuing Bank shall issue U.K. Letters of Credit from time to time on and after the Closing Date until 30 days prior to the Facility Termination Date (or until the U.K. Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(a) The U.K. Borrower acknowledges that U.K. Issuing Bank's issuance of any U.K. Letter of Credit is conditioned upon U.K. Issuing Bank's receipt of a LC Application with respect to the requested U.K. Letter of Credit, as well as such other instruments and agreements as U.K. Issuing Bank may customarily require for issuance of a letter of credit of similar type and

amount. U.K. Issuing Bank shall have no obligation to issue any U.K. Letter of Credit unless (i) U.K. Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender that is a U.K. Lender exists, such Lender or the U.K. Borrower has entered into arrangements satisfactory to Agent and U.K. Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, U.K. Issuing Bank receives written notice from U.K. Required Lenders that a LC Condition has not been satisfied, U.K. Issuing Bank shall not issue the requested U.K. Letter of Credit. Prior to receipt of any such notice, U.K. Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(b) U.K. Letters of Credit may be requested by the U.K. Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. The renewal or extension of any U.K. Letter of Credit shall be treated as the issuance of a new U.K. Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of U.K. Issuing Bank.

(c) The U.K. Borrower assumes all risks of the acts, omissions or misuses of any U.K. Letter of Credit by the beneficiary. In connection with issuance of any U.K. Letter of Credit, none of Agent, Issuing Banks or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a U.K. Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and the U.K. Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any U.K. Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Banks, Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of U.K. Issuing Bank under the Loan Documents shall be cumulative. U.K. Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims against the U.K. Borrower are discharged with proceeds of any U.K. Letter of Credit.

(d) In connection with its administration of and enforcement of rights or remedies under any U.K. Letters of Credit or LC Documents, U.K. Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by U.K. Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. U.K. Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. U.K. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to U.K. Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

## **2.2.2. Reimbursement; Participations.**

(a) If U.K. Issuing Bank honors any request for payment under a U.K. Letter of Credit, the U.K. Borrower shall pay to U.K. Issuing Bank, on the same day ("U.K. Reimbursement Date"), the amount paid by U.K. Issuing Bank under such U.K. Letter of Credit in the same currency in which the Letter of Credit was denominated unless otherwise specified by Agent or U.K. Issuing Bank (at their respective option) that it requires payment in Dollars, British Pounds or Euros calculated at the Spot Rate, together with interest at the interest rate for U.K. Base Rate Loans from the U.K. Reimbursement Date until payment by the U.K. Borrower. The obligation of the U.K. Borrower to reimburse U.K. Issuing Bank for any payment made under a U.K. Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any U.K. Letter of Credit or the existence of any claim, setoff, defense or other right that the U.K. Borrower may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, the U.K. Borrower shall be deemed to have requested a Borrowing of a LIBOR Revolver Loan (the initial Interest Period of which shall be 30 days commencing on the relevant Reimbursement Date) in an amount necessary to pay all amounts due U.K. Issuing Bank on that U.K. Reimbursement Date and each U.K. Lender agrees to fund its Pro Rata share of such Borrowing whether or not the U.K. Revolver Commitments have terminated, a U.K. Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied. In the event that (i) a drawing denominated in a foreign currency (other than Dollars, British Pounds and Euros) (such foreign currency, a "U.K. Reimbursed Foreign Currency") is to be reimbursed in Dollars, British Pounds or Euros pursuant to the first sentence in this **Section 2.2.2(a)**; and (ii) the Dollars, British Pounds or Euros amount, as applicable, paid by the U.K. Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the U.K. Reimbursed Foreign Currency equal to the drawing, the U.K. Borrower agrees, as a separate and independent obligation, to indemnify U.K. Issuing Bank for the loss resulting from its inability on that date to purchase the U.K. Reimbursed Foreign Currency in the full amount of the drawing.

(b) Upon issuance of a U.K. Letter of Credit, each U.K. Lender shall be deemed to have irrevocably and unconditionally purchased from U.K. Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all U.K. LC Obligations relating to the U.K. Letter of Credit. If U.K. Issuing Bank makes any payment under a U.K. Letter of Credit and the U.K. Borrower does not reimburse such payment on the U.K. Reimbursement Date, Agent shall promptly notify U.K. Lenders and each U.K. Lender shall promptly (within one Business Day) and unconditionally pay to Agent, for the benefit of U.K. Issuing Bank, the U.K. Lender's Pro Rata share of such payment in the same currency as required of the U.K. Borrower in accordance with **Section 2.2.2(a)**. Upon request by a U.K. Lender, U.K. Issuing Bank shall furnish copies of any U.K. Letters of Credit and LC Documents in its possession at such time.

(c) The obligation of each U.K. Lender to make payments to Agent for the account of U.K. Issuing Bank in connection with U.K. Issuing Bank's payment under a U.K. Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a U.K. Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein

being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Obligor may have with respect to any Obligations. U.K. Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by the U.K. Borrower or other Person of any obligations under any LC Documents. U.K. Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Obligor. U.K. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct. U.K. Issuing Bank shall not have any liability to any Lender if U.K. Issuing Bank refrains from any action under a Letter of Credit or LC Documents until it receives written instructions from U.K. Required Lenders.

2.2.3. Cash Collateral. If any U.K. LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b) that U.K. Availability is less than zero, or (c) within 10 Business Days prior to the U.K. Revolver Commitment Termination Date, then the U.K. Borrower shall, at U.K. Issuing Bank's or Agent's request, Cash Collateralize the stated amount of all outstanding U.K. Letters of Credit and pay to U.K. Issuing Bank the amount of all other U.K. LC Obligations. The U.K. Borrower shall, **on demand** by U.K. Issuing Bank or Agent from time to time, Cash Collateralize the Fronting Exposure of any Defaulting Lender which is a U.K. Lender. If the U.K. Borrower fails to provide any Cash Collateral as required hereunder, U.K. Lenders may (and shall upon direction of Agent) advance, as U.K. Revolver Loans, the amount of the Cash Collateral required (whether or not the U.K. Revolver Commitments have terminated, a U.K. Overadvance exists or the conditions in **Section 6** are satisfied).

2.2.4. Resignation of U.K. Issuing Bank. U.K. Issuing Bank may resign at any time upon notice to Agent and the U.K. Borrower. On the effective date of such resignation, U.K. Issuing Bank shall have no further obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and obligations of an Issuing Bank hereunder, including under **Sections 2.2, 12.6 and 14.2**, relating to any Letter of Credit issued prior to such date. Agent shall promptly appoint a replacement U.K. Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to the U.K. Borrower.

### **2.3 U.S. Letter of Credit Facility.**

2.3.1. Issuance of U.S. Letters of Credit. U.S. Issuing Bank shall issue U.S. Letters of Credit from time to time until 30 days prior to the Facility Termination Date (or until the U.S. Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(a) Each U.S. Borrower acknowledges that U.S. Issuing Bank's issuance of any U.S. Letter of Credit is conditioned upon U.S. Issuing Bank's receipt of a LC Application with respect to the requested U.S. Letter of Credit, as well as such other instruments and agreements as U.S. Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. U.S. Issuing Bank shall have no obligation to issue any U.S. Letter of Credit unless (i) U.S. Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender that is a U.S. Lender exists, such Lender or U.S. Borrowers have entered into arrangements satisfactory to Agent and U.S. Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, U.S. Issuing Bank receives written notice from U.S. Required Lenders that a LC Condition has not been satisfied, U.S. Issuing Bank shall not issue the requested U.S. Letter of Credit. Prior to receipt of any such notice, U.S. Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(b) U.S. Letters of Credit may be requested by a U.S. Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. The renewal or extension of any U.S. Letter of Credit shall be treated as the issuance of a new U.S. Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of U.S. Issuing Bank.

(c) U.S. Borrowers assume all risks of the acts, omissions or misuses of any U.S. Letter of Credit by the beneficiary. In connection with issuance of any U.S. Letter of Credit, none of Agent, Issuing Banks or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a U.S. Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and a U.S. Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any U.S. Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Banks, Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of U.S. Issuing Bank under the Loan Documents shall be cumulative. U.S. Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims against U.S. Borrowers are discharged with proceeds of any U.S. Letter of Credit.

(d) In connection with its administration of and enforcement of rights or remedies under any U.S. Letters of Credit or LC Documents, U.S. Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by U.S. Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. U.S. Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in

any action taken in good faith reliance upon, any advice given by such experts. U.S. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to U.S. Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

(e) Obligors, Agent and Lenders hereby acknowledge and agree that all Existing Letters of Credit shall constitute U.S. Letters of Credit under this Agreement on and after the Original Agreement Closing Date with the same effect as if such Existing Letters of Credit were issued by U.S. Issuing Bank at the request of U.S. Borrowers on the Original Agreement Closing Date.

### **2.3.2. Reimbursement; Participations.**

(a) If U.S. Issuing Bank honors any request for payment under a U.S. Letter of Credit, U.S. Borrowers shall pay to U.S. Issuing Bank, on the same day (“U.S. Reimbursement Date”), the amount paid by U.S. Issuing Bank under such U.S. Letter of Credit in the same currency in which the Letter of Credit was denominated unless otherwise specified by Agent or U.S. Issuing Bank (at their respective option) that it requires payment in Dollars calculated at the Spot Rate, together with interest at the interest rate for U.S. Base Rate Revolver Loans from the U.S. Reimbursement Date until payment by U.S. Borrowers. The obligation of U.S. Borrowers to reimburse U.S. Issuing Bank for any payment made under a U.S. Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any U.S. Letter of Credit or the existence of any claim, setoff, defense or other right that U.S. Borrowers may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, U.S. Borrowers shall be deemed to have requested a Borrowing of U.S. Base Rate Revolver Loans in an amount necessary to pay all amounts due U.S. Issuing Bank on any U.S. Reimbursement Date and each U.S. Lender agrees to fund its Pro Rata share of such Borrowing whether or not the U.S. Revolver Commitments have terminated, a U.S. Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied. In the event that (i) a drawing denominated in a foreign currency (such foreign currency, a “U.S. Reimbursed Foreign Currency”) is to be reimbursed in Dollars pursuant to the first sentence in this **Section 2.3.2(a)**; and (ii) the Dollars amount paid by the U.S. Borrowers shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the U.S. Reimbursed Foreign Currency equal to the drawing, the U.S. Borrowers agree, as a separate and independent obligation, to indemnify U.S. Issuing Bank for the loss resulting from its inability on that date to purchase the U.S. Reimbursed Foreign Currency in the full amount of the drawing.

(b) Upon issuance of a U.S. Letter of Credit, each U.S. Lender shall be deemed to have irrevocably and unconditionally purchased from U.S. Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all U.S. LC Obligations relating to the U.S. Letter of Credit. If U.S. Issuing Bank makes any payment under a U.S. Letter of Credit and U.S. Borrowers do not reimburse such payment on the U.S. Reimbursement Date, Agent shall promptly notify U.S. Lenders and each U.S. Lender shall promptly (within one Business Day) and unconditionally pay to Agent, for the benefit of U.S. Issuing Bank, the U.S. Lender’s Pro Rata share of such payment in the same currency as required of the U.S. Borrowers in accordance with

**Section 2.3.2(a).** Upon request by a U.S. Lender, U.S. Issuing Bank shall furnish copies of any U.S. Letters of Credit and LC Documents in its possession at such time.

(c) The obligation of each U.S. Lender to make payments to Agent for the account of U.S. Issuing Bank in connection with U.S. Issuing Bank's payment under a U.S. Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a U.S. Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Obligor may have with respect to any Obligations. U.S. Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by any U.S. Borrower or other Person of any obligations under any LC Documents. U.S. Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Obligor. U.S. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct. U.S. Issuing Bank shall not have any liability to any Lender if U.S. Issuing Bank refrains from any action under a Letter of Credit or LC Documents until it receives written instructions from U.S. Required Lenders.

2.3.3. Cash Collateral. If any U.S. LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b) that U.S. Availability is less than zero, or (c) within 10 Business Days prior to the U.S. Revolver Commitment Termination Date, then U.S. Borrowers shall, at U.S. Issuing Bank's or Agent's request, Cash Collateralize the stated amount of all outstanding U.S. Letters of Credit and pay to U.S. Issuing Bank the amount of all other U.S. LC Obligations. U.S. Borrowers shall, **on demand** by U.S. Issuing Bank or Agent from time to time, Cash Collateralize the Fronting Exposure of any Defaulting Lender which is a U.S. Lender. If U.S. Borrowers fail to provide any Cash Collateral as required hereunder, U.S. Lenders may (and shall upon direction of Agent) advance, as U.S. Revolver Loans, the amount of the Cash Collateral required (whether or not the U.S. Revolver Commitments have terminated, a U.S. Overadvance exists or the conditions in **Section 6** are satisfied).

2.3.4. Resignation of U.S. Issuing Bank. U.S. Issuing Bank may resign at any time upon notice to Agent and U.S. Borrowers. On the effective date of such resignation, U.S. Issuing Bank shall have no further obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and obligations of an Issuing Bank hereunder, including under **Sections 2.3, 12.6 and 14.2**, relating to any Letter of Credit issued prior

to such date. Agent shall promptly appoint a replacement U.S. Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to U.S. Borrowers.

## **2.4 Canadian Letter of Credit Facility.**

2.4.1. Issuance of Canadian Letters of Credit. Canadian Issuing Bank shall issue Canadian Letters of Credit from time to time until 30 days prior to the Facility Termination Date (or until the Canadian Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(a) Canadian Borrower acknowledges that Canadian Issuing Bank's issuance of any Canadian Letter of Credit is conditioned upon Canadian Issuing Bank's receipt of a LC Application with respect to the requested Canadian Letter of Credit, as well as such other instruments and agreements as Canadian Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. Canadian Issuing Bank shall have no obligation to issue any Canadian Letter of Credit unless (i) Canadian Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender that is a Canadian Lender exists, such Lender or Canadian Borrower has entered into arrangements satisfactory to Agent and Canadian Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, Canadian Issuing Bank receives written notice from Canadian Required Lenders that a LC Condition has not been satisfied, Canadian Issuing Bank shall not issue the requested Canadian Letter of Credit. Prior to receipt of any such notice, Canadian Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(b) Canadian Letters of Credit may be requested by Canadian Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. The renewal or extension of any Canadian Letter of Credit shall be treated as the issuance of a new Canadian Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of Canadian Issuing Bank.

(c) Canadian Borrower assumes all risks of the acts, omissions or misuses of any Canadian Letter of Credit by the beneficiary. In connection with issuance of any Canadian Letter of Credit, none of Agent, Issuing Banks or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Canadian Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and Canadian Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Canadian Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Banks, Agent or any Lender, including any act or

omission of a Governmental Authority. The rights and remedies of Canadian Issuing Bank under the Loan Documents shall be cumulative. Canadian Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims against Canadian Borrower are discharged with proceeds of any Canadian Letter of Credit.

(d) In connection with its administration of and enforcement of rights or remedies under any Canadian Letters of Credit or LC Documents, Canadian Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by Canadian Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Canadian Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. Canadian Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to Canadian Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

#### **2.4.2. Reimbursement; Participations.**

(a) If Canadian Issuing Bank honors any request for payment under a Canadian Letter of Credit, Canadian Borrower shall pay to Canadian Issuing Bank, on the same day (“Canadian Reimbursement Date”), the amount paid by Canadian Issuing Bank under such Canadian Letter of Credit in the same currency in which the Letter of Credit was denominated unless otherwise specified by Agent or Canadian Issuing Bank (at their respective option) that it requires payment in Dollars or Canadian Dollars calculated at the Spot Rate, together with interest at the interest rate for Canadian Prime Rate Loans from the Canadian Reimbursement Date until payment by Canadian Borrower. The obligation of Canadian Borrower to reimburse Canadian Issuing Bank for any payment made under a Canadian Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Canadian Letter of Credit or the existence of any claim, setoff, defense or other right that Canadian Borrower may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, Canadian Borrower shall be deemed to have requested a Borrowing of Canadian Prime Rate Loans in an amount necessary to pay all amounts due Canadian Issuing Bank on any Canadian Reimbursement Date and each Canadian Lender agrees to fund its Pro Rata share of such Borrowing whether or not the Canadian Revolver Commitments have terminated, a Canadian Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied. In the event that (i) a drawing denominated in a foreign currency (other than Dollars or Canadian Dollars) (such foreign currency, a “Canadian Reimbursed Foreign Currency”) is to be reimbursed in Dollars or Canadian Dollars pursuant to the first sentence in this **Section 2.4.2(a)**; and (ii) the Dollars or Canadian Dollars amount, as applicable, paid by Canadian Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Canadian Reimbursed Foreign Currency equal to the drawing, Canadian Borrower agrees, as a separate and independent obligation, to indemnify Canadian Issuing Bank for the loss resulting from its inability on that date to purchase the Canadian Reimbursed Foreign Currency in the full amount of the drawing.

(b) Upon issuance of a Canadian Letter of Credit, each Canadian Lender shall be deemed to have irrevocably and unconditionally purchased from Canadian Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all Canadian LC Obligations relating to the Canadian Letter of Credit. If Canadian Issuing Bank makes any payment under a Canadian Letter of Credit and Canadian Borrower does not reimburse such payment on the Canadian Reimbursement Date, Agent shall promptly notify Canadian Lenders and each Canadian Lender shall promptly (within one Business Day) and unconditionally pay to Agent, for the benefit of Canadian Issuing Bank, the Canadian Lender's Pro Rata share of such payment in the same currency as required of the Canadian Borrower in accordance with **Section 2.4.2(a)**. Upon request by a Canadian Lender, Canadian Issuing Bank shall furnish copies of any Canadian Letters of Credit and LC Documents in its possession at such time.

(c) The obligation of each Canadian Lender to make payments to Agent for the account of Canadian Issuing Bank in connection with Canadian Issuing Bank's payment under a Canadian Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Canadian Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Obligor may have with respect to any Obligations. Canadian Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by Canadian Borrower or other Person of any obligations under any LC Documents. Canadian Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Obligor. Canadian Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct. Canadian Issuing Bank shall not have any liability to any Lender if Canadian Issuing Bank refrains from any action under a Letter of Credit or LC Documents until it receives written instructions from Canadian Required Lenders.

2.4.3. **Cash Collateral**. If any Canadian LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b) that Canadian Availability is less than zero, or (c) within 10 Business Days prior to the Canadian Revolver Commitment Termination Date, then Canadian Borrower shall, at Canadian Issuing Bank's or Agent's request, Cash Collateralize the stated amount of all outstanding Canadian Letters of Credit and pay to Canadian Issuing Bank the amount of all other Canadian LC Obligations. Canadian Borrower shall, **on demand** by Canadian Issuing Bank or Agent from time to time, Cash Collateralize the Fronting Exposure of any Defaulting Lender which is a Canadian Lender. If Canadian Borrower fails to provide any Cash Collateral as required hereunder, Canadian Lenders may (and shall upon direction of Agent) advance, as Canadian Revolver Loans,

the amount of the Cash Collateral required (whether or not the Canadian Revolver Commitments have terminated, a Canadian Overadvance exists or the conditions in **Section 6** are satisfied).

2.4.4. Resignation of Canadian Issuing Bank. Canadian Issuing Bank may resign at any time upon notice to Agent and Canadian Borrower. On the effective date of such resignation, Canadian Issuing Bank shall have no further obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and obligations of an Issuing Bank hereunder, including under **Sections 2.4, 12.6 and 14.2**, relating to any Letter of Credit issued prior to such date. Agent shall promptly appoint a replacement Canadian Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to Canadian Borrower.

## 2.5 Term Loans.

2.5.1. Term Loans to U.S. Borrowers. Each U.S. Lender agrees, severally (and not jointly) on a Pro Rata basis up to its Term Loan Commitment, upon the terms and subject to the conditions set forth herein, to make a one-time Term Loan to the U.S. Borrowers on any Business Day during the period from the Closing Date to the date that is six months after the Closing Date; provided, however, that such U.S. Lenders shall have no obligation to the U.S. Borrowers whatsoever to honor any request for a Term Loan on or after the Term Loan Commitment Termination Date or to the extent the aggregate Term Loans will exceed the Term Loan Cap on the proposed funding date of the Term Loans (in which case such U.S. Lenders shall be obligated to fund the Term Loans in an amount up to the Term Loan Cap). The Term Loans shall bear interest as set forth in **Section 3.1**. The Term Loans shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of Base Rate Term Loans or LIBOR Term Loans. The Term Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all of the U.S. Facility Collateral. U.S. Borrowers shall be jointly and severally liable to pay all of the Term Loans. The Term Loans shall be funded and repaid in Dollars. For clarification, once repaid, the Term Loans may not be reborrowed.

2.5.2. Term Notes. The Term Loans made by each U.S. Lender and interest accruing thereon shall be evidenced by the records of Agent and such Lender. At the request of any U.S. Lender, the U.S. Borrowers shall execute and deliver a promissory note to such Lender, evidencing its Term Loans.

2.5.3. Use of Term Loan Proceeds. The proceeds of the Term Loans shall be used by U.S. Borrowers solely (a) to pay Obligations in accordance with this Agreement; and (b) for working capital and other lawful corporate purposes of U.S. Borrowers.

2.5.4. Termination of Term Loan Commitments. The Term Loan Commitments shall terminate on the Term Loan Commitment Termination Date unless sooner terminated in accordance with this Agreement. Any unused Term Loan Commitment shall terminate on the date of the making of the Term Loans. Upon at least 10 days' prior written notice to Agent from the Borrower Agent, U.S. Borrowers may, at their option, terminate the Term Loan Commitments without premium or penalty. Any notice of termination given by Borrowers pursuant to this **Section 2.5.4** shall be irrevocable but may be conditioned on a refinancing or another material

## SECTION 3. INTEREST, FEES AND CHARGES

### 3.1 Interest.

#### 3.1.1. Rates and Payment of Interest.

(a) The Obligations shall bear interest (i) if a U.S. Base Rate Revolver Loan, at the U.S. Base Rate in effect from time to time, plus the Applicable Margin, (ii) if a LIBOR Revolver Loan, at LIBOR for the applicable Interest Period, plus the Applicable Margin plus with respect to any U.K. Revolver Loan that is a LIBOR Loan, any Mandatory Costs; (iii) if a Canadian Prime Rate Loan, at the Canadian Prime Rate in effect from time to time, plus the Applicable Margin, (iv) if a Canadian Base Rate Loan, at the Canadian Base Rate in effect from time to time, plus the Applicable Margin, (v) if a Canadian BA Rate Loan, at the Canadian BA Rate for the applicable Interest Period, plus the Applicable Margin, (vi) if a U.K. Base Rate Loan, at the U.K. Base Rate in effect from time to time, plus the Applicable Margin, (vii) if a Base Rate Term Loan, at the U.S. Base Rate in effect from time to time, plus the Applicable Margin, (viii) if a LIBOR Term Loan, at LIBOR for the applicable Interest Period, plus the Applicable Margin, (ix) if any other U.S. Facility Obligation (including, to the extent permitted by law, interest not paid when due), at the U.S. Base Rate in effect from time to time, plus the Applicable Margin for U.S. Base Rate Revolver Loans; (x) if any other Canadian Facility Obligation (including, to the extent permitted by law, interest not paid when due), at the Canadian Prime Rate in effect from time to time, plus the Applicable Margin for Canadian Prime Rate Loans; and (xi) if any other U.K. Facility Obligation (including, to the extent permitted by law, interest not paid when due), at the U.K. Base Rate in effect from time to time, plus the Applicable Margin for U.K. Base Rate Loans. Interest shall accrue from the date the Loan is advanced or the Obligation is incurred or payable, until paid by the applicable Borrower(s). If a Loan is repaid on the same day made, one day's interest shall accrue.

(b) Interest on the Revolver Loans shall be payable in the currency (*i.e.*, Dollars, Canadian Dollars, British Pounds or Euro, as the case may be) of the underlying Revolver Loan (which shall be Dollars only in the case of any U.K. Base Rate Loan).

(c) During an Insolvency Proceeding with respect to any Obligor, or during any other Event of Default if Agent or Required Lenders in their discretion so elect, Obligations shall bear interest at the Default Rate (whether before or after any judgment). Each Obligor acknowledges that the cost and expense to Agent and Lenders due to an Event of Default are difficult to ascertain and that the Default Rate is a fair and reasonable estimate to compensate Agent and Lenders for this.

(d) Interest accrued on the Loans shall be due and payable (i) on the last day of the relevant Interest Period with respect to Interest Period Loans (or in the case of an Interest Period Loan with an Interest Period of more than 90 days' duration, on each quarterly anniversary of the first day of such Interest Period) or, in arrears on the first day of each month with respect to Base Rate Loans, and (ii) on any date of prepayment, with respect to the principal amount of Loans being prepaid. In addition, interest accrued on the Canadian Revolver Loans shall be due and

payable in arrears on the Canadian Revolver Commitment Termination Date, interest accrued on the U.S. Revolver Loans shall be due and payable in arrears on the U.S. Revolver Commitment Termination Date, and interest accrued on the U.K. Revolver Loans shall be due and payable in arrears on the U.K. Revolver Commitment Termination Date. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents and, if no payment date is specified, shall be due and payable **on demand**. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable **on demand**.

### 3.1.2. Application of LIBOR to Outstanding Loans.

(a) Borrowers may on any Business Day, subject to delivery of a Notice of Conversion/Continuation, elect to convert any portion of the U.S. Base Rate Loans, the Canadian Base Rate Loans, or the U.K. Base Rate Loans, as applicable, to, or to continue any LIBOR Loan at the end of its Interest Period as, a LIBOR Loan; provided that, in the case of U.K. Base Rate Loans only, portions of such Loans may be converted to a LIBOR Loan denominated in Dollars only. During any Default or Event of Default, Agent may (and shall at the direction of Required Lenders) declare that no Loan may be made, converted or continued as a LIBOR Loan.

(b) Whenever Borrowers desire to convert or continue Loans as LIBOR Loans, Borrower Agent shall give Agent a Notice of Conversion/Continuation, no later than 11:00 a.m. at least three Business Days (and at least four Business Days in the case of a U.K. Revolver Loan) before the requested conversion or continuation date. Promptly after receiving any such notice, Agent shall notify each Applicable Lender (or Lenders with outstanding Term Loans if related to the Term Loans) thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be 30 days if not specified). If, upon the expiration of any Interest Period in respect of any LIBOR Loans, Borrower Agent shall have failed to deliver a Notice of Conversion/Continuation, Borrowers shall be deemed to have elected to convert such Loans into U.S. Base Rate Loans (if owing by the U.S. Borrowers), Canadian Base Rate Loans (if owing by the Canadian Borrower), or a U.K. Base Rate Loan (if owing by the U.K. Borrower) if that LIBOR Loan was denominated in Dollars, or (as the case may be) a LIBOR Loan (the initial Interest Period of which shall be 30 days commencing on the date of expiration of the Interest Period applicable to that LIBOR Loan) if that LIBOR Loan was denominated in British Pounds or Euro.

### 3.1.3. Application of Canadian BA Rate to Outstanding Loans.

(a) Canadian Borrower may on any Business Day, subject to delivery of a Notice of Conversion/Continuation and the other terms hereof, elect to convert any portion of the Canadian Prime Rate Loans, or to continue any Canadian BA Rate Loan at the end of its Interest Period as, a Canadian BA Rate Loan. During any Default or Event of Default, Agent may (and shall at the direction of Required Lenders) declare that no Loan may be made, converted or continued as a Canadian BA Rate Loan.

(b) Whenever Canadian Borrower desires to convert or continue Loans as Canadian BA Rate Loans, Borrower Agent shall give Agent a Notice of Conversion/Continuation, no later than 11:00 a.m. at least three Business Days before the requested conversion or

continuation date. Promptly after receiving any such notice, Agent shall notify each Canadian Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be one month if not specified). If, upon the expiration of any Interest Period in respect of any Canadian BA Rate Loans, Borrower Agent shall have failed to deliver a Notice of Conversion/Continuation with respect thereto as required above, Canadian Borrower shall be deemed to have elected to convert such Loans into Canadian Prime Rate Loans.

3.1.4. Interest Periods. In connection with the making, conversion or continuation of any LIBOR Loans or Canadian BA Rate Loans, Borrower Agent shall select an interest period ("Interest Period") to apply, which interest period shall be 30, 60, 90 or 180 days; provided, however, that:

(a) the Interest Period shall commence on the date the Loan is made or continued as, or converted into, a LIBOR Loan or Canadian BA Rate Loan, and shall expire on the numerically corresponding day in the calendar month at its end;

(b) if any Interest Period commences on a day for which there is no corresponding day in the calendar month at its end or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month; and if any Interest Period would expire on a day that is not a Business Day, the period shall expire on the next Business Day; and

(c) no Interest Period shall extend beyond: (i) the U.S. Revolver Commitment Termination Date in the case of any Revolving Loan owing by the U.S. Borrowers, (ii) the Canadian Revolver Commitment Termination Date in the case of any Loan owing by the Canadian Borrower, (iii) the U.K. Revolver Commitment Termination Date in the case of any Loan owing by the U.K. Borrower, and (iv) the Term Loan Maturity Date in the case of any Term Loan owing by the U.S. Borrowers. No Interest Period for a LIBOR Term Loan may be established that would require repayment before the end of an Interest Period in order to make any scheduled principal payment on Term Loans.

3.1.5. Interest Rate Not Ascertainable. If Agent shall determine that, on any date for determining LIBOR or the Canadian BA Rate, due to any circumstance affecting the London interbank market or the Canadian interbank bankers' acceptances market, respectively, adequate and fair means do not exist for ascertaining such rate on the basis provided herein, then Agent shall immediately notify the Borrower Agent of such determination. Until Agent notifies the Borrower Agent that such circumstance no longer exists, the obligation of the Lenders to make LIBOR Loans or Canadian BA Rate Loans, as applicable, shall be suspended, and no further Loans may be converted into or continued as LIBOR Loans or Canadian BA Rate Loans, as applicable.

### **3.2 Fees.**

#### **3.2.1. Unused Line Fee.**

(a) U.S. Borrowers shall pay to Agent, for the Pro Rata benefit of U.S. Lenders, a fee equal to the U.S. Unused Line Fee Rate times the amount by which the U.S. Revolver

Commitments exceed the average daily balance of U.S. Revolver Loans and stated amount of U.S. Letters of Credit during any month. Such fee shall be payable in arrears, on the first day of each month and on the U.S. Revolver Commitment Termination Date.

(b) Canadian Borrower shall pay to Agent, for the Pro Rata benefit of Canadian Lenders, a fee equal to the Canadian Unused Line Fee Rate times the amount by which the Canadian Revolver Commitments exceed the average daily balance of Canadian Revolver Loans and stated amount of Canadian Letters of Credit during any month. Such fee shall be payable in arrears, on the first day of each month and on the Canadian Revolver Commitment Termination Date.

(c) The U.K. Borrower shall pay to Agent, for the Pro Rata benefit of U.K. Lenders, a fee equal to the U.K. Unused Line Fee Rate times the amount by which the U.K. Revolver Commitments exceed the average daily balance of U.K. Revolver Loans and stated amount of U.K. Letters of Credit during any month. Such fee shall be payable in arrears, on the first day of each month and on the U.K. Revolver Commitment Termination Date.

3.2.2. **U.S. LC Facility Fees.** The U.S. Borrowers shall pay (a) to Agent, for the Pro Rata benefit of the U.S. Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for LIBOR Revolver Loans times the average daily stated amount of U.S. Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the stated amount of each U.S. Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (c) to the U.S. Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of U.S. Letters of Credit, which charges shall be paid as and when incurred. At the election of Agent or the U.S. Required Lenders, during an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum.

3.2.3. **Canadian LC Facility Fees.** The Canadian Borrower shall pay (a) to Agent, for the Pro Rata benefit of the Canadian Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for Canadian BA Rate Loans times the average daily stated amount of Canadian Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the stated amount of each Canadian Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (c) to the Canadian Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Canadian Letters of Credit, which charges shall be paid as and when incurred. At the election of Agent or the Canadian Required Lenders, during an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum.

3.2.4. **U.K. LC Facility Fees.** The U.K. Borrower shall pay (a) to Agent, for the Pro Rata benefit of the U.K. Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for LIBOR Revolver Loans times the average daily stated amount of U.K. Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the stated amount of each U.K. Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and

(c) to the U.K. Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of U.K. Letters of Credit, which charges shall be paid as and when incurred. At the election of Agent or the U.K. Required Lenders, during an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum.

3.2.5. **U.S. Term Loan Fees.** U.S. Borrowers shall pay to Agent, for the Pro Rata benefit of U.S. Lenders with Term Loan Commitments, a fee equal to the Term Loan Unused Commitment Fee Rate times the Term Loan Commitments during each month from the Closing to the earlier of (a) date of the making of the Term Loans or (b) Term Loan Commitment Termination Date. Such fee shall be payable in arrears, on the first day of each month and on the earlier of (x) date of the making of the Term Loans or (y) the Term Loan Commitment Termination Date.

3.2.6. **Other Fees.** Borrowers shall pay such other fees as described in the Fee Letters.

**3.3 Computation of Interest, Fees, Yield Protection.** All interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 360 days, or, in the case of (a) interest based on the Canadian Prime Rate or Canadian BA Rate or (b) a Revolver Loan made in British Pounds, on the basis of a 365 day year, as the case may be. Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by any Borrower under **Section 3.4, 3.5, 3.7, 3.9 or 5.9**, submitted to the Borrower Agent by Agent or the affected Lender or Issuing Bank, as applicable, shall be final, conclusive and binding for all purposes, absent manifest error, and the Borrowers shall pay such amounts to the appropriate party within 10 days following receipt of the certificate. For the purposes of the *Interest Act* (Canada), the yearly rate of interest to which any rate calculated on the basis of a period of time different from the actual number of days in the year (360 days, for example) is equivalent is the stated rate multiplied by the actual number of days in the year (365 or 366, as applicable) and divided by the number of days in the shorter period (360 days, in the example), and the parties hereto acknowledge that there is a material distinction between the nominal and effective rates of interest and that they are capable of making the calculations necessary to compare such rates and that the calculations herein are to be made using the nominal rate method and not on any basis that gives effect to the principle of deemed reinvestment of interest. Each Canadian Domiciled Obligor confirms that it fully understands and is able to calculate the rate of interest applicable to Loans and other Obligations based on the methodology for calculating per annum rates provided for in this Agreement and each Canadian Domiciled Obligor hereby irrevocably agrees not to plead or assert, whether by way of defense or otherwise, in any proceeding relating to this Agreement or to any other Loan Documents, that the interest payable under this Agreement and the calculation thereof has not been adequately disclosed to the Canadian Domiciled Obligors as required pursuant to Section 4 of the Interest Act (Canada).

**3.4 Reimbursement Obligations.** Borrowers within each Borrower Group shall reimburse Agent and each Lender for all Extraordinary Expenses incurred by Agent or such Lender in reference to such Borrower Group or its related Obligations or Collateral. In addition to such Extraordinary Expenses, such Borrowers shall also reimburse Agent for all legal, accounting, appraisal, consulting, and other fees, costs and expenses incurred by it in connection with (a) negotiation and preparation of any Loan Documents, including any amendment or other modification thereof; (b) administration of and actions relating to any Collateral for its Obligations, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any such Collateral, to maintain any insurance required hereunder or to verify such Collateral; and (c) subject to any limits of **Section 10.1.1(b)**, each inspection, audit or appraisal with respect to any Obligor within such Borrowers' related Obligor Group or Collateral securing such Obligor Group's Obligations, whether prepared by Agent's personnel or a third party. All legal, accounting and consulting fees shall be charged to Borrowers by Agent's professionals at their full hourly rates, regardless of any reduced or alternative fee billing arrangements that Agent, any Lender or any of their Affiliates may have with such professionals with respect to this or any other transaction. If, for any reason (including inaccurate reporting on financial statements, a Borrowing Base Certificate, or a Compliance Certificate), it is determined that a higher Applicable Margin, U.S. Unused Line Fee Rate, Canadian Unused Line Fee Rate, or U.K. Unused Line Fee Rate should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and the applicable Borrowers shall immediately pay to Agent, for the Pro Rata benefit of Applicable Lenders (or Lenders with outstanding Term Loans in the case of interest related to the Term Loans), an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid. All amounts payable by Borrowers under this Section shall be due **on demand**.

**3.5 Illegality.** If any Lender determines that any Applicable 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 Loans or Canadian BA Rate Loans, or to determine or charge interest rates based upon LIBOR or the Canadian BA Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, the applicable Available Currency in the London interbank market, or Canadian Dollars through bankers' acceptances, then, on notice thereof by such Lender to Agent, any obligation of such Lender to make or continue LIBOR Loans or Canadian BA Rate Loans, as applicable, or to convert U.S. Base Rate Loans or Canadian Base Rate Loans to LIBOR Loans, or Canadian Prime Rate Loans to Canadian BA Rate Loans, or U.K. Base Rate Loans to LIBOR Loans, as applicable, shall be suspended until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist. Upon delivery of such notice, the applicable Borrower(s) with respect to such Loans shall prepay or, if applicable, convert all LIBOR Loans of such Lender to U.S. Base Rate Loans, Canadian Base Rate Loans or U.K. Base Rate Loans (which alternative to prepayment aforesaid shall only be applicable in relation to any LIBOR Loans of such Lenders to the U.K. Borrower in the case of any such LIBOR Loans denominated in Dollars), or all Canadian Prime Rate Loans to Canadian BA Rate Loans, as applicable, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Loans or Canadian BA Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Loans or Canadian BA Rate

Loans. Upon any such prepayment or conversion, the applicable Borrower(s) with respect to such Loans shall also pay accrued interest on the amount so prepaid or converted.

**3.6 Inability to Determine Rates.** If the U.S. Required Lenders, with respect to U.S. Revolver Loans, or the U.S. Required Term Lenders, with respect to Term Loans, or the Canadian Required Lenders, with respect to Canadian Revolver Loans, or the U.K. Required Lenders, with respect to U.K. Revolver Loans, notify Agent for any reason in connection with a request for a Borrowing of, or conversion to or continuation of, a LIBOR Loan or a Canadian BA Rate Loan that (a) deposits or bankers' acceptances in the relevant Available Currency are not being offered to, as regards LIBOR, banks in the London interbank eurocurrency market or, as regards Canadian BA Rate, Persons in Canada, for the applicable amount and Interest Period of such Loan, (b) adequate and reasonable means do not exist for determining LIBOR or the Canadian BA Rate for the requested Interest Period, or (c) LIBOR or the Canadian BA Rate for the requested Interest Period does not adequately and fairly reflect the cost to such Lenders of funding such Loan, then Agent will promptly so notify the Borrower Agent and each Applicable Lender (or Lenders with outstanding Term Loans if related to Term Loans). Thereafter, the obligation of the Applicable Lenders (or Lenders with Term Loan Commitments or outstanding Term Loans if related to the Term Loans) to make or maintain the affected LIBOR Loans or Canadian BA Rate Loans shall be suspended until Agent (upon instruction by the U.S. Required Lenders, U.S. Required Term Lenders, Canadian Required Lenders or U.K. Required Lenders, as applicable) revokes such notice. Upon receipt of such notice, the Borrower Agent may revoke any pending request for a Borrowing of, conversion to or continuation of a LIBOR Loan or a Canadian BA Rate Loan or, failing that, will be deemed to have submitted a request for a U.S. Base Rate Loan, a Canadian Prime Rate Loan or a U.K. Base Rate Loan (but in the case of any such pending request in relation to a LIBOR Loan for the U.K. Borrower, if (a) that LIBOR Loan was denominated in British Pounds or Euro, the Borrower Agent shall be deemed to have revoked any such pending request for a Borrowing of, conversion to or continuation of that LIBOR Loan, and the U.K. Borrower shall repay any such outstanding LIBOR Loan which was the subject of a continuation request, and (b) only if that LIBOR Loan was denominated in Dollars shall the Borrower Agent be deemed to have submitted a request for a U.K. Base Rate Loan).

**3.7 Increased Costs; Capital Adequacy.**

3.7.1. Change in Law. 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 (except any reserve requirement reflected in LIBOR or the Canadian BA Rate or Mandatory Costs) or any Issuing Bank;
- (b) subject any Lender or any Issuing Bank to any Tax with respect to any Loan, Loan Document, Letter of Credit or participation in LC Obligations, or change the basis of taxation of payments to such Lender or such Issuing Bank in respect thereof (except for Indemnified Taxes or Other Taxes covered by **Section 5.9** (or would be covered by **Section 5.9** but for exclusions in **Sections 5.9.2 and 5.9.13**) and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or such Issuing Bank); or

(c) impose on any Lender or any Issuing Bank or the London interbank market or the Canadian bankers' acceptances market any other condition, cost or expense affecting any Loan, Loan Document, Letter of Credit, participation in LC Obligations, or Commitment;

and the result thereof shall be to increase the cost to such Lender of making or maintaining any LIBOR Loan or Canadian BA Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such Issuing Bank 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 such Issuing Bank hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such Issuing Bank, the Borrower(s) of any Borrower Group with respect to such Commitments, Loans, Letters of Credit or participations in LC Obligations will pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as applicable, for such additional costs incurred or reduction suffered.

**3.7.2. Capital Adequacy.** If any Lender or any Issuing Bank determines that any Change in Law affecting such Lender or such Issuing Bank or any Lending Office of such Lender or such Lender's or such Issuing Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's, such Issuing Bank's or holding company's capital as a consequence of this Agreement, or such Lender's or such Issuing Bank's Commitments, Loans, Letters of Credit or participations in LC Obligations, to a level below that which such Lender, such Issuing Bank or holding company could have achieved but for such Change in Law (taking into consideration such Lender's, such Issuing Bank's and holding company's policies with respect to capital adequacy), then from time to time the Borrowers (or the applicable Borrower(s) of any Borrower Group with respect to such Commitments, Loans, Letters of Credit or participations in LC Obligations) will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate it or its holding company for any such reduction suffered.

**3.7.3. Compensation.** Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but the Borrower(s) of any Borrower Group shall not be required to compensate a Lender or an Issuing Bank for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such Issuing Bank notifies the Borrower Agent of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

**3.8 Mitigation.** If any Lender gives a notice under **Section 3.5** or requests compensation under **Section 3.7**, or if the Borrower(s) of any Borrower Group are required to pay additional amounts with respect to a Lender under **Section 5.9**, then such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject such Lender to any

unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or unlawful. The Borrower(s) of each affected Borrower Group shall pay all reasonable costs and expenses incurred by any Lender that has issued a Commitment to such Borrower Group in connection with any such designation or assignment.

**3.9 Funding Losses.** If for any reason (other than default by a Lender) (a) any Borrowing of, or conversion to or continuation of, a LIBOR Loan or a Canadian BA Rate Loan does not occur on the date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn), (b) any repayment or conversion of a LIBOR Loan or a Canadian BA Rate Loan occurs on a day other than the end of its Interest Period, (c) a Lender (other than a Defaulting Lender) is required to assign a LIBOR Loan or Canadian BA Rate Loan prior to the end of its Interest Period pursuant to **Section 13.4**, or (d) the Borrower(s) of any Borrower Group fail(s) to repay a LIBOR Loan or a Canadian BA Rate Loan when required hereunder, then such applicable Borrower(s) shall pay to Agent its customary administrative charge and to each Applicable Lender all losses and expenses that it sustains as a consequence thereof, including loss of anticipated profits and any loss or expense arising from liquidation or redeployment of funds or from fees payable to terminate deposits of matching funds but excluding the Applicable Margin and Mandatory Costs. The Lenders shall not be required to purchase deposits in the London interbank market or any other offshore market to fund any LIBOR Loan or to transact in bankers' acceptances to make any Canadian BA Rate Loan, but the provisions hereof shall be deemed to apply as if each Applicable Lender had purchased such deposits to fund its LIBOR Loans or Canadian BA Rate Loans, as applicable.

**3.10 Maximum Interest.** 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 ("maximum rate"). If 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 Obligations of the Borrower Group to which such excess interest relates or, if it exceeds such unpaid principal, refunded to such Borrower Group. In determining whether the interest contracted for, charged or received by 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. Without limiting the generality of the foregoing provisions of this **Section 3.10**, if any provision of any of the Loan Documents would obligate any Canadian Domiciled Obligor to make any payment of interest with respect to the Canadian Facility Obligations in an amount or calculated at a rate which would be prohibited by Applicable Law or would result in the receipt of interest with respect to the Canadian Facility Obligations at a criminal rate (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rates shall be 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 law or so result in a receipt by the applicable recipient of interest with respect to the Canadian Facility Obligations at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (i) first, by reducing the amount or rates of interest required to be paid by the Canadian Domiciled Obligors to the applicable recipient under the Loan Documents; and (ii) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid by the Canadian

Domiciled Obligors to the applicable recipient which would constitute interest with respect to the Canadian Facility Obligations for purposes of Section 347 of the Criminal Code (Canada). Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if the applicable recipient shall have received an amount in excess of the maximum permitted by that section of the Criminal Code (Canada), then the Canadian Domiciled Obligors shall be entitled, by notice in writing to Agent, to obtain reimbursement from the applicable recipient in an amount equal to such excess, and, pending such reimbursement, such amount shall be deemed to be an amount payable by the applicable recipient to the applicable Canadian Domiciled Obligor. Any amount or rate of interest with respect to the Canadian Facility Obligations referred to in this **Section 3.10** shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that any Loans to the Canadian Borrower remain outstanding on the assumption that any charges, fees or expenses that fall within the meaning of “interest” (as defined in the Criminal Code (Canada)) shall, if they relate to a specific period of time, be pro rated over that period of time and otherwise be pro rated over the period from the Original Agreement Closing Date to the date of Full Payment of the Canadian Facility Obligations, and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Agent shall be conclusive for the purposes of such determination.

## **SECTION 4. LOAN ADMINISTRATION**

### **4.1 Manner of Borrowing and Funding Revolver Loans.**

#### **4.1.1. Notice of Borrowing.**

(a) Whenever Borrowers within a Borrower Group desire funding of a Borrowing of Revolver Loans, Borrower Agent shall give Agent a Notice of Borrowing. Such notice must be received by Agent no later than 11:00 a.m. (i) on the Business Day of the requested funding date, in the case of U.S. Base Rate Loans, Canadian Prime Rate Loans, or Canadian Base Rate Loans, (ii) on the Business Day prior to the requested funding date, in the case of U.K. Base Rate Loans, and (iii) at least three Business Days prior (and at least four Business Days in the case of a U.K. Revolver Loan) to the requested funding date, in the case of LIBOR Loans or Canadian BA Rate Loans. Notices received after 11:00 a.m. shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable and shall specify (A) the amount of the Borrowing, (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a U.S. Base Rate Loan or a LIBOR Loan (in the case of a Borrowing by the U.S. Borrowers), or as a Canadian Base Rate Loan, a Canadian Prime Rate Loan, LIBOR Loan, or a Canadian BA Rate Loan (in the case of a Borrowing by the Canadian Borrower) or as a U.K. Base Rate Loan or a LIBOR Loan (in the case of a Borrowing by the U.K. Borrower), (D) in the case of LIBOR Loans or Canadian BA Rate Loans, the duration of the applicable Interest Period (which shall be deemed to be 30 days if not specified), (E) in the case of a Borrowing by the Canadian Borrower, whether such Loan is to be denominated in Dollars or Canadian Dollars, and (F) in the case of a Borrowing by the U.K. Borrower, in the case of LIBOR Loans only, whether such Loan is to be denominated in Dollars, British Pounds or Euro.

(b) Unless payment is otherwise timely made by Borrowers within a Borrower Group, the becoming due of any amount required to be paid with respect to any of the Obligations

of the Obligor Group to which such Borrower Group belongs (whether principal, interest, fees or other charges, including Extraordinary Expenses, LC Obligations, Cash Collateral and Secured Bank Product Obligations) shall be deemed to be a request for Revolver Loans by such Borrower Group on the due date, in the amount of such Obligations and shall bear interest at the per annum rate applicable hereunder to U.S. Base Rate Revolver Loans, in the case of such Obligations owing by any U.S. Facility Obligor, or to Canadian Prime Rate Loans, in the case of such Obligations owing by a Canadian Domiciled Obligor, or to U.K. Base Rate Loans, in the case of such Obligations owing by a U.K. Domiciled Obligor. The proceeds of such Revolver Loans shall be disbursed as direct payment of the relevant Obligation. In addition, Agent may, at its option, charge such Obligations of an Obligor Group against any operating, investment or other account of an Obligor within such Obligor Group maintained with Agent or any of its Affiliates.

(c) If Borrowers within a Borrower Group establish a controlled disbursement account with Agent or any branch or Affiliate of Agent, then the presentation for payment of any check, ACH or electronic debit, or other payment item at a time when there are insufficient funds to cover it shall be deemed to be a request for Revolver Loans by such Borrower Group on the date of such presentation, in the amount of such payment item, and shall bear interest at the per annum rate applicable hereunder to U.S. Base Rate Revolver Loans, in the case of insufficient funds owing by any U.S. Facility Obligor, or to Canadian Prime Rate Loans, in the case of insufficient funds owing by a Canadian Domiciled Obligor, or to U.K. Base Rate Loans, in the case of insufficient funds owing by a U.K. Domiciled Obligor. The proceeds of such Revolver Loans may be disbursed directly to the controlled disbursement account or other appropriate account.

(d) Whenever U.S. Borrowers desire funding of the Borrowing of the Term Loans, Borrower Agent shall give Agent a Notice of Borrowing. Such notice must be received by Agent no later than 11:00 a.m. (i) at least two (2) Business Days prior to the requested funding date in the case of Base Rate Term Loans and (ii) at least three (3) Business Days prior to the requested funding date in the case of LIBOR Term Loans. Notices received after 11:00 a.m. shall be deemed received on the next Business Day. Any such Notice of Borrowing shall be irrevocable (subject to the last sentence of this Section 4.1.1(d)) and shall specify (A) the amount of the Term Loans to be borrowed (subject to the limits set forth herein), (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a Base Rate Term Loan or a LIBOR Term Loan, and (D) in the case of LIBOR Term Loans, the duration of the applicable Interest Period (which shall be deemed to be 30 days if not specified). Notwithstanding the foregoing, a request for a Base Rate Term Loan (a “Base Rate Term Loan Request”) meeting the foregoing requirements may be conditioned by U.S. Borrowers on a material event occurring, provided, that, Agent must receive notice no later than 11:00 a.m. on the requested funding date on whether such material event has, or shall be deemed to have, occurred (a “Material Event Confirmation”) (it being understood that to the extent Agent does not receive a Material Event Confirmation by such time, the corresponding Base Rate Term Loan Request shall be deemed null and void).

#### 4.1.2. Fundings by Lenders.

(a) Each Applicable Lender shall timely honor its Revolver Commitment by funding its Pro Rata share of each Borrowing of Revolver Loans that is properly requested

hereunder. Except for Borrowings to be made as Swingline Loans, Agent shall endeavor to notify the Applicable Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 12:00 noon (Applicable Time Zone) on the proposed funding date (and by 12:00 p.m. (Applicable Time Zone) on the Business Day prior to the proposed funding date, in the case of U.K. Base Rate Loans) for U.S. Base Rate Loans, Canadian Base Rate Loans, Canadian Prime Rate Loans or U.K. Base Rate Loans, or by 3:00 p.m. (Applicable Time Zone) at least two Business Days before any proposed funding of LIBOR Loans or Canadian BA Rate Loans. Each Applicable Lender shall fund to Agent such Lender's Pro Rata share of the Borrowing to the account specified by Agent in immediately available funds not later than 2:00 p.m. (Applicable Time Zone) on the requested funding date, unless Agent's notice is received after the times provided above, in which case Lender shall fund its Pro Rata share by 11:00 a.m. (Applicable Time Zone) on the next Business Day. Subject to its receipt of such amounts from the Applicable Lenders, Agent shall disburse the proceeds of the Revolver Loans as directed by Borrower Agent. Unless Agent shall have received (in sufficient time to act) written notice from an Applicable Lender that it does not intend to fund its Pro Rata share of a Borrowing, Agent may assume that such Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to the applicable Borrower(s). If an Applicable Lender's share of any Borrowing or of any settlement pursuant to **Section 4.1.3(b)** is not received by Agent, then the Borrowers within the applicable Borrower Group agree to repay to Agent **on demand** the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing.

(b) Each U.S. Lender shall timely honor its Term Loan Commitment by funding its Pro Rata share of the Term Loans that are properly requested hereunder. Agent shall endeavor to notify the U.S. Lenders with Term Loan Commitments of any Notice of Borrowing to request the Term Loans by 12:00 noon (Pacific time) at least three (3) Business Days prior to the proposed funding date. Each U.S. Lender with a Term Loan Commitment shall fund to Agent such Lender's Pro Rata share of the Borrowing to the account specified by Agent in immediately available funds not later than 2:00 p.m. (Pacific time) on the requested funding date. Subject to its receipt of such amounts from such U.S. Lenders, Agent shall disburse the proceeds of the Term Loans as directed by Borrower Agent. Unless Agent shall have received (in sufficient time to act) written notice from a U.S. Lender with a Term Loan Commitment that it does not intend to fund its Pro Rata share of such Borrowing, Agent may assume that such U.S. Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to the applicable U.S. Borrower(s). If a U.S. Lender's share of any such Borrowing is not received by Agent, then the U.S. Borrowers agree to repay to Agent **on demand** the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing.

#### **4.1.3. Swingline Loans; Settlement.**

(a) Agent may, but shall not be obligated to, advance U.S. Swingline Loans to the U.S. Borrowers, up to an aggregate outstanding amount equal to 10% of the aggregate U.S. Revolver Commitments, unless the funding is specifically required to be made by all U.S. Lenders hereunder. Each U.S. Swingline Loan shall constitute a U.S. Base Rate Revolver Loan for all purposes, except that payments thereon shall be made to Agent for its own account. The obligation of the U.S. Borrowers to repay U.S. Swingline Loans shall be evidenced by the records of Agent and need not be evidenced by any promissory note. Agent (acting through its Canada branch)

may, but shall not be obligated to, advance Canadian Swingline Loans to the Canadian Borrower, up to an aggregate outstanding amount equal to 10% of the aggregate Canadian Revolver Commitments, unless the funding is specifically required to be made by all Canadian Lenders hereunder. Each Canadian Swingline Loan shall constitute a Canadian Prime Rate Revolver Loan or a Canadian Base Rate Loan, as applicable, for all purposes, except that payments thereon shall be made to Agent (acting through its Canada branch) for its own account. The obligation of the Canadian Borrower to repay Canadian Swingline Loans shall be evidenced by the records of Agent (acting through its Canada branch) and need not be evidenced by any promissory note. Agent may, but shall not be obligated to, advance U.K. Swingline Loans to the U.K. Borrower, up to an aggregate outstanding amount equal to 10% of the aggregate U.K. Revolver Commitments, unless the funding is specifically required to be made by all U.K. Lenders hereunder. Each U.K. Swingline Loan shall be made in and denominated only in Dollars, and shall constitute a U.K. Base Rate Loan for all purposes, except that payments thereon shall be made to Agent for its own account. The obligation of the U.K. Borrower to repay U.K. Swingline Loans shall be evidenced by the records of Agent and need not be evidenced by any promissory note

(b) Settlement of Swingline Loans and other Revolver Loans among Lenders and Agent shall take place on a date determined from time to time by Agent (but at least weekly), in accordance with the Settlement Report delivered by Agent to Lenders. Between settlement dates, Agent may in its discretion apply payments on Revolver Loans to Swingline Loans, regardless of any designation by any Borrower or any provision herein to the contrary. Each Lender's obligation to make settlements with Agent is absolute and unconditional, without offset, counterclaim or other defense, and whether or not the Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any U.S. Swingline Loan may not be settled among the U.S. Lenders hereunder, then each U.S. Lender shall be deemed to have purchased from Agent a Pro Rata participation in such Loan and shall transfer the amount of such participation to Agent, in immediately available funds, within one Business Day after Agent's request therefor. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any Canadian Swingline Loan may not be settled among the Canadian Lenders hereunder, then each Canadian Lender shall be deemed to have purchased from Agent a Pro Rata participation in such Loan and shall transfer the amount of such participation to Agent, in immediately available funds, within one Business Day after Agent's request therefore. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any U.K. Swingline Loan may not be settled among the U.K. Lenders hereunder, then each U.K. Lender shall be deemed to have purchased from Agent a Pro Rata participation in such Loan and shall transfer the amount of such participation to Agent, in immediately available funds, within one Business Day after Agent's request therefore

4.1.4. **Notices.** Borrowers may request, convert or continue Loans, select interest rates and transfer funds based on telephonic or e-mailed instructions to Agent. Borrowers shall confirm each such request by prompt delivery to Agent of a Notice of Borrowing or Notice of Conversion/Continuation, if applicable, but if it differs materially from the action taken by Agent or Lenders, the records of Agent and Lenders shall govern. Neither Agent nor any Lender shall have any liability for any loss suffered by a Borrower as a result of Agent or any Lender acting upon its understanding of telephonic or e-mailed instructions from a person believed in good faith by Agent or any Lender to be a person authorized to give such instructions on a Borrower's behalf.

#### **4.2 Defaulting Lender.**

4.2.1. Reallocation of Pro Rata Share; Amendments. For purposes of determining Lenders' obligations to fund or participate in Loans or Letters of Credit, Agent may exclude the Commitments and Loans of any Defaulting Lender(s) from the calculation of Pro Rata shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 14.1.1(c).**

4.2.2. Payments; Fees. Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to Agent such amounts until all Obligations owing to Agent, non-Defaulting Lenders and other Secured Parties have been paid in full. Agent may apply such amounts to the Defaulting Lender's defaulted obligations, use the funds to Cash Collateralize such Lender's Fronting Exposure, or readvance the amounts, in accordance with this Agreement, to the Borrowers of the Borrower Group to which such defaulted obligations relate. A Lender shall not be entitled to receive any fees accruing hereunder during the period in which it is a Defaulting Lender, and the unfunded portion of its Commitment shall be disregarded for purposes of calculating the unused line fees under **Section 3.2.1.** If any LC Obligations owing to a Defaulted Lender are reallocated to other Lenders, fees attributable to such LC Obligations under **Section 3.2.2, Section 3.2.3, and Section 3.2.4,** as applicable, shall be paid to such Lenders. Agent shall be paid all fees attributable to LC Obligations that are not reallocated.

4.2.3. Cure. Borrowers, Agent and Issuing Banks may agree in writing that a Lender is no longer a Defaulting Lender. At such time, Pro Rata shares shall be reallocated without exclusion of such Lender's Commitments and Loans, and all outstanding Revolver Loans, LC Obligations and other exposures under the Revolver Commitments shall be reallocated among Lenders and settled by Agent (with appropriate payments by the reinstated Lender) in accordance with the readjusted Pro Rata shares. Unless expressly agreed by Borrowers, Agent and Issuing Banks, or as expressly provided herein with respect to Bail-In Actions and related matters, no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform its obligations hereunder shall not relieve any other Lender of its obligations, and no Lender shall be responsible for default by another Lender.

4.3 Number and Amount of LIBOR Loans and Canadian BA Rate Loans; Determination of Rate. With respect to the U.S. Borrowers, (i) no more than 10 Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans to U.S. Borrowers having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose, and (ii) each Borrowing of LIBOR Loans when made, continued or converted shall be in a minimum amount of \$1,000,000 or an increment of \$1,000,000, in excess thereof. With respect to the Canadian Borrower, (x) no more than 5 Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose, (y) no more than 5 Borrowings of Canadian BA Rate Loans may be outstanding at any time, and all Canadian BA Rate Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose, and (z) each Borrowing of such Loans when made, continued or

converted shall be in a minimum amount of \$1,000,000 (or, in the case of Canadian BA Rate Loans, Cdn\$1,000,000) or an increment of \$1,000,000 (or, in the case of Canadian BA Rate Loans, Cdn\$1,000,000), in excess thereof. With respect to the U.K. Borrower, (1) no more than 5 Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans having the same length and beginning date of their Interest Periods and in the same Available Currency shall be aggregated together and considered one Borrowing for this purpose, and (2) each Borrowing of such Loans when made, continued or converted shall be in a minimum amount of \$1,000,000 (or, in the case of LIBOR Loans denominated in British Pounds, £1,000,000 or, in the case of LIBOR Loans denominated in Euros, Euros 1,000,000) or an increment of \$1,000,000 (or, in the case of LIBOR Loans denominated in British Pounds, £1,000,000 or, in the case of LIBOR Loans denominated in Euros, Euros 1,000,000), in excess thereof. Upon determining LIBOR or the Canadian BA Rate for any Interest Period requested by the Borrower Agent on behalf of a Borrower Group, Agent shall promptly notify the Borrower Agent thereof by telephone or electronically and, if requested by the Borrower Agent, shall confirm any telephonic notice in writing.

**4.4 Borrower Agent.** Each Borrower and other Obligor hereby designates Callaway Golf Company, a Delaware corporation ("Borrower Agent") as its representative and agent for all purposes under the Loan Documents, including requests for Loans and Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent, any Issuing Bank or any Lender. Borrower Agent hereby accepts such appointment. Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower. Agent and Lenders may give any notice or communication with a Borrower or other Obligor hereunder to Borrower Agent on behalf of such Borrower or other Obligor. Each of Agent, Issuing Banks and Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Borrower and other Obligor agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it.

**4.5 One Obligation.** The Loans, LC Obligations and other Obligations of the applicable Borrower(s) of each Borrower Group and their respective Guarantors shall constitute one general obligation of such Borrower(s) of such Borrower Group and their respective Guarantors and (unless otherwise expressly provided in any Loan Document) shall be secured by Agent's Lien upon all Collateral of such Borrower(s) of such Borrower Group and their respective Guarantors; provided, however, that each Credit Party shall be deemed to be a creditor of, and the holder of a separate claim against, each Borrower or other Obligor to the extent of any Obligations jointly or severally owed by such Borrower or other Obligor to such Credit Party.

**4.6 Effect of Termination.** On the effective date of any termination of any of the Revolver Commitments, all Obligations with respect thereto shall be immediately due and payable, and any Lender may terminate its and its Affiliates' Bank Products. All undertakings of Borrowers contained in the Loan Documents shall survive any termination, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents until Full Payment

of the Obligations. Notwithstanding Full Payment of the Obligations, Agent shall not be required to terminate its Liens in any Collateral unless, with respect to any damages Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, Agent receives (a) a written agreement satisfactory to Agent, executed by Borrowers and any Person whose advances are used in whole or in part to satisfy the Obligations, indemnifying Agent and Lenders from such damages; and (b) such Cash Collateral as Agent, in its discretion, deems appropriate to protect against such damages. **Sections 2.2, 2.3, 2.4, 3.4, 3.6, 3.7, 3.9, 5.5, 5.9, 5.10, 12, 14.2** and this Section, and the obligation of each Obligor and Lender with respect to each indemnity given by it in any Loan Document, shall survive Full Payment of the Obligations and any release relating to this credit facility.

## SECTION 5. PAYMENTS

**5.1 General Payment Provisions.** All payments of Obligations shall be made without offset, counterclaim or defense of any kind, free of (and without deduction for) any Taxes, and in immediately available funds, not later than 12:00 noon (Applicable Time Zone) on the due date. Any payment after such time shall be deemed made on the next Business Day. Any payment of a LIBOR Loan or a Canadian BA Rate Loan prior to the end of its Interest Period shall be accompanied by all amounts due under **Section 3.9**. Any prepayment of Loans by a Borrower Group shall be applied first to U.S. Base Rate Loans, Canadian Base Rate Loans, Canadian Prime Rate Loans or U.K. Base Rate Loans, as applicable, of such Borrower Group and then to LIBOR Loans or Canadian BA Rate Loans, as applicable, of such Borrower Group. All payments with respect to any U.S. Facility Obligations shall be made in Dollars and all payments with respect to any Canadian Facility Obligations shall be made in Canadian Dollars or, if any portion of such Canadian Facility Obligations is denominated in Dollars, then in Dollars and all payments with respect to any U.K. Facility Obligations shall be made in British Pounds or, if any portion of such U.K. Facility Obligations is denominated in Euro, then in Euro or, if any portion of such U.K. Facility Obligations is denominated in Dollars, then in Dollars.

**5.2 Repayment of Revolver Loans.** All U.S. Revolver Loans shall be due and payable in full on the U.S. Revolver Commitment Termination Date, all Canadian Revolver Loans shall be due and payable in full on the Canadian Revolver Commitment Termination Date, and all U.K. Revolver Loans shall be due and payable in full on the U.K. Revolver Commitment Termination Date, in each case unless payment is sooner required hereunder. Revolver Loans may be prepaid from time to time, without penalty or premium, subject to, in the case of LIBOR Loans and Canadian BA Rate Loans, **Section 3.9**. If any Asset Disposition includes the disposition of Accounts or Inventory of an Obligor, then Net Proceeds equal to the greater of (a) the net book value of such Accounts and Inventory, or (b) the reduction in the applicable Borrowing Base (*i.e.*, the U.S. Borrowing Base in the case of an Asset Disposition with respect to Accounts or Inventory of the U.S. Borrowers, the Canadian Borrowing Base in the case of an Asset Disposition with respect to Accounts or Inventory of the Canadian Borrower, and the U.K. Borrowing Base in the case of an Asset Disposition with respect to Accounts or Inventory of the U.K. Borrower) upon giving effect to such disposition, shall be applied to the applicable Revolver Loans (*i.e.*, the U.S. Revolver Loans in the case of an Asset Disposition of Accounts or Inventory of the U.S. Borrowers, the Canadian Revolver Loans in the case of an Asset Disposition with respect to the Accounts or Inventory of the Canadian Borrower, and the U.K. Revolver Loans in the case of an Asset Disposition with respect to the Accounts or Inventory of the U.K. Borrower).

Notwithstanding anything herein to the contrary, if an Overadvance exists (including as a result of any Asset Disposition), the applicable Borrower(s) (*i.e.*, the U.S. Borrowers in the case of a U.S. Overadvance, the Canadian Borrower in the case of a Canadian Overadvance, and the U.K. Borrower in the case of a U.K. Overadvance) shall, on the sooner of Agent's demand or the first Business Day after any such Borrower has knowledge thereof, repay the outstanding applicable Revolver Loans (*i.e.*, the U.S. Revolver Loans in the case of a U.S. Overadvance, the Canadian Revolver Loans in the case of a Canadian Overadvance, and the U.K. Revolver Loans in the case of a U.K. Overadvance) in an amount sufficient to reduce the principal balance of such Revolver Loans to the applicable Borrowing Base (*i.e.*, the U.S. Borrowing Base in the case of a U.S. Revolver Loans, the Canadian Borrowing Base in the case of Canadian Revolver Loans, and the U.K. Borrowing Base in the case of U.K. Revolver Loans).

### **5.3 Repayment of Term Loans.**

5.3.1. **Payment of Principal.** Commencing on the first day of the month immediately following the date that is fifteen (15) months after the date the Term Loans are made (such month, the “First Term Loan Repayment Month”), and on the first day of each third month ending after the First Term Loan Repayment Month, the principal amount of the Term Loans shall be repaid by an amount equal to 1/12th of the original principal aggregate amount of the Term Loans. In addition to the foregoing, on the earlier of the Term Loan Maturity Date and the U.S. Revolver Commitment Termination Date, all principal, interest and other amounts owing with respect to the Term Loans shall be due and payable in full. Each installment shall be paid to Agent for the Pro Rata benefit of Lenders. Once repaid, whether such repayment is voluntary or required, Term Loans may not be reborrowed. Any prepayment of Term Loans shall be accompanied by all interest accrued thereon and any amounts payable under **Section 3.9**.

#### **5.3.2. Mandatory Prepayments.**

(a) Within sixty days after delivery to Agent of Borrowers’ audited annual financial statements (and accompanying Compliance Certificate) for the Fiscal Year ending on December 31, 2018, U.S. Borrowers shall (a) deliver to Agent a written calculation of Excess Cash Flow for such Fiscal Year, certified by a Senior Officer of Borrower Agent, and (b) prepay Term Loans in an amount equal to the least of: (i) 50% of such Excess Cash Flow; (ii) \$10,000,000; and (iii) the greatest amount available such that after giving effect to the payment of such amount, the sum of Net Excess Availability plus unrestricted cash and cash equivalents of the Obligors is not less than an amount equal to 15% of the Maximum Facility Amount. Any such prepayment of the Term Loans shall be applied to principal in inverse order of maturity.

(b) Concurrently with any Asset Disposition by any U.S. Facility Obligor of any Real Estate, Intellectual Property, or Equity Interests of Top Golf, U.S. Borrowers shall prepay Term Loans in an amount equal to the Net Proceeds of such disposition. Any such prepayment of the Term Loans shall be applied to principal in inverse order of maturity.

5.3.3. **Optional Prepayments.** U.S. Borrowers may, at their option from time to time, prepay Term Loans, which prepayment must be at least \$5,000,000, plus any increment of \$1,000,000 in excess thereof. Borrower Agent shall give written notice to Agent of an intended prepayment of Term Loans, which notice shall specify the amount of the prepayment and the date

of such prepayment (which must be a Business Day), shall be irrevocable once given, and shall be given at least 3 Business Days prior to the date of such prepayment. Any such voluntary prepayment of the Term Loans shall be applied to principal in inverse order of maturity.

**5.4 Payment of Other Obligations.** Obligations other than Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, **on demand**.

**5.5 Marshaling; Payments Set Aside.** None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrowers or any other Obligor is made to Agent, any Issuing Bank or any Lender, or Agent, any Issuing Bank or any Lender exercises a 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 Agent, such Issuing Bank or such Lender in its discretion) to be repaid to a Creditor Representative or any other Person, then to the extent of such recovery, the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

## **5.6 Post-Default Allocation of Payments.**

5.6.1. **Allocation.** Notwithstanding anything herein to the contrary, during an Event of Default, monies to be applied to the Obligations, whether arising from payments by or on behalf of any Obligor, realization on Collateral, setoff or otherwise, shall be allocated as follows:

- (a) with respect to monies, payments, Property or Collateral of or from any U.S. Domiciled Obligor:
  - (i) first, to all costs and expenses, including Extraordinary Expenses, owing to Agent;
  - (ii) second, to all Extraordinary Expenses owing to any U.S. Lender;
  - (iii) third, to all amounts owing to Agent on U.S. Swingline Loans;
  - (iv) fourth, to all amounts owing to U.S. Issuing Bank on account of U.S. LC Obligations;
  - (v) fifth, to all Obligations constituting fees (other than Secured Bank Product Obligations) owing by any U.S. Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the U.S. Domiciled Obligors);
  - (vi) sixth, to all U.S. Facility Obligations constituting interest (other than Secured Bank Product Obligations and other than on account of the Term Loans) owing by any U.S. Domiciled Obligor (exclusive of any such amounts owing by the Canadian

Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the U.S. Domiciled Obligors);

(vii) seventh, to Cash Collateralize the U.S. LC Obligations;

(viii) eighth, to all U.S. Revolver Loans and Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the U.S. Borrowing Base immediately prior to the time of such allocation) of any U.S. Domiciled Obligor, including Cash Collateralization of Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the U.S. Borrowing Base immediately prior to the time of such allocation) of any U.S. Domiciled Obligor;

(ix) ninth, to all other U.S. Facility Obligations (exclusive of any such amounts owing by the Canadian Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the U.S. Domiciled Obligors);

(x) tenth, ratably: (i) to be applied in accordance with clause (b) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any Canadian Domiciled Obligor, and (ii) to be applied in accordance with clause (c) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any U.K. Domiciled Obligor;

(xi) eleventh, to all interest owing by any U.S. Domiciled Obligor on account of the Term Loans; and

(xii) twelfth, to all Term Loans.

(b) with respect to monies, payments, Property or Collateral of or from any Canadian Domiciled Obligor, together with any allocations pursuant to subclause (x) of clause (a) above and subclause (x) of clause (c) below:

(i) first, to all costs and expenses, including Extraordinary Expenses, owing to Agent, to the extent owing by any Canadian Domiciled Obligor;

(ii) second, to all Extraordinary Expenses owing to any Canadian Lender;

(iii) third, to all amounts owing to Agent (acting through its Canada branch) on Canadian Swingline Loans;

(iv) fourth, to all amounts owing to the Canadian Issuing Bank on account of Canadian LC Obligations;

(v) fifth, to all Canadian Facility Obligations constituting fees (other than Secured Bank Product Obligations) owing by any Canadian Domiciled Obligor (exclusive of any such amounts owing by the U.K. Domiciled Obligors which are guaranteed by the Canadian Domiciled Obligors);

- (vi) sixth, to all Canadian Facility Obligations constituting interest (other than Secured Bank Product Obligations) owing by any Canadian Domiciled Obligor (exclusive of any such amounts owing by the U.K. Domiciled Obligors which are guaranteed by the Canadian Domiciled Obligors);
- (vii) seventh, to Cash Collateralize the Canadian LC Obligations;
- (viii) eighth, to all Canadian Revolver Loans and Noticed Hedges of any Canadian Domiciled Obligor (solely to the extent such Noticed Hedges were reserved for by Agent under the Canadian Borrowing Base immediately prior to the time of such allocation), including Cash Collateralization of Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the Canadian Borrowing Base immediately prior to the time of such allocation) of any Canadian Domiciled Obligor;
- (ix) ninth, to all other Canadian Facility Obligations (exclusive of any such amounts owing by the U.K. Domiciled Obligors which are guaranteed by the Canadian Domiciled Obligors); and
- (x) tenth, to be applied in accordance with clause (c) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any U.K. Domiciled Obligor.

(c) with respect to monies, payments, Property or Collateral of or from any U.K. Domiciled Obligor, together with any allocations pursuant to subclause (x) of clause (a) above and subclause (x) of clause (b) above:

- (i) first, to all costs and expenses, including Extraordinary Expenses, owing to Agent, to the extent owing by any U.K. Domiciled Obligor;
- (ii) second, to all Extraordinary Expenses owing to any U.K. Lender;
- (iii) third, to all amounts owing to Agent on U.K. Swingline Loans;
- (iv) fourth, to all amounts owing to the U.K. Issuing Bank on account of U.K. LC Obligations;
- (v) fifth, to all U.K. Facility Obligations constituting fees (other than Secured Bank Product Obligations) owing by any U.K. Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligors which are guaranteed by the U.K. Domiciled Obligors);
- (vi) sixth, to all U.K. Facility Obligations constituting interest (other than Secured Bank Product Obligations) owing by any U.K. Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligors which are guaranteed by the U.K. Domiciled Obligors);
- (vii) seventh, to Cash Collateralize the U.K. LC Obligations;

(viii) eighth, to all U.K. Revolver Loans and Noticed Hedges of any U.K. Domiciled Obligor (solely to the extent such Noticed Hedges were reserved for by Agent under the U.K. Borrowing Base immediately prior to the time of such allocation), including Cash Collateralization of Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the U.K. Borrowing Base immediately prior to the time of such allocation) of any U.K. Domiciled Obligor;

(ix) ninth, to all other U.K. Facility Obligations (exclusive of any such amounts owing by the Canadian Domiciled Obligors which are guaranteed by the U.K. Domiciled Obligors); and

(x) tenth, to be applied in accordance with clause (b) above, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any Canadian Domiciled Obligor.

Amounts shall be applied to each category of Obligations set forth above until Full Payment thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. Amounts distributed with respect to any Secured Bank Product Obligations shall be the lesser of the maximum Secured Bank Product Obligations last reported to Agent or the actual Secured Bank Product Obligations as calculated by the methodology reported to Agent for determining the amount due. Monies and proceeds obtained from an Obligor shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Obligors to preserve the allocations in any applicable category. Agent shall have no obligation to calculate the amount to be distributed with respect to any Secured Bank Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Party. If a Secured Party fails to deliver such calculation within five days following request by Agent, Agent may assume the amount to be distributed is the last reported amount. The allocations set forth in this Section are solely to determine the rights and priorities of Agent and Secured Parties as among themselves, and may be changed by agreement among them without the consent of any Obligor. This Section is not for the benefit of or enforceable by any Borrower.

5.6.2. Erroneous Application. Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been made shall be to recover the amount from the Person that actually received it (and, if such amount was received by any Lender, such Lender hereby agrees to return it).

## 5.7 **Application of Payments.**

5.7.1. Dominion Account(s) of U.S. Borrowers. The ledger balance in the main Dominion Account of the U.S. Borrowers as of the end of a Business Day shall be applied to the Obligations of the U.S. Borrowers at the beginning of the next Business Day, during any Dominion Trigger Period. If, at the end of a Business Day, after giving effect to such application, if any, a credit balance exists, the balance shall not accrue interest in favor of the U.S. Borrowers and shall be made available to the U.S. Borrowers as long as the Obligations have not been accelerated on account of an Event of Default. During any Dominion Trigger Period, each U.S. Borrower and

other Obligor irrevocably waive the right to direct the application of any payments or Collateral proceeds, and agree that Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Agent deems advisable.

5.7.2. Dominion Account(s) of Canadian Borrower. The ledger balance in the main Dominion Account of the Canadian Borrower as of the end of a Business Day shall be applied to the Obligations of the Canadian Borrower at the beginning of the next Business Day, during any Dominion Trigger Period. If, at the end of a Business Day, after giving effect to such application, if any, a credit balance exists, the balance shall not accrue interest in favor of the Canadian Borrower and shall be made available to the Canadian Borrower as long as the Obligations have not been accelerated on account of an Event of Default. During any Dominion Trigger Period, the Canadian Borrower and each other Obligor irrevocably waive the right to direct the application of any payments or Collateral proceeds, and agree that Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Agent deems advisable.

5.7.3. Dominion Account(s) of U.K. Borrower. The ledger balance in the main Dominion Account of the U.K. Borrower as of the end of a Business Day occurring on and after the Closing Date shall be applied to the Obligations of the U.K. Borrower at the beginning of the next Business Day. If, at the end of a Business Day occurring after the Closing Date, after giving effect to such application, if any, a credit balance exists, the balance shall not accrue interest in favor of the U.K. Borrower and shall be made available to the U.K. Borrower as long as the Obligations have not been accelerated on account of an Event of Default and in any event subject to the terms of the U.K. Security Agreements. The U.K. Borrower and each other Obligor irrevocably waive the right to direct the application of any payments or Collateral proceeds, and agree that Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Agent deems advisable.

## **5.8 Loan Account; Account Stated.**

5.8.1. Loan Account. Agent shall maintain, in accordance with its usual and customary practices, an account or accounts (“Loan Account”) evidencing the Debt of each of the Borrower(s) within each Borrower Group resulting from each Loan made to such Borrower Group or issuance of a Letter of Credit for the account of such Borrower(s) from time to time. Any failure of Agent to record anything in any Loan Account, or any error in doing so, shall not limit or otherwise affect the obligations of the applicable Borrower(s) to pay any amount owing hereunder. Agent may maintain a single Loan Account in the name of the Borrower Agent, and each Borrower and other Obligor confirms that such arrangement shall have no effect on the joint and several character of its liability for the Obligations as and to the extent provided herein or in the other Loan Documents.

5.8.2. Entries Binding. Entries made in any Loan Account shall constitute presumptive evidence of the information contained therein. If any information contained in the Loan Account is provided to or inspected by any Person, then such information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute.

## **5.9 Taxes.**

5.9.1. Payments Free of Taxes. All payments by or on behalf of any Obligor hereunder shall be free and clear of and without withholding or deduction for any Taxes. If Applicable Law requires any Obligor or Agent to withhold or deduct any Tax (including backup withholding or withholding Tax), the withholding or deduction shall be based on information provided pursuant to **Section 5.10** and Agent shall pay the amount withheld or deducted to the relevant Governmental Authority. If the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the applicable Borrowers or other Obligors shall be increased so that Agent, each Lender and each Issuing Bank, as applicable, receives an amount equal to the sum it would have received if no such withholding or deduction (including withholdings or deductions applicable to additional sums payable under this Section) had been made. In addition, Borrowers and the other Obligors shall timely pay all Other Taxes to the relevant Governmental Authorities.

5.9.2. Payments Free of Tax by the U.K. Borrower. A payment by the U.K. Borrower under this Agreement shall not be increased under **Section 5.9.1** above by reason of a withholding or deduction on account of Tax imposed by the United Kingdom (“Tax Deduction”), if on the date on which the payment falls due:

- (a) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a U.K. Qualified Lender, but on that date that Lender is not or has ceased to be a U.K. Qualified Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
- (b) the relevant Lender is a U.K. Qualified Lender solely by virtue of paragraph (i)(B) of the definition of U.K. Qualified Lender; and:
  - (i) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a “Direction”) under section 931 of ITA which relates to the payment and that Lender has received from the U.K. Borrower making the payment a certified copy of that Direction; and
  - (ii) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
- (c) the Lender is a U.K. Qualified Lender solely by virtue of paragraph (i)(B) of the definition of U.K. Qualified Lender and:
  - (i) the Lender has not given a U.K. Tax Confirmation to the U.K. Borrower; and
  - (ii) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a U.K. Tax Confirmation to the U.K. Borrower, on the basis that the U.K. Tax Confirmation would have enabled the U.K. Borrower to have

formed a reasonable belief that the payment was an “**excepted payment**” for the purposes of Section 930 of ITA; or

(d) the relevant Lender is a Treaty Lender and the U.K. Borrower making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under **Section 5.9.5** below.

5.9.3. Timing and Amount. If the U.K. Borrower is required to make a Tax Deduction, the U.K. Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

5.9.4. Evidence of Payment. Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the U.K. Borrower shall deliver to the Agent for the Lender or the Agent entitled to the payment a statement under Section 975 of ITA or other evidence reasonably satisfactory to that Lender or the Agent that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

5.9.5. Co-operation between a Treaty Lender and the U.K. Borrower. A Treaty Lender and the U.K. Borrower making a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for U.K. Borrower to obtain authorization to make that payment without a Tax Deduction.

5.9.6. Exceptions. Nothing in **Section 5.9.5** above shall require a Treaty Lender to: (a) register under the HMRC DT Treaty Passport scheme; (b) apply the HMRC DT Treaty Passport scheme to any Loan if it has so registered; or (c) file Treaty forms if it has included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with **Section 5.9.9** below or **Section 5.9.16** below and the Obligor making that payment has complied with its obligations under **Section 5.9.10** below or **Section 5.9.17** below.

5.9.7. Existing Lenders. A U.K. Non-Bank Lender which becomes a Lender on the day on which this Agreement is entered into gives a U.K. Tax Confirmation to the U.K. Borrower by entering into this Agreement.

5.9.8. Notice. A U.K. Non-Bank Lender shall promptly notify the U.K. Borrower and the Agent if there is any change in the position from that set out in the U.K. Tax Confirmation.

5.9.9. HMRC DT Treaty Passport schemes. A Treaty Lender which becomes a party to this Agreement on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which then wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) by including its scheme reference number and its jurisdiction of tax residence opposite its name in **Schedule 5.9.9**.

5.9.10. Form DTTP2. Where a Lender includes the indication described in **Section 5.9.9** above in **Schedule 5.9.9**, the U.K. Borrower shall, to the extent that such Lender is

a Lender under the facilities made available to the U.K. Borrower pursuant to **Section 2.1** or **Section 2.2**, file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of the date of this Agreement and shall promptly provide such Lender with a copy of that filing.

5.9.11. **No Filings.** If a Lender has not included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with **Section 5.9.9** above or **Section 5.9.16** below, no Obligor shall file a form DTTP2 or any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's commitment(s) or its participation in any facility made available under this Agreement.

5.9.12. **Payment.** Obligors shall indemnify, hold harmless and reimburse (within 10 days after demand therefor) Agent, Lenders and Issuing Banks for any Indemnified Taxes or Other Taxes (including those attributable to amounts payable under this Section) paid by Agent, any Lender or any Issuing Bank, with respect to any Obligations of such Borrower's Borrower Group, Letters of Credit of such Borrower's Borrower Group or Loan Documents, whether or not such Taxes were properly asserted by the relevant Governmental Authority, and including all penalties, interest and reasonable expenses relating thereto, as well as any amount that a Lender or an Issuing Bank fails to pay indefeasibly to Agent under **Section 5.10**. A certificate as to the amount of any such payment or liability delivered to Borrower Agent by Agent, or by a Lender or an Issuing Bank (with a copy to Agent), shall be conclusive, absent manifest error. As soon as practicable after any payment of Taxes by any Obligor, Borrower Agent shall deliver to Agent a receipt from the Governmental Authority or other evidence of payment satisfactory to Agent.

5.9.13. **Payment by the U.K. Borrower.** **Section 5.9.12** shall not apply:

- (a) with respect to any Tax assessed on a Lender or the Agent:
  - (i) under the law of the jurisdiction in which that Lender or the Agent is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Lender or the Agent is treated as resident for tax purposes; or
  - (ii) under the law of the jurisdiction in which that Lender's or the Agent's lending office is located in respect of amounts received or receivable in that jurisdiction,
    - if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender or the Agent; or
- (b) to the extent a loss, liability or cost:
  - (i) is compensated for by an increased payment under **Section 5.9.1**; or
  - (ii) would have been compensated for by an increased payment under **Section 5.9.1** but was not so compensated solely because one of the exclusions in **Section 5.9.2** applied.

5.9.14. Tax Credit. If the U.K. Borrower makes a payment under **Section 5.9.1** or **Section 5.9.12** (a “**U.K. Tax Payment**”) and either a Lender or the Agent determines that:

- (a) a Tax Credit is attributable either to an increased payment of which that U.K. Tax Payment forms part, or to that U.K. Tax Payment; and
- (b) that Lender or the Agent has obtained, utilized and retained that Tax Credit,

that Lender or the Agent shall pay an amount to the U.K. Borrower which that Lender or the Agent determines will leave it (after that payment) in the same after-Tax position as it would have been in had the U.K. Tax Payment not been required to be made by the U.K. Borrower.

5.9.15. New Lenders. Each Lender which becomes a party to this Agreement in the capacity of a U.K. Lender after the date of this Agreement (“**New Lender**”) shall indicate, at the time it becomes a New Lender, on and for the benefit of the Agent and without liability to the U.K. Borrower, which of the following categories it falls in:

- (a) not a U.K. Qualified Lender;
- (b) a U.K. Qualified Lender (other than a Treaty Lender); or
- (c) a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this **Section 5.9.15** then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a U.K. Qualified Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the U.K. Borrower). For the avoidance of doubt, an assignment in accordance with **Section 13.3** shall not be invalidated by any failure of a New Lender to comply with this **Section 5.9.15**.

5.9.16. HMRC DT Treaty Passport schemes – New Lenders. A New Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which then wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) in the assignment notice which it executes pursuant to, or in connection with, **Section 13.3** below by including its scheme reference number and its jurisdiction of tax residence in that assignment notice.

5.9.17. Form DTTP2 – New Lenders. Where a New Lender includes the indication described in **Section 5.9.16** above in the relevant assignment notice the U.K. Borrower shall, to the extent that that New Lender becomes a Lender under a facility which is made available to the U.K. Borrower pursuant to pursuant to Section 2.1 or Section 2.2, file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of the date of that assignment and shall promptly provide the Lender with a copy of that filing.

5.9.18. FATCA Grandfathering. 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

## **5.10 Lender Tax Information.**

5.10.1. Status of Lenders. Each Lender shall deliver documentation and information to Agent and Borrower Agent, at the times and in form required by Applicable Law or reasonably requested by Agent or Borrower Agent, sufficient to permit Agent or Borrowers to determine (a) whether or not payments made with respect to Obligations are subject to Taxes, (b) if applicable, the required rate of withholding or deduction, and (c) such Lender’s entitlement to any available exemption from, or reduction of, applicable Taxes for such payments or otherwise to establish such Lender’s status for withholding tax purposes in the applicable jurisdiction.

5.10.2. Documentation. If a Borrower is resident for tax purposes in the United States, any Lender that is a “United States person” within the meaning of section 7701(a)(30) of the Code shall deliver to Agent and Borrower Agent IRS Form W-9 or such other documentation or information prescribed by Applicable Law or reasonably requested by Agent or Borrower Agent to determine whether such Lender is subject to backup withholding or information reporting requirements. If any Foreign Lender is entitled to any exemption from or reduction of withholding tax for payments with respect to the U.S. Facility Obligations, it shall deliver to Agent and Borrower Agent, on or prior to the date on which it becomes a Lender hereunder (and from time to time thereafter upon request by Agent or Borrower Agent, but only if such Foreign Lender is legally entitled to do so), (a) IRS Form W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States is a party; (b) IRS Form W-8ECI; (c) IRS Form W-8IMY and all required supporting documentation; (d) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, IRS Form W-8BEN-E and a certificate showing such Foreign Lender is not (i) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (ii) a “10 percent shareholder” of any Obligor within the meaning of section 881(c)(3)(B) of the Code, or (iii) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code; or (e) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in withholding tax, together with such supplementary documentation necessary to allow Agent and Borrowers to determine the withholding or deduction required to be made.

5.10.3. Lender Obligations. Each Lender and each Issuing Bank shall promptly notify Borrower Agent and Agent of any change in circumstances that would change any claimed Tax exemption or reduction. Each Lender and each Issuing Bank, in each case severally and not jointly with the other Lenders and/or applicable Issuing Bank, shall indemnify, hold harmless and reimburse (within 10 days after demand therefor) the affected Borrower to which such Lender or such Issuing Bank (as applicable) has issued a Commitment and Agent for any Taxes, losses, claims, liabilities, penalties, interest and expenses (including reasonable attorneys’ fees) incurred by or asserted against such affected Borrower or Agent by any Governmental Authority due to such Lender’s or such Issuing Bank’s failure to deliver, or inaccuracy or deficiency in, any documentation required to be delivered by it pursuant to this Section. Each Lender and each Issuing Bank authorizes Agent to set off any amounts due to Agent under this Section against any amounts payable to such Lender or such Issuing Bank under any Loan Document.

## **5.11 Guarantee by Obligors.**

### **5.11.1. Guarantee by U.S. Domiciled Obligors.**

(a) Joint and Several Liability. Each U.S. Domiciled Obligor agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to the Secured Parties the prompt payment and performance of, all Obligations and all agreements of each other Obligor under the Loan Documents, except its Excluded Swap Obligations, and that it is a U.S. Facility Guarantor, a Canadian Facility Guarantor, and a U.K. Facility Guarantor hereunder. Each U.S. Domiciled Obligor agrees that its guaranty or guarantee of obligations as a U.S. Facility Guarantor, a Canadian Facility Guarantor, and a U.K. Facility Guarantor hereunder, as applicable, constitute a continuing guaranty or guarantee of payment and not of collection, that such obligations shall not be discharged until Full Payment of all Obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by any Secured Party with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty or guarantee for the Obligations or any action, or the absence of any action, by any Secured Party in respect thereof (including the release of any security or guaranty or guarantee); (d) the insolvency of any Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the U.S. Bankruptcy Code or similar provision of other Applicable Law; (f) any borrowing or grant of a Lien by any other Obligor, as debtor-in-possession under Section 364 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (g) the disallowance of any claims of any Secured Party against any Obligor for the repayment of any Obligations under Section 502 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (h) any other insolvency, debtor relief or debt adjustment law (whether state, provincial, federal or foreign, including the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), and the Insolvency Act 1986 of the United Kingdom and the Enterprise Act 2002 of the United Kingdom); (i) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of any Obligor or any other person; (j) any merger, amalgamation or consolidation of any Obligor with any person or persons; (k) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of any governmental body or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Obligations under the Loan Documents; (l) the existence of any claim, set-off, compensation or other rights which any Obligor may have at any time against any other Obligor or any other person, or which any Obligor may have at any time against the Secured Parties, whether in connection with the Loan Documents or otherwise; or (m) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of all Obligations.

(b) Waivers.

(i) Each U.S. Domiciled Obligor expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to

compel Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Obligor. Each U.S. Domiciled Obligor waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of all Obligations. It is agreed among each U.S. Domiciled Obligor, Agent and Lenders that the provisions of this **Section 5.11** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and Lenders would decline to make Loans and issue Letters of Credit. Each U.S. Domiciled Obligor acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(ii) Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral (including any Real Estate owned by any Obligor) by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this **Section 5.11**. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any U.S. Domiciled Obligor or other Person, whether because of any Applicable Laws pertaining to "election of remedies" or otherwise, each U.S. Domiciled Obligor consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any U.S. Domiciled Obligor might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any U.S. Domiciled Obligor shall not impair any other U.S. Domiciled Obligor's obligation to pay the full amount of the Obligations. Each U.S. Domiciled Obligor waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such U.S. Domiciled Obligor's rights of subrogation against any other Person. Agent may bid all or a portion of the Obligations at any foreclosure or trustee's sale or at any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this **Section 5.11**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each U.S. Domiciled Obligor's liability under this **Section 5.11** shall be limited to the greater of (i) all amounts for which such U.S. Domiciled Obligor is primarily liable, as described below, and (ii) such U.S. Domiciled Obligor's Allocable Amount.

(ii) If any U.S. Domiciled Obligor makes a payment under this **Section 5.11** of any Obligations (other than amounts for which such U.S. Domiciled Obligor is

primarily liable) (a “Guarantor Payment”) that, taking into account all other Guarantor Payments previously or concurrently made by any other U.S. Domiciled Obligor, exceeds the amount that such U.S. Domiciled Obligor would otherwise have paid if each U.S. Domiciled Obligor had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such U.S. Domiciled Obligor’s Allocable Amount bore to the total Allocable Amounts of all U.S. Domiciled Obligors, then such U.S. Domiciled Obligor shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other U.S. Domiciled Obligor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The “Allocable Amount” for any U.S. Domiciled Obligor shall be the maximum amount that could then be recovered from such U.S. Domiciled Obligor under this **Section 5.11** without rendering such payment voidable under Section 548 of the U.S. Bankruptcy Code or under any similar applicable fraudulent transfer or conveyance Applicable Law, or the Applicable Law in Canada or any province or territory thereof, or in England.

(iii) Each U.S. Domiciled Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each other U.S. Domiciled Obligor that is a Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor 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’s obligations and undertakings under this **Section 5.11** voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each U.S. Domiciled Obligor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support or other agreement” for the benefit of, each Obligor for all purposes of the Commodity Exchange Act.

#### **5.11.2. Guarantee by Canadian Domiciled Obligors and U.K. Domiciled Obligors.**

(a) Joint and Several Liability. Each Canadian Domiciled Obligor and U.K. Domiciled Obligor agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to the Secured Parties the prompt payment and performance of, all Canadian Facility Obligations, U.K. Facility Obligations, and all agreements of each other Canadian Domiciled Obligor and U.K. Domiciled Obligor under the Loan Documents, except its Excluded Swap Obligations, and that it is a Canadian Facility Guarantor and a U.K. Facility Guarantor hereunder. Each Canadian Domiciled Obligor and U.K. Domiciled Obligor agrees that its guaranty or guarantee of obligations as a Canadian Facility Guarantor and a U.K. Facility Guarantor hereunder, as applicable, constitute a continuing guaranty or guarantee of payment and not of collection, that such obligations shall not be discharged until Full Payment of all Obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or

change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by any Secured Party with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty or guarantee for the Obligations or any action, or the absence of any action, by any Secured Party in respect thereof (including the release of any security or guaranty or guarantee); (d) the insolvency of any Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the U.S. Bankruptcy Code or similar provision of other Applicable Law; (f) any borrowing or grant of a Lien by any other Obligor, as debtor-in-possession under Section 364 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (g) the disallowance of any claims of any Secured Party against any Obligor for the repayment of any Obligations under Section 502 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (h) any other insolvency, debtor relief or debt adjustment law (whether state, provincial, federal or foreign, including the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), and the Insolvency Act 1986 of England and the Enterprise Act 2002 of England); (i) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of any Obligor or any other person; (j) any merger, amalgamation or consolidation of any Obligor with any person or persons; (k) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of any governmental body or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Obligations under the Loan Documents; (l) the existence of any claim, set-off, compensation or other rights which any Obligor may have at any time against any other Obligor or any other person, or which any Obligor may have at any time against the Secured Parties, whether in connection with the Loan Documents or otherwise; or (m) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of all Obligations.

(b) Waivers.

(i) Each Canadian Domiciled Obligor and U.K. Domiciled Obligor expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Obligor. Each Canadian Domiciled Obligor and U.K. Domiciled Obligor waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of all Obligations. It is agreed among each Canadian Domiciled Obligor and U.K. Domiciled Obligor, Agent and Lenders that the provisions of this **Section 5.11** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and Lenders would decline to make Loans and issue Letters of Credit. Each Canadian Domiciled Obligor and U.K. Domiciled Obligor acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(ii) Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral (including any

Real Estate owned by any Obligor) by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this **Section 5.11**. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Canadian Domiciled Obligor or U.K. Domiciled Obligor or other Person, whether because of any Applicable Laws pertaining to “election of remedies” or otherwise, each Canadian Domiciled Obligor and U.K. Domiciled Obligor consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Canadian Domiciled Obligor or U.K. Domiciled Obligor might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any Canadian Domiciled Obligor or U.K. Domiciled Obligor shall not impair any other Canadian Domiciled Obligor’s or U.K. Domiciled Obligor’s obligation to pay the full amount of the Obligations it is jointly and severally liable for and has guaranteed under the Loan Documents. Each Canadian Domiciled Obligor and U.K. Domiciled Obligor waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Canadian Domiciled Obligor’s or U.K. Domiciled Obligor’s rights of subrogation against any other Person. Agent may bid all or a portion of the Obligations at any foreclosure or trustee’s sale or at any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this **Section 5.11**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each Canadian Domiciled Obligor’s and U.K. Domiciled Obligor’s liability under this **Section 5.11** shall be limited to the greater of (i) all amounts for which such Canadian Domiciled Obligor or U.K. Domiciled Obligor is primarily liable, as described below, and (ii) such Canadian Domiciled Obligor’ and U.K. Domiciled Obligor’s U.K./Canadian Allocable Amount.

(ii) If any Canadian Domiciled Obligor or U.K. Domiciled Obligor makes a payment under this **Section 5.11** of any Obligations (other than amounts for which such Canadian Domiciled Obligor or U.K. Domiciled Obligor is primarily liable) (a “U.K./Canadian Guarantor Payment”) that, taking into account all other U.K./Canadian Guarantor Payments previously or concurrently made by any other Canadian Domiciled Obligor or U.K. Domiciled Obligor, exceeds the amount that such Canadian Domiciled Obligor or U.K. Domiciled Obligor would otherwise have paid if each Canadian Domiciled Obligor and U.K. Domiciled Obligor had paid the aggregate Obligations satisfied by such U.K./Canadian Guarantor Payments in the same proportion that such Canadian Domiciled Obligor’s or U.K. Domiciled Obligor’s U.K./Canadian Allocable Amount bore to the total

U.K./Canadian Allocable Amounts of all Canadian Domiciled Obligors and U.K. Domiciled Obligors, then such Canadian Domiciled Obligor or U.K. Domiciled Obligor shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Canadian Domiciled Obligor and U.K. Domiciled Obligor for the amount of such excess, pro rata based upon their respective U.K./Canadian Allocable Amounts in effect immediately prior to such U.K./Canadian Guarantor Payment. The “U.K./Canadian Allocable Amount” for any Canadian Domiciled Obligor or U.K. Domiciled Obligor shall be the maximum amount that could then be recovered from such Canadian Domiciled Obligor or U.K. Domiciled Obligor under this **Section 5.11** without rendering such payment voidable under Section 548 of the U.S. Bankruptcy Code or under any similar applicable fraudulent transfer or conveyance Applicable Law, or the Applicable Law in Canada or any province or territory thereof, or in England.

(iii) Each Canadian Domiciled Obligor and each U.K. Domiciled Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Canadian Domiciled Obligor and U.K. Domiciled Obligor that is a Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor 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’s obligations and undertakings under this **Section 5.11** voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each Canadian Domiciled Obligor and each U.K. Domiciled Obligor intends this Section to constitute, and this Section shall be deemed to constitute, a guaranteee of the obligations of, and a “keepwell, support or other agreement” for the benefit of, each Obligor for all purposes of the Commodity Exchange Act.

5.11.3. No Limitation. Nothing contained in this **Section 5.11** shall limit the liability of any Obligor to pay Loans made directly or indirectly to that Obligor (including Loans advanced to any other Obligor and then re-loaned or otherwise transferred to, or for the benefit of, such Obligor), LC Obligations relating to Letters of Credit issued to support such Obligor’s business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Obligor shall be primarily liable for all purposes hereunder. Agent and Lenders shall have the right, at any time in their discretion, to condition Loans and Letters of Credit upon a separate calculation of borrowing availability for each Borrower and to restrict the disbursement and use of such Loans and Letters of Credit to such Borrower.

5.11.4. Joint Enterprise. Each Obligor has requested that Agent and Lenders make the credit facilities available to the applicable Borrowers on a combined basis, in order to finance Borrowers’ business most efficiently and economically. Obligors’ business is a mutual and collective enterprise, and the successful operation of each Obligor is dependent upon the successful performance of the integrated group. The Obligors believe that the credit facilities provided to the applicable Borrowers under this Agreement will enhance the borrowing power of each Borrower and ease administration of such credit facilities, all to their mutual advantage. Obligors acknowledge that Agent’s and Lenders’ willingness to extend credit and to administer

the Collateral as provided under the Loan Documents is done solely as an accommodation to Obligors and at Obligors' request.

5.11.5. California Waivers.

(a) Notwithstanding anything to the contrary set forth in this Agreement or any of the Loan Documents, each of the Obligors hereby understands and acknowledges that if Agent forecloses judicially or nonjudicially against any Collateral consisting of Real Estate located in California for the Obligations, that foreclosure could impair or destroy any ability that the Obligors may have to seek reimbursement, contribution, or indemnification from one another based on any right any Obligor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by the Obligors under this Agreement. Each of the Obligors further understands and acknowledges that in the absence of this paragraph, such potential impairment or destruction of the Obligors' rights, if any, may entitle the Obligors to assert a defense to this Agreement based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing this Agreement, each Obligor freely, irrevocably, and unconditionally: (i) waives and relinquishes that defense and agrees that the Obligors will be fully liable under this Agreement even though Agent may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agrees that the Obligors will not assert that defense in any action or proceeding which Agent may commence to enforce this Agreement or any other Loan Document; (iii) acknowledges and agrees that the rights and defenses waived by the Obligors in this Agreement include any right or defense that the Obligors may have or be entitled to assert based upon or arising out of any one or more of Sections 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or Section 2848 of the California Civil Code; and (iv) acknowledges and agrees that Agent and the Lenders are relying on this waiver in creating the Obligations, and that this waiver is a material part of the consideration which Agent and the Lenders are receiving for creating the Obligations.

(b) Each of the Obligors waives all rights and defenses that each Obligor may have because of any of the Obligations is secured by Real Estate. This means, among other things: (i) Agent may collect from the Obligors without first foreclosing on any real or personal property collateral pledged by the Obligors; and (ii) if Agent forecloses on any Collateral consisting of Real Estate pledged by the Obligors: (A) the amount of the Obligations may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the Collateral is worth more than the sale price, and (B) Agent may collect from the Obligors even if Agent, by foreclosing on the Collateral consisting of Real Estate, has destroyed any right the Obligors may have to collect from one another. This is an unconditional and irrevocable waiver of any rights and defenses the Obligors may have because any of the Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(c) Each of the Obligors waives any right or defense it may have at law or equity, including California Code of Civil Procedure Section 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

5.11.6. Subordination. Each Obligor hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution,

indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to the Full Payment of all Obligations.

**5.12 Currency Matters.** Dollars are the currency of account and payment for each and every sum at any time due from Borrowers hereunder unless otherwise specifically provided in this Agreement, any other Loan Document or otherwise agreed to by Agent. The parties hereto hereby agree as follows:

- (a) Each repayment of a Loan or LC Obligation or a part thereof shall be made in the currency in which such Loan or LC Obligation is denominated at the time of that repayment;
- (b) Each payment of interest shall be made in the currency in which the principal or other sum in respect of which such interest is denominated;
- (c) Each payment of fees by a U.S. Borrower pursuant to **Section 3.2** shall be in Dollars;
- (d) Each payment of fees by Canadian Borrower pursuant to **Section 3.2** shall be in Dollars;
- (e) Each payment of fees by U.K. Borrower pursuant to **Section 3.2** shall be in Dollars;
- (f) Each payment in respect of Extraordinary Expenses and any other costs, expenses and indemnities shall be made in the currency in which the same were incurred by the party to whom payment is to be made;
- (g) Any amount expressed to be payable in Canadian Dollars shall be paid in Canadian Dollars;
- (h) Any amount expressed to be payable in British Pounds shall be paid in British Pounds; and
- (i) Any amount expressed to be payable in Euro shall be paid in Euro.

No payment to any Credit Party (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Obligor in respect of which it was made unless and until such Credit Party shall have received Full Payment in the currency in which such obligation or liability is payable pursuant to the above provisions of this **Section 5.12**. To the extent that the amount of any such payment shall, on actual conversion into such currency, be less than the full amount of such obligation or liability (actual or contingent) expressed in that currency, such Obligor (together with the other Obligors who are liable thereunder or obligated therefor) agrees to indemnify and hold harmless such Credit Party with respect to the amount of such deficiency, with such indemnity surviving the termination of this Agreement and any legal proceeding, judgment or court order pursuant to which the original payment was made which resulted in such deficiency. To the extent that the amount of any such payment to a Credit Party shall, upon an actual conversion into such currency, exceed such obligation or liability, actual or contingent, expressed in that currency, such Credit Party shall return such excess to the Borrower Agent.

**5.13 Currency Fluctuations.** On each Business Day or such other date determined by Agent (the “Calculation Date”), Agent shall determine the Exchange Rate as of such date. The Exchange Rate so determined shall become effective on the first Business Day immediately following such determination (a “Reset Date”) and shall remain effective until the next succeeding Reset Date. On each Reset Date, Agent shall determine the Dollar Equivalent of the Canadian Revolver Exposure and the U.K. Revolver Exposure. If, on any Reset Date: (a) the Total Revolver Exposure exceeds the total amount of the Revolver Commitments on such date, (b) the Canadian Revolver Exposure on such date exceeds the lesser of the Canadian Borrowing Base or the Canadian Revolver Commitments on such date, or (c) the U.K. Revolver Exposure on such date exceeds the lesser of the U.K. Borrowing Base or the Canadian Revolver Commitments on such date (in any case, the amount of any such excess referred to herein as the “Excess Amount”) then (i) Agent shall give notice thereof to Borrower Agent and Lenders and (ii) within one (1) Business Day thereafter, Borrowers shall cause such excess to be eliminated, either by repayment of Revolver Loans or depositing of Cash Collateral with Agent with respect to LC Obligations and until such Excess Amount is repaid, Lenders shall not have any obligation to make any Loans and the Issuing Banks shall not have any obligation to issue any Letters of Credit.

## SECTION 6. CONDITIONS PRECEDENT

**6.1 Conditions Precedent to Effectiveness and Loans.** In addition to the conditions set forth in **Section 6.2**, this Agreement shall not become effective and Agent, the Issuing Banks and the Lenders shall not be required to fund any requested Loans, issue any Letter of Credit for the benefit of the Borrowers or otherwise extend credit to the Borrowers hereunder, until the date (“Closing Date”) that each of the following conditions has been satisfied:

- (a) Notes shall have been executed by each Borrower and delivered to each Applicable Lender that requests issuance of a Note. Each other Loan Document to which any Obligor is a party shall have been duly executed and delivered to Agent by each of the signatories thereto, and each such Obligor shall be in compliance with all terms thereof.
- (b) U.S. Borrowers shall have paid all fees and expenses to be paid to Agent and Lenders on the Closing Date.
- (c) Agent shall have received certificates, in form and substance satisfactory to it, from a knowledgeable Senior Officer of each Obligor certifying that, after giving effect to the initial Loans and transactions hereunder, (i) such Obligor is Solvent; (ii) no Default or Event of Default exists; (iii) the representations and warranties set forth in **Section 9** are true and correct; and (iv) such Obligor has complied with all agreements and conditions to be satisfied by it under the Loan Documents to which such Obligor is a party.
- (d) Agent shall have received a certificate of a duly authorized officer of each Obligor certifying (i) that attached copies of such Obligor’s Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents to which such Obligor is a party is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; and (iii) to the title, name and signature of each Person

authorized to sign the Loan Documents to which such Obligor is a party. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.

(e) Agent shall have received a written opinion of Gibson, Dunn & Crutcher LLP, Durham Jones & Pinegar, P.C., McMillan LLP, and CMS Cameron McKenna Nabarro Olswang LLP, in form and substance satisfactory to Agent.

(f) Agent shall have received good standing certificates for each Obligor (other than the U.K. Borrower and the U.K. Subsidiaries), issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization.

(g) There shall exist no action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental instrumentality that in Agent's judgment (i) could reasonably be expected to have a material adverse effect on any Obligor's business, assets, properties, liabilities, operations, condition or prospects, or could impair any Obligor's ability to perform satisfactorily under this Agreement and the other Loan Documents; or (ii) could reasonably be expected to materially and adversely affect this Agreement or the transactions contemplated hereby.

(h) (i) Each Canadian Security Agreement (amended as required) shall have been duly executed and delivered to Agent by each of the signatories thereto, and each signatory thereto shall be in compliance with all terms thereof, (ii) all PPSA and other Lien filings or recordations necessary to perfect Agent's Liens on the Collateral of each signatory to the Canadian Security Agreement shall have been filed, and (iii) Agent shall have received PPSA and Lien searches and other evidence satisfactory to Agent that such Liens are the only Liens upon the Collateral of each signatory to the Canadian Security Agreement (including estoppel letters), except Permitted Liens.

(i) Each document listed in paragraph (a) of the definition of U.K. Security Agreement shall have been duly executed and delivered to the Agent by each of the signatories thereto, and each U.K. Domiciled Obligor shall be in compliance with all terms thereof.

**6.2 Conditions Precedent to All Credit Extensions.** Agent, Issuing Banks and Lenders shall not be required to fund any Loans, arrange for issuance of any Letters of Credit or grant any other accommodation to or for the benefit of Borrowers, unless the following conditions are satisfied:

(a) No Default or Event of Default shall exist at the time of, or result from, such funding, issuance or grant;

(b) The representations and warranties of each Obligor in the Loan Documents shall be true and correct on the date of, and upon giving effect to, such funding, issuance or grant (except for representations and warranties that expressly relate to an earlier date);

(c) All conditions precedent in any other Loan Document shall be satisfied; and

(d) With respect to issuance of a Letter of Credit, the LC Conditions shall be satisfied.

Each request (or deemed request) by Borrower Agent or any Borrower for funding of a Loan, issuance of a Letter of Credit or grant of an accommodation shall constitute a representation by Borrowers that the foregoing conditions are satisfied on the date of such request and on the date of such funding, issuance or grant. As an additional condition to any funding, issuance or grant, Agent shall have received such other information, documents, instruments and agreements as it deems appropriate in connection therewith.

## SECTION 7. COLLATERAL

### 7.1 Grant of Security Interest.

7.1.1. (a) To secure the prompt payment and performance of all Obligations (including, without limitation, all Obligations of the Guarantors), each U.S. Domiciled Obligor hereby grants to Agent, for the benefit of the Secured Parties, a continuing security interest in and Lien upon all Property of such Obligor, in which such Obligor has rights, or the power to transfer rights, including all of the following Property of such Obligor, whether now or in the future, and wherever located:

- (i) all Accounts;
- (ii) all Goods, including Inventory, Equipment and fixtures;
- (iii) all Deposit Accounts (including all cash, cash equivalents, financial assets, negotiable instruments and other evidence of payment, and other funds on deposit therein or credited thereto);
- (iv) all securities accounts (including any and all Investment Property held therein or credited thereto);
- (v) all General Intangibles, including Intellectual Property (including the right to sue and recover for any and all past, present or future infringements of, violations of, dilution of or other damages or injuries to any Intellectual Property);
- (vi) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender, and any Cash Collateral;
- (vii) all Supporting Obligations;
- (viii) all Instruments, Documents and Chattel Paper;
- (ix) all Investment Property;
- (x) all Letters of Credit (as defined in the UCC) and Letter-of-Credit Rights;
- (xi) all Commercial Tort Claims, including those shown on Schedule 9.1.24;

(xii) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any of the Property described in this **Section 7.1.1(a)** (the “Proceeds”); and

(xiii) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records), pertaining to any of the Property described in this **Section 7.1.1(a)**.

Notwithstanding anything to the contrary contained in clauses (i) through (xiii) above, the security interest granted by the U.S. Domiciled Obligors pursuant to this Agreement shall not extend to, and the “Collateral” of the U.S. Domiciled Obligors shall not include, any Excluded Property.

(b) To secure the prompt payment and performance of: (i) all Canadian Facility Obligations (including, without limitation, all Canadian Facility Obligations of each Canadian Facility Guarantor), each Canadian Domiciled Obligor hereby grants to Agent, for the benefit of the Canadian Facility Secured Parties and the U.K. Facility Secured Parties and (ii) all U.K. Facility Obligations (including, without limitation, all U.K. Facility Obligations of each U.K. Facility Guarantor) each U.K. Domiciled Obligor hereby grants to Agent, for the benefit of the U.K. Facility Secured Parties and the Canadian Facility Secured Parties, in each case of clause (a)-(b), and (e), a continuing security interest in and Lien upon all of the following Property of such Obligor, in which such Obligor has rights, or the power to transfer rights, whether now or in the future, and wherever located:

- (i) all Accounts;
- (ii) all Inventory;
- (iii) all Deposit Accounts (including all cash, cash equivalents, financial assets, negotiable instruments and other evidence of payment, and other funds on deposit therein or credited thereto);
- (iv) all securities accounts (including any and all Investment Property held therein or credited thereto);
- (v) all Intellectual Property (including the right to sue and recover for any and all past, present or future infringements of, violations of, dilution of or other damages or injuries to any Intellectual Property), ~~other than Excluded Intellectual Property~~;
- (vi) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender that were derived from or consist of any of the Property described in this **Section 7.1.1, 7.1.1(b)**, and any Cash Collateral;
- (vii) all Supporting Obligations of any of the Property described in this **Section 7.1.1(b)**;

(viii) all Instruments, Documents and Chattel Paper, in each case only to the extent evidencing or governing any of the Property described in this **Section 7.1.1(b)**;

(ix) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any of the Property described in this **Section 7.1.1(b)** (the “Proceeds”); and

(x) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to any of the Property described in this **Section 7.1.1(b)**, and any General Intangibles to the extent evidencing or governing any of the Property described in this **Section 7.1.1(b)**.

In the case of each U.K. Domiciled Obligor, the continuing security interest in and Lien upon all of the above Property of such U.K. Domiciled Obligor granted above is limited to the Property of that U.K. Domiciled Obligor which is expressed to be subject to a security interest under the U.K. Security Agreements to which that U.K. Obligor is expressed to be a party.

## **7.2 Lien on Deposit Accounts; Cash Collateral.**

7.2.1. Deposit Accounts. To further secure the prompt payment and performance of: (a) all Obligations (including, without limitation, all Obligations of the Guarantors), each U.S. Domiciled Obligor hereby grants to Agent, for the benefit of the Secured Parties, (b) all Canadian Facility Obligations (including, without limitation, all Canadian Facility Obligations of each Canadian Facility Guarantor), each Canadian Domiciled Obligor hereby grants to Agent, for the benefit of the Canadian Facility Secured Parties and the U.K. Facility Secured Parties, and (c) all U.K. Facility Obligations (including, without limitation, all U.K. Facility Obligations of each U.K. Facility Guarantor), each U.K. Domiciled Obligor hereby grants to Agent, for the benefit of the U.K. Facility Secured Parties and the Canadian Facility Secured Parties, in each case of clause (a), (b), and (c), a continuing security interest in and Lien on all amounts credited to any Deposit Account of such Obligor, including any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept. Each Obligor hereby authorizes and directs each bank or other depository to deliver to Agent, upon request, all balances in any Deposit Account maintained by such Obligor, without inquiry into the authority or right of Agent to make such request. In the case of each U.K. Domiciled Obligor, the continuing security interest in and Lien upon all amounts credited to any Deposit Accounts of such U.K. Domiciled Obligor, and any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept, granted above is limited to the sums in the Deposit Accounts of that U.K. Domiciled Obligor, and any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept, which are expressed to be subject to a security interest under the U.K. Security Agreements to which that U.K. Obligor is expressed to be a party.

7.2.2. Cash Collateral. Any Cash Collateral may be invested, at Agent’s discretion (and with the consent of Borrowers, as long as no Event of Default exists), but Agent shall have no duty to do so, regardless of any agreement or course of dealing with any Obligor,

and shall have no responsibility for any investment or loss. To further secure the prompt payment and performance of all: (a) Obligations (including, without limitation, all Obligations of the Guarantors), each U.S. Domiciled Obligor hereby grants to Agent, for the benefit of the Secured Parties, (b) Canadian Facility Obligations (including, without limitation, all Canadian Facility Obligations of each Canadian Facility Guarantor), each Canadian Domiciled Obligor hereby grants to Agent, for the benefit of the Canadian Facility Secured Parties and the U.K. Facility Secured Parties, and (c) U.K. Facility Obligations (including, without limitation, all U.K. Facility Obligations of each U.K. Facility Guarantor), each U.K. Domiciled Obligor hereby grants to Agent, for the benefit of the U.K. Facility Secured Parties and the Canadian Facility Secured Parties, in each case of clause (a), (b), and (c), a continuing security interest in and Lien on all Cash Collateral held from time to time and all proceeds thereof, whether such Cash Collateral is held in a Cash Collateral Account or elsewhere. Agent may apply Cash Collateral of a U.S. Domiciled Obligor to the payment of any Obligations, may apply Cash Collateral of a Canadian Domiciled Obligor to the payment of any Canadian Facility Obligations, and may apply Cash Collateral of a U.K. Domiciled Obligor to the payment of any U.K. Facility Obligations, in each case, in such order as Agent may elect, as they become due and payable. Each Cash Collateral Account and all Cash Collateral shall be under the sole dominion and control of Agent. No U.S. Domiciled Obligor or other Person claiming through or on behalf of any U.S. Domiciled Obligor shall have any right to any Cash Collateral, until Full Payment of all Obligations. No Canadian Domiciled Obligor or other Person claiming through or on behalf of any Canadian Domiciled Obligor shall have any right to any Cash Collateral, until Full Payment of all Canadian Facility Obligations. No U.K. Domiciled Obligor or other Person claiming through or on behalf of any U.K. Domiciled Obligor shall have any right to any Cash Collateral, until Full Payment of all U.K. Facility Obligations

**7.3 Intentionally Omitted—Real Estate Collateral.** If any U.S. Domiciled Obligor owns any Material Real Property as of the Second Amendment to Third Amended and Restated Effective Date, Borrowers shall, within 120 days of the Second Amendment to Third Amended and Restated Effective Date, execute, deliver and record a first priority (subject to the terms of the Intercreditor Agreement) Mortgage, in form and substance satisfactory to Agent, together with all Related Real Estate Documents. If any U.S. Domiciled Obligor acquires Material Real Property after the Second Amendment to Third Amended and Restated Effective Date, Borrowers shall promptly notify Agent and, within 120 days, execute, deliver and record a first priority (subject to the terms of the Intercreditor Agreement) Mortgage, in form and substance satisfactory to Agent, together with all Related Real Estate Documents. Notwithstanding anything contained in this Agreement to the contrary, no Mortgage shall be executed and delivered with respect to any real property unless and until each Lender has received, at least twenty Business Days prior to such execution and delivery, a life of loan flood zone determination and such other documents as it may reasonably request to complete its flood insurance due diligence and has confirmed to the Agent that flood insurance due diligence and flood insurance compliance has been completed to its satisfaction.

#### **7.4 Other Collateral**

**7.4.1. Commercial Tort Claims.** U.S. Borrowers shall promptly notify Agent in writing if any U.S. Domiciled Obligor has a Commercial Tort Claim (other than a Commercial Tort Claim for less than \$1,000,000), shall promptly amend Schedule 9.1.24 to include such claim, and shall take such actions as Agent deems appropriate to subject such claim to a duly perfected, first priority (subject to the terms of the Intercreditor Agreement) Lien in favor of Agent.<sup>7.4</sup>

**Certain After-Acquired Collateral.** Borrowers shall promptly notify Agent in writing if, after the Original Agreement Closing Date, any Obligor obtains any interest in any Collateral consisting of Deposit Accounts, Chattel Paper, Documents, Instruments, Intellectual Property (**other than Excluded Intellectual Property**), Investment Property or Letter-of-Credit Rights and, upon Agent's request, shall promptly take such actions as Agent deems appropriate to effect Agent's duly perfected, first priority Lien upon such Collateral, including obtaining any appropriate possession, control agreement or Lien Waiver. If any Collateral is in the possession of a third party, at Agent's request, Borrowers shall obtain an acknowledgment that such third party holds the Collateral for the benefit of Agent.

**7.5 No Assumption of Liability.** The Liens on the Collateral granted hereunder are given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of any Obligor relating to any Collateral. In no event shall the grant of any Lien under any Loan Document secure an Excluded Swap Obligation of the granting Obligor.

**7.6 Further Assurances.** Promptly upon request, Obligors shall deliver such instruments, assignments, title certificates, or other documents or agreements, and shall take such actions, as Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Obligor authorizes Agent to file any financing statement that Agent deems desirable to preserve and perfect Agent's security interest in the Collateral of such Obligor, and ratifies any action taken by Agent before the Closing Date to effect or perfect its Lien on any Collateral.

## SECTION 8. COLLATERAL ADMINISTRATION

**8.1 Borrowing Base Certificates.** By the 20th day of each month, Borrower Agent shall deliver to Agent (and Agent shall promptly deliver same to Lenders) a U.S. Borrowing Base Certificate, Canadian Borrowing Base Certificate, and a U.K. Borrowing Base Certificate, in each case, prepared as of the close of business of the previous month, and at such other times as Agent may request; provided that during any Reporting Trigger Period, Borrower Agent shall also be required to deliver to Agent weekly U.S. Borrowing Base Certificates, Canadian Borrowing Base Certificates, and U.K. Borrowing Base Certificates by the 3rd Business Day of each week which begins during such Reporting Trigger Period, in each case, prepared as of the close of business on the last Business Day of the previous week (in the case of matters other than those related to Inventory) or of the close of business of the previous month (in the case of matters relating to Inventory). All calculations of U.S. Availability, Canadian Availability, or U.K. Availability in any Borrowing Base Certificate shall originally be made by Borrower Agent and certified by a Senior Officer of Borrower Agent; provided, that Agent may from time to time review and adjust any such calculation (a) to reflect its reasonable estimate of declines in value of any Collateral, due to collections received in any Dominion Account or otherwise; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Collateral; and (c) to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the U.S. Availability Reserve and/or the Canadian Availability Reserve and/or the U.K. Availability Reserve. The U.S. Borrowing Base Certificate shall set forth the calculation of the U.S. Borrowing Base in Dollars. The Canadian Borrowing Base shall set forth the calculation of the Canadian Borrowing Base in both Canadian Dollars and the Dollar Equivalent thereof along with the Exchange Rate used to determine such Dollar Equivalent. The U.K. Borrowing Base shall set forth the calculation of the U.K. Borrowing Base in each of British Pounds, Dollars and Euros and

the Dollar Equivalent thereof along with the Exchange Rate used to determine such Dollar Equivalent.

## **8.2 Administration of Accounts.**

8.2.1. Records and Schedules of Accounts. Each Obligor shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to Agent sales, collection, reconciliation and other reports in form satisfactory to Agent, on such periodic basis as Agent may request. Borrower Agent shall also provide to Agent, on or before the 20th day of each month, a detailed aged trial balance of all Accounts of each Borrower as of the end of the preceding month, specifying each Account's Account Debtor name and address, amount, invoice date and due date, showing any discount, allowance, credit, authorized return or dispute, and including such proof of delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as Agent may reasonably request. If Accounts of any Borrower Group in an aggregate face amount of \$2,500,000 or more cease to be Eligible Accounts, Borrower Agent shall notify Agent of such occurrence promptly (and in any event within one Business Day) after any Obligor has knowledge thereof.

8.2.2. Taxes. If an Account of any Obligor includes a charge for any Taxes, Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Obligor and to charge the Borrowers of the applicable Borrower Group therefor; provided, however, that neither Agent nor Lenders shall be liable for any Taxes that may be due from any Obligor or with respect to any Collateral.

8.2.3. Account Verification. Whether or not a Default or Event of Default exists, Agent shall have the right at any time, in the name of Agent, any designee of Agent or any Obligor, to verify the validity, amount or any other matter relating to any Accounts of Obligors by mail, telephone or otherwise. Obligors shall cooperate fully with Agent in an effort to facilitate and promptly conclude any such verification process.

### **8.2.4. Maintenance of Dominion Accounts.**

(a) U.S. Domiciled Obligors and Canadian Domiciled Obligors shall maintain Dominion Accounts pursuant to lockbox or other arrangements acceptable to Agent. U.S. Domiciled Obligors and Canadian Domiciled Obligors shall obtain an agreement (in form and substance satisfactory to Agent) from each lockbox servicer and Dominion Account bank, establishing Agent's control over and Lien in the lockbox or Dominion Account, which may be exercised by Agent during any Dominion Trigger Period, requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges. If a Dominion Account of a U.S. Domiciled Obligor or Canadian Domiciled Obligor is not maintained with Bank of America or Bank of America (Canada), as applicable, Agent may, during any Dominion Trigger Period, require immediate transfer of all funds in such account to a Dominion Account maintained with Bank of America or Bank of America (Canada), as applicable.

(b) U.K. Domiciled Obligors shall maintain Dominion Accounts at all times pursuant to lockbox or other arrangements acceptable to Agent. U.K. Domiciled Obligors shall obtain an agreement (in form and substance satisfactory to Agent) from each lockbox servicer and Dominion Account bank, establishing Agent's control over and Lien in the lockbox or Dominion Account at all times, requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges. If a Dominion Account of a U.K. Domiciled Obligor is not maintained with Bank of America, N.A., London Branch, Agent may require immediate transfer of all funds in such account to a Dominion Account maintained with Bank of America, N.A., London Branch.

(c) Agent and Lenders assume no responsibility to any Obligor for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

8.2.5. Proceeds of Collateral. Obligors (other than U.K. Domiciled Obligors) shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Dominion Account (or a lockbox relating to a Dominion Account). U.K. Domiciled Obligors shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Dominion Account (or a lockbox relating to a Dominion Account). If any Obligor receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for Agent and promptly (not later than the next Business Day) deposit same into a Dominion Account.

### **8.3 Administration of Inventory.**

8.3.1. Records and Reports of Inventory. Each Obligor shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to Agent inventory and reconciliation reports in form satisfactory to Agent, on such periodic basis as Agent may request. Each Obligor shall conduct periodic cycle counts consistent with historical practices, and shall provide to Agent a report based on each such count promptly upon completion thereof, together with such supporting information as Agent may request.

8.3.2. Returns of Inventory. No Obligor shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default, Event of Default or Overadvance exists or would result therefrom; (c) Agent is promptly notified if the aggregate Value of all Inventory returned in any month exceeds \$5,000,000; and (d) any payment received by an Obligor for a return during any Dominion Trigger Period is promptly remitted to Agent for application to the Obligations.

8.3.3. Acquisition, Sale and Maintenance. No Obligor shall acquire or accept any Inventory on consignment or approval, and each Obligor shall take all steps to assure that all Inventory is produced in accordance with Applicable Law, including the FLSA. Except to the extent permitted by **Section 10.2.5(b)** in the case of consignments, no Obligor shall sell any Inventory on consignment or approval or any other basis under which the customer may return or require an Obligor to repurchase such Inventory. Each Obligor shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any

insurance and in conformity with all Applicable Law, and, except in cases of good faith disputes, shall make current rent payments (within applicable grace and cure periods provided for in leases) at all locations where any Collateral is located.

#### **8.4 Intentionally Omitted.**

**8.5 Administration of Deposit Accounts.** Each Obligor shall take all actions necessary to establish Agent's control of all Deposit Accounts (including Dominion Accounts) and securities accounts maintained by such Obligor; provided, however, that such control shall not be required for the following (collectively, the "Excluded Deposit Accounts") : (a) an account exclusively used for payroll, payroll taxes or employee benefits, and (b) at any time during which an Event of Default does not exist, an account containing not more than \$250,000, provided, that the aggregate amounts contained in all such accounts referred to in this clause (b) for which Agent does not have control at any time shall not exceed \$1,000,000. The applicable Obligor shall be the sole account holder of each Deposit Account or securities account and shall not allow any other Person (other than Agent) to have control over a Deposit Account, securities account or any Property deposited therein. Each of the Obligors shall promptly notify Agent in writing of any opening or closing of a Deposit Account or securities account and, concurrently with the opening thereof, shall ensure that such account (except an Excluded Deposit Account) is subject to a fully executed Deposit Account Control Agreement or, in the case of a securities account, similar control agreement in favor of Agent and acceptable to Agent.

#### **8.6 General Provisions.**

**8.6.1. Location of Collateral.** All tangible items of Collateral, other than Inventory in transit (including in transit to or from a manufacturing facility), shall at all times be kept by Obligors at the business locations for such Obligors set forth in **Schedule 8.6.1**, except that Obligors may (a) make sales or other dispositions of Collateral in accordance with **Section 10.2.5**; and (b) move Collateral to another location in the United States or, in the case of: (i) a Canadian Domiciled Obligor, in Canada, or (ii) a U.K. Domiciled Obligor, in England, Wales, Scotland or Northern Ireland (subject, in each case, to Agent being granted a first priority Lien (subject to Permitted Liens) if none has been previously granted in such province or territory), in each case, upon 15 Business Days' prior written notice to Agent.

##### **8.6.2. Insurance of Collateral; Condemnation Proceeds.**

(a) Each Obligor shall maintain insurance with respect to the Collateral, covering casualty, hazard, theft, malicious mischief, flood and other risks, in amounts, with endorsements and with insurers (with a Best's Financial Strength Rating of at least A- VII, unless otherwise approved by Agent) satisfactory to Agent; provided, that if Real Estate secures any Obligations, flood hazard diligence, documentation and insurance for such Real Estate shall comply with all Flood Laws or shall otherwise be satisfactory to all Lenders. From time to time upon request, Borrower Agent shall deliver to Agent the originals or certified copies of its insurance policies and updated flood plain searches. Unless Agent shall agree otherwise, each policy shall include satisfactory endorsements (i) showing Agent as lender first loss payee (with respect to property policies only); (ii) requiring at least 30 days prior written notice to Agent in the event of cancellation of the policy for any reason whatsoever; and (iii) specifying that the interest

of Agent shall not be impaired or invalidated by any act or neglect of any Obligor or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. If any Obligor fails to provide and pay for any insurance, Agent may, at its option, but shall not be required to, procure the insurance and charge Borrowers therefor. Each Obligor agrees to deliver to Agent, promptly as rendered, copies of all reports made to insurance companies. While no Event of Default exists, Obligors may settle, adjust or compromise any insurance claim, as long as the proceeds are delivered to Agent in accordance with **Section 8.6.2(b)**. If an Event of Default exists, only Agent shall be authorized to settle, adjust and compromise any claims involving any Collateral.

(b) Any proceeds of insurance relating to the Collateral and any awards arising from condemnation of any Collateral shall be paid to Agent for application to the Obligations in accordance with the terms hereof.

8.6.3. Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Borrowers. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Obligors' sole risk.

8.6.4. Defense of Title to Collateral. Each Obligor shall at all times defend its title to Collateral and Agent's Liens therein against all Persons, claims and demands whatsoever, except Permitted Liens.

**8.7 Power of Attorney.** Each Obligor hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Obligor's true and lawful attorney (and agent-in-fact), coupled with an interest, for the purposes provided in this Section. Agent, or Agent's designee, may, without notice and in either its or a an Obligor's name, but at the cost and expense of the Borrowers:

(a) Endorse an Obligor's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control; and

(b) During an Event of Default, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts, by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Agent deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or securities accounts, and take control, in any manner, of any proceeds of Collateral; (v) prepare, file and sign an Obligor's name to a proof of claim or other document in a bankruptcy or other Insolvency Proceeding of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to an Obligor where the addressee is any Account Debtor or where

the addressee is not identifiable with certainty, and notify postal authorities to deliver any such mail to an address designated by Agent; (vii) endorse any Chattel Paper, Document, Instrument, invoice, freight bill, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use an Obligor's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use the information recorded on or contained in any data processing, electronic or information systems relating to any Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which an Obligor is a beneficiary; and (xii) exercise any voting or other rights under or with respect to any Investment Property; and (xiii) take all other actions as Agent deems appropriate to fulfill any Obligor's obligations under the Loan Documents.

## SECTION 9. REPRESENTATIONS AND WARRANTIES

**9.1 General Representations and Warranties.** To induce Agent and Lenders to enter into this Agreement and to make available the Commitments, Loans and Letters of Credit, each Obligor represents and warrants that:

9.1.1. Existence, Qualification and Power; Compliance with Applicable Laws. Each Obligor and each Subsidiary (a) is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and is licensed and 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, and (d) is in compliance with all Applicable Laws; except in each case referred to in clause (b)(i), (c) or (d), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. No Obligor is an EEA Financial Institution.

9.1.2. Authorization; No Contravention. The execution, delivery and performance by each Obligor of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organic Documents; (b) conflict with or result in any breach of or contravention under (i) any Contractual Obligation to which such Person is a party or by which it is bound, the termination or adverse modification of which could reasonably be expected to have a Material Adverse Effect, 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; (c) result in the creation of any Lien (other than Permitted Liens), or (d) violate any Applicable Law.

9.1.3. Governmental Authorization; Other Consents. No 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 Obligor of this Agreement or any other Loan Document except for such approvals, consents, exemptions, authorizations, actions, notices and filings which have been obtained, taken, given or made and are in full force and effect. All necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral

have been procured and are in effect, and Obligors and Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect.

9.1.4. **Binding Effect**. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Obligor 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 Obligor, enforceable against each Obligor that is party thereto in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

9.1.5. **Financial Statements; No Material Adverse Effect**.

(a) The consolidated and consolidating balance sheets, and related statements of income, cash flow and shareholder's equity, of Parent and its Subsidiaries that have been and are hereafter delivered to Agent and Lenders (i) are prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial positions and results of operations of Parent and Subsidiaries at the dates and for the periods indicated, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of Parent and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Debt, to the extent required by GAAP to be shown on such financial statements.

(b) Since December 31, 2010, there has been no change in the condition, financial or otherwise, of any Borrower or any Subsidiary that could reasonably be expected to have a Material Adverse Effect.

(c) Each Borrower is Solvent and Parent and the Subsidiaries on a consolidated basis are Solvent.

9.1.6. **Litigation**. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Obligor, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Borrower or any Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

9.1.7. **No Default**. No Borrower or Subsidiary is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

9.1.8. **Ownership of Property; Liens**. Each Borrower and each Subsidiary 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 (other than minor defects in title as could

not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect), and all personal Property, including all Property reflected in any financial statements delivered to Agent or Lenders, in each case free of Liens except Permitted Liens. Except disclosed on the survey delivered to Agent as part of the Related Real Estate Documents, no ~~Eligible~~ Real Estate is located in a special flood hazard zone, except as disclosed on **Schedule 9.1.8**. Each Borrower and each Subsidiary has paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, other than Permitted Liens. All Liens of Agent in the Collateral are duly perfected, first priority Liens, subject only to Permitted Liens that are expressly allowed to have priority over Agent's Liens.

9.1.9. Environmental Compliance. Borrowers and Subsidiaries conduct in the Ordinary Course of Business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties (including Real Estate), and as a result thereof the Obligors have reasonably concluded that, except as specifically disclosed on **Schedule 9.1.9**, such Environmental Laws and claims could not, individually or in the aggregate reasonably be expected to have a Material Adverse Effect. No Borrower or Subsidiary has any contingent liability with respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now or previously owned, leased or operated by it.

9.1.10. Insurance. The properties of Borrowers and Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of any Obligor, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Borrower or the applicable Subsidiary operates.

9.1.11. Taxes. Each Borrower and each Subsidiary has filed all federal, state and material local tax returns and other material reports that it is required by law to file, and has paid, or made proper provision in accordance with relevant accounting standards for the payment of, all Taxes upon it, its income and its Properties that are due and payable, except to the extent being Properly Contested.

9.1.12. ERISA; Canadian Pension Plan Compliance. Except as disclosed on **Schedule 9.1.12**:

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of Obligors, nothing has occurred which would prevent, or cause the loss of, such qualification. Parent and each ERISA Affiliate has made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of Obligors, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could be 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 that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) No Canadian Borrower or any Canadian Subsidiary provides benefits to retired Canadian Employees or to beneficiaries or dependents of retired Canadian Employees. Except as would not reasonably be expected to result in a Material Adverse Effect, Canadian Borrower and each Canadian Subsidiary is in compliance with all Requirements of Law and all Canadian Employee Benefits Legislation and health and safety, workers compensation, employment standards, labor relations, health insurance, employment insurance, protection of personal information, human rights laws and any Canadian federal, provincial or local counterparts or equivalents in each case, as applicable to the Canadian Employees and as amended from time to time.

(d) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither Parent nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither Parent nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither Parent nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

(e) Canadian Borrower and Canadian Subsidiaries are in compliance with the requirements of the PBA and other federal, provincial or state laws with respect to each Canadian Pension Plan, except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect. No fact or situation that may reasonably be expected to result in a Material Adverse Effect exists in connection with any Canadian Pension Plan. Neither Canadian Borrower nor any of Canadian Subsidiary has any material withdrawal liability in connection with a Plan. No Termination Event has occurred. Each Canadian Pension Plan has no solvency deficiency and is fully funded as required under the most recent actuarial valuation filed with the applicable Governmental Authority pursuant to generally accepted actuarial practices and principles. No fact or circumstance exists that could adversely affect the tax-exempt status of a Canadian Pension Plan. No Lien has arisen, choate or inchoate, in respect of Canadian Borrower or Canadian Subsidiaries or their property in connection with any Canadian Pension Plan (save for contribution amounts not yet due). No Canadian Pension Plan provides benefits on a defined benefit basis.

(f) With respect to any Foreign Plan, except as could not reasonably be expected to have a Material Adverse Effect, (i) all employer and employee contributions required by law or by the terms of the Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices; (ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance, or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to

procure or provide for the accrued benefit obligations with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and (iii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.

(g) No U.K. Domiciled Obligor nor any of its U.K. subsidiaries is nor has at any time been: (i) an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004 of the United Kingdom) of an occupational pension scheme which is not a money purchase scheme (as those terms are defined in the Pension Schemes Act 1993 of the United Kingdom); or (ii) “connected” with or an “associate” of the Parent or any of its Subsidiaries which is such an employer (as those terms are used in Sections 38 and 43 of the Pensions Act 2004 of the United Kingdom) in relation to an occupational pension scheme in the United Kingdom which is not a money purchase scheme.

9.1.13. Subsidiaries. **Schedule 9.1.13** shows, for each Borrower and each Subsidiary, its name and its jurisdiction of organization.

**Schedule 9.1.13** shows, for each Subsidiary of Parent, its authorized and issued Equity Interests, the holders of its Equity Interests, and all agreements binding on such holders with respect to their Equity Interests. Except as disclosed on **Schedule 9.1.13**, in the five years preceding the Closing Date, no Borrower or Subsidiary has acquired any substantial assets from any other Person nor been the surviving entity in a merger, amalgamation or combination. Each Borrower has good title to its Equity Interests in its Subsidiaries, and all such Equity Interests are duly issued, fully paid and non-assessable. There are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Subsidiary of Parent.

9.1.14. Margin Regulations; Investment Company Act.

(a) No Borrower or Subsidiary is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Loan proceeds or Letters of Credit will be used by Borrowers to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose, in each case, in violation of Regulations T, U or X of the Board of Governors.

(b) None of the Borrowers is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

9.1.15. Disclosure. No written report, financial statement, certificate or other written information furnished by or on behalf of any Obligor to Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) taken as a whole 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 misleading; provided that, with respect to projected financial information, the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that projections are subject to significant uncertainties

and contingencies, many of which are beyond the Borrowers' control, and that no assurance can be given the projections will be realized).

9.1.16. Compliance with Laws. Each Borrower and each Subsidiary is in compliance in all material respects with the requirements of all Applicable 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 Applicable 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. Except as would not reasonably be expected to have a Material Adverse Effect, no Inventory has been produced in violation of the FLSA.

9.1.17. Intellectual Property; Licenses, Etc. To the best knowledge of Obligors, or as could not reasonably be expected to have a Material Adverse Effect, Borrowers and Subsidiaries own, or possess the lawful right to use, all Intellectual Property necessary for the conduct of its business, without conflict with the rights of any other Person. To the best knowledge of Obligors, no slogan or other advertising device, product, process, method, substance, part or other material now employed by any Borrower or any Subsidiary infringes upon any valid, proprietary rights held by any other Person that could result in a claim, that, if successful, could reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Obligors, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Borrower Agent has disclosed on **Schedule 9.1.17** (i) all Royalties or other compensation paid by any Borrower or Subsidiary to any Person with respect to any Intellectual Property and (ii) all Intellectual Property (**other than Excluded Intellectual Property**) registrations, filings and applications for registration owned by any Obligor.

9.1.18. Accounts. Agent may rely, in determining which Accounts are Eligible Accounts, on all statements and representations made by Borrowers with respect thereto. Borrowers warrant, with respect to each Account at the time it is shown as an Eligible Account in a Borrowing Base Certificate, that:

- (a) it is genuine and in all respects what it purports to be, and is not evidenced by a judgment;
- (b) it arises out of a completed, bona fide sale and delivery of goods or rendition of services in the Ordinary Course of Business, and substantially in accordance with any purchase order, contract or other document relating thereto;
- (c) it is for a sum certain, maturing as stated in the invoice covering such sale or rendition of services, a copy of which has been furnished or is available to Agent on request;
- (d) it is not subject to any offset, Lien (other than Agent's Lien), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the Ordinary Course of Business and disclosed to Agent; and it is absolutely owing by the Account Debtor, without contingency in any respect;

(e) no purchase order, agreement, document or Applicable Law restricts assignment of the Account to Agent (regardless of whether, under the UCC or PPSA, the restriction is ineffective), and the applicable Borrower is the sole payee or remittance party shown on the invoice;

(f) no extension, compromise, settlement, modification, credit, deduction or return has been authorized with respect to the Account, except discounts or allowances granted in the Ordinary Course of Business for prompt payment that are reflected on the face of the invoice related thereto and in the reports submitted to Agent hereunder; and

(g) to the best of Borrowers' knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectibility of such Account; (ii) the Account Debtor had the capacity to contract when the Account arose, continues to meet the applicable Borrower's customary credit standards, is Solvent, is not contemplating or subject to an Insolvency Proceeding, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

9.1.19. Brokers. There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Loan Documents.

9.1.20. Trade Relations. Except as would not reasonably be expected to have a Material Adverse Effect, there exists no actual or threatened termination, limitation or modification of any business relationship between any Borrower or Subsidiary and any customer or supplier, or any group of customers or suppliers, who individually or in the aggregate are material to the business of such Borrower or Subsidiary.

9.1.21. Labor Relations. Except as described on **Schedule 9.1.21**, no Obligor is party to or bound by any collective bargaining agreement. Except as would not reasonably be expected to have a Material Adverse Effect, there are no material grievances, disputes or controversies with any union or other organization of any Borrower's or Subsidiary's employees, or, to any Obligor's knowledge, any asserted or threatened strikes, work stoppages or demands for collective bargaining.

9.1.22. OFAC. No Obligor (i) or (to the knowledge of any Obligor) any director, officer, employee, agent, affiliate or representative thereof, is or is owned or controlled by any individual or entity that is currently the target of any Sanction or is located, organized or resident in a Designated Jurisdiction, (ii) is a person whose property or interest in property is blocked or subject to blocking pursuant to (A) Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (B) the United Nations Act (Canada), the Special Economic Measures Act (Canada), the Export and Import Permits Act (Canada), the Freezing Assets of Corrupt Foreign Officials Act (Canada), the Criminal Code (Canada), the Defence Production Act (Canada), the Proceeds of Crime Act, the Anti-terrorism Act (Canada) or the Foreign Extraterritorial Measures Act (Canada) (together with and all regulations and orders

made thereunder, collectively, “Canadian Sanctions Laws”), or (C) the Proceeds of Crime Act 2002, the Counter-Terrorism Act 2008 and Export Control Order 2008, the Export Control Act 2002, the Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011, the Terrorist Asset-Freezing etc. Act 2010 and the Consolidated List of Financial Sanctions Targets administered by HM Treasury through the Office of Financial Sanctions Implementations, EU Council Regulation 2580/2001 and all supplementary instruments thereto including Implementing Resolution 1169/2012 and EU (EC) Regulation 881/2002, (EU) 753/2011, (EU) 754/2011 and (EU) 2017/1411 (collectively, the “U.K. Sanctions Laws”), (iii) engages in any dealings or transactions prohibited by (A) Section 2 of such executive order, (B) Canadian Sanctions Laws or (C) U.K. Sanctions Laws, or is otherwise associated with any such person in any manner violative of Section 2 of such executive order or by Canadian Sanctions Laws or U.K. Sanctions Laws, or (iv) is a person (A) on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order, (B) on the list of names subject to the Regulations Establishing a List of Entities made under subsection 83.05(1) of the *Criminal Code*, and/or the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* (RIUNRST) and/or *United Nations Al-Qaida and Taliban Regulations* (UNAQTR), or (C) is a person included on the UK’s Consolidated List of Financial Sanctions Targets.

9.1.23. **Anti-Corruption Laws.** Each Obligor has implemented and maintains in effect policies and procedures designed to ensure compliance by such Obligor, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws of Canada, United Kingdom, United States, and any of the member states of the European Union and applicable Sanctions, and such Obligor, its Subsidiaries and their respective officers and directors and, to the knowledge of such Loan Party, its employees and agents, are in compliance with Anti-Corruption Laws of Canada, United Kingdom, United States, and any of the member states of the European Union and applicable Sanctions in all material respects.

**9.1.24. Commercial Tort Claims. Except as shown on Schedule 9.1.24, no U.S. Domiciled Obligor has a Commercial Tort Claim (other than a Commercial Tort Claim for less than \$1,000,000).**

## **SECTION 10. COVENANTS AND CONTINUING AGREEMENTS**

**10.1 Affirmative Covenants.** As long as any Commitments or Obligations are outstanding, each Obligor shall, and shall cause each Subsidiary to:

10.1.1. **Financial Statements.** Deliver to Agent (with sufficient copies for each Lender), in form and detail satisfactory to Agent and the Required Lenders:

(a) as soon as available, but in any event within 90 days after the end of each Fiscal Year of Parent, balance sheets as at the end of such Fiscal Year, and the related statements of income or operations, shareholders’ equity and cash flows for such Fiscal Year, on a consolidated and consolidating basis for Parent and its Subsidiaries, 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, which consolidated statements shall be audited and accompanied by a

report and opinion of an independent certified public accountant or chartered accountant, as applicable, of nationally recognized standing, 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;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each Fiscal Year of Parent, unaudited balance sheets as at the end of such fiscal quarter, and the related statements of income or operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of Parent's fiscal year then ended, on a consolidated and consolidating basis for Parent and its Subsidiaries, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief financial officer of Borrower Agent as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Parent and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, and in any event within 30 days after the end of each month other than the last month of each fiscal quarter of Parent, unaudited balance sheets as at the end of such month, and the related statements of income or operations for such month and for the portion of Parent's fiscal year then ended, on a consolidated basis for Parent and its Subsidiaries, setting forth in each case in comparative form the figures for the corresponding month of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief financial officer of Borrower Agent as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Parent and its Subsidiaries in accordance with historical practices.

10.1.2. Certificates; Other Information. Deliver to Agent, for delivery to each Lender, in form and detail satisfactory to Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in **Sections 10.1.1(a), (b) and (c)**, or more frequently if requested by Agent when a Default or Event of Default exists, a duly completed Compliance Certificate signed by the chief financial officer of the Borrower Agent;

(b) concurrently with the delivery of financial statements under **Section 10.1.1(a)**, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of Parent by independent accountants in connection with the accounts or books of Borrowers or any Subsidiary, or any audit of any of them;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Parent, and copies of all annual, regular, periodic and special reports and registration statements which any Obligor may file or be required to file with the Securities and Exchange Commission or any provincial securities commission or regulator, and not otherwise required to be delivered to Agent pursuant hereto;

(d) promptly following the Agent's request therefor, all documentation and other information that the Agent reasonably requests on its behalf or on behalf of any Lender 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 Proceeds of Crime Act;

(e) promptly following the Agent's request therefor, copies of (i) any documents described in Section 101(k)(1) of ERISA that any Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l)(1) of ERISA that any Borrower or any of its ERISA Affiliates may request with respect to any Plan or Multiemployer Plan; provided that if any Borrower or any of its ERISA Affiliates have not requested such documents or notices from the administrator or sponsor of the applicable Plan or Multiemployer Plan prior to the Agent's request therefor, a Borrower or one of its ERISA Affiliates shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof and promptly after the sending or filing thereof, copies of any annual report to be filed in connection with any Canadian Pension Plan or any Foreign Plan of any Obligor incorporated in the U.K.;

(f) promptly after Borrower Agent has notified Agent of any intention by Borrowers to treat the Loans and/or Letters of Credit and related transactions as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4), a duly completed copy of IRS Form 8886 or any successor form;

(g) not later than 30 days after the end of each Fiscal Year, projections of Parent's consolidated balance sheets, results of operations, cash flow, U.S. Availability, U.K. Availability and Canadian Availability for the next Fiscal Year, month by month;

(h) at Agent's request, a listing of each Obligor's trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging, all in form satisfactory to Agent;

(i) within 45 days of the end of each fiscal quarter of Parent, or more frequently if requested by Agent when a Default or Event of Default exists: (i) all Royalties or other compensation (to the extent not previously disclosed to Agent in writing) paid by any Borrower or Subsidiary to any Person with respect to any Intellectual Property, and (ii) all Intellectual Property (to the extent not previously disclosed to Agent in writing) owned, used or licensed by, or otherwise subject to any interests of, any Borrower or Subsidiary; and

(j) promptly, such additional information regarding the Collateral or the business, financial or corporate affairs of Borrowers or any Subsidiary, or compliance with the terms of the Loan Documents, as Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to **Section 10.1.1(a) or (b)** or **Section 10.1.2(c)** (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower Agent posts such documents, or provides a link thereto on Borrower Agent's website; or (ii) on which such documents are posted on Borrower Agent's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which Agent and each Lender have

access (whether a commercial, third-party website or whether sponsored by Agent); provided that: (i) if any Lender so requests, the Borrower Agent shall deliver paper copies or electronic copies via electronic mail of such documents to Agent or any Lender that requests Borrower Agent to deliver such paper or electronic copies until a written request to cease delivering paper or electronic copies is given by Agent or such Lender and (ii) Borrower Agent shall notify (which may be by facsimile or electronic mail) Agent and each Lender of the posting of any such documents. Notwithstanding anything contained herein, in every instance Borrower Agent shall be required to provide paper copies of the Compliance Certificates required by **Section 10.1.2(a)** to Agent and each of the Lenders. Except for such Compliance Certificates, 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 Borrower Agent 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.

10.1.3. Notices. Notify Agent and each Lender:

- (a) Within five (5) Business Days after the occurrence of a Default or Event of Default under **Section 11.1(f)** and promptly after the occurrence of any other Default or Event of Default;
- (b) Promptly of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including, if applicable (i) breach or non-performance of, or any default under, a Contractual Obligation of any Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between any Borrower or any Subsidiary and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws; or (iv) the assertion of any Intellectual Property Claim;
- (c) Promptly of the occurrence of any ERISA Event or Termination Event;
- (d) Promptly of any material change in accounting policies or financial reporting practices by any Borrower or any Subsidiary;
- (e) Promptly after obtaining knowledge of any pending or threatened labor dispute, strike or walkout, or the expiration of any material labor contract that, in each case, materially and adversely affects any Obligor or any Subsidiary;
- (f) Promptly of any judgment affecting any Obligor in an amount exceeding the Dollar Equivalent of \$5,000,000;
- (g) Promptly after the discharge or any withdrawal or resignation by Borrowers' accountants; and
- (h) At least 30 days prior to any opening of a new office or place of business where Collateral will be located.

Each notice pursuant to this Section shall be accompanied by a statement of a Senior Officer of Borrower Agent setting forth details of the occurrence referred to therein and stating what action

Borrowers have taken and proposes to take with respect thereto. Each notice pursuant to **Section 10.1.3** shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

10.1.4. Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities in an aggregate amount in excess of \$10,000,000, including (a) all Taxes and tax liabilities, assessments and governmental charges or levies upon it or its Properties, unless such Taxes are being Properly Contested; provided, that all such Taxes, tax liabilities, assessments, governmental charges and levies shall be paid and discharged prior to the date on which a Lien on any Collateral shall attach in an aggregate amount in excess of \$250,000 for all federal tax liens and \$2,500,000 for all other liens which is senior to Agent's Lien; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Debt, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Debt.

10.1.5. Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization except in a transaction permitted by **Section 10.2.4** or **10.2.5**; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

10.1.6. Maintenance of Properties. (a) Except for any downsizing, restructuring, closure or partial closure of the golf ball manufacturing operations of Borrowers in existence on the Original Agreement Closing Date, maintain, preserve and protect all of its material properties and material 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 except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

10.1.7. Maintenance of Insurance. In addition to the insurance required hereunder with respect to Collateral, maintain insurance with insurers (with a Best Rating of at least A7, unless otherwise approved by Agent) satisfactory to Agent, with respect to the Properties and business of Borrowers and Subsidiaries of such type (including product liability, workers' compensation, larceny, embezzlement, or other criminal misappropriation insurance), in such amounts, and with such coverages and deductibles as are customary for companies similarly situated.

10.1.8. Compliance with Laws. Comply in all material respects with the requirements of all Applicable 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 Applicable Law or order, write, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Materially comply with all Anti-Terrorism Laws.

10.1.9. **Books and Records.** Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of each Borrower and each 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 each Borrower and each Subsidiary, as the case may be.

10.1.10. **Inspections; Appraisals.**

(a) Permit Agent from time to time, subject (except when a Default or Event of Default exists) to reasonable notice and normal business hours, to visit and inspect the Properties of any Borrower or Subsidiary, inspect, audit and make extracts from any Borrower's or Subsidiary's books and records, and discuss with its officers, employees, agents, advisors and independent accountants such Borrower's or Subsidiary's business, financial condition, assets, prospects and results of operations. For each calendar year, at least one examination will be held by Agent during such calendar year and at least two examinations will be held by Agent during such calendar year if Availability on any day during such year is less than \$35,000,000. Lenders may participate in any such visit or inspection, at their own expense. Neither Agent nor any Lender shall have any duty to any Borrower to make any inspection, nor to share any results of any inspection, appraisal or report with any Borrower. Borrowers acknowledge that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Borrowers shall not be entitled to rely upon them.

(b) Reimburse Agent for all charges, costs and expenses of Agent in connection with (i) examinations of any Obligor's books and records or any other financial or Collateral matters as Agent deems appropriate, up to two times per calendar year; (ii) appraisals of Inventory, up to two times per calendar year and (iii) appraisals of Intellectual Property (other than Excluded Intellectual Property), up to one time per calendar year; provided, however, that: (A) Borrowers shall reimburse Agent for all charges, costs and expenses in connection with a third appraisal of Inventory or second appraisal of Intellectual Property (other than Excluded Intellectual Property) in any calendar year if such appraisal is commenced during any Reporting Trigger Period; (B) Borrowers shall reimburse Agent for all charges, costs and expenses in connection with a third examination in any calendar year if such examination is commenced during any Reporting Trigger Period; and (C) if an examination or appraisal is initiated during a Default or Event of Default, all charges, costs and expenses therefor shall be reimbursed by Borrowers without regard to such limits. Borrowers agree to pay Agent's then standard charges for examination activities, including the standard charges of Agent's internal examination and appraisal groups, as well as the charges of any third party used for such purposes.

10.1.11. **Use of Proceeds.** Use the proceeds of the Loans or other extensions of credit (a) to refinance existing indebtedness, (b) to issue standby or commercial letters of credit and (c) to finance ongoing working capital needs and for general corporate purposes (including Permitted Acquisitions) not in contravention of any Applicable Law or of any Loan Document.

10.1.12. **Additional Guarantors.** Promptly notify Agent upon any Person becoming a Subsidiary and (a) cause (i)(A) each U.S. Subsidiary and (B) any Foreign Subsidiary that loses its status as a "controlled foreign corporation" under Section 957 of the Code promptly to execute

and deliver to Agent a Guarantee (including, if requested by Agent, a joinder to this Agreement in form and substance satisfactory to Agent) in favor of Agent for the benefit of the Secured Parties, and (ii) each Canadian Subsidiary and U.K. Subsidiary to execute and deliver to Agent a Canadian Facility Guarantee and U.K. Facility Guarantee (including, if requested by Agent, a joinder to this Agreement in form and substance satisfactory to Agent) in favor of Agent for the benefit of the Canadian Secured Parties and U.K. Secured Parties, (b) cause such Guarantor to deliver to the Agent such certificates of resolutions or other action, incumbency certificates and/or other certificates of Senior Officers or other authorized Persons of such Subsidiary as Agent may require evidencing the identity, authority and capacity of each Senior Officer or other authorized Person thereof in connection with the Guarantee, Canadian Facility Guarantee, or U.K. Facility Guarantee, as applicable, to which such Subsidiary is a party and such additional and other documents and certifications as Agent may reasonably require to evidence that such Subsidiary is duly organized or formed and is validly existing, in good standing and qualified to engage in business, in each case to the extent applicable, in jurisdictions reasonably identified by Agent, and (c) cause such Guarantor to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall require to evidence and perfect a Lien in favor of Agent (for the benefit of Secured Parties (in the case of a Subsidiary described in clause (a)(i) above) and the Canadian Secured Parties and U.K. Secured Parties (in the case of a Subsidiary described in clause (a)(ii) above)) on all assets of such Person which are the same type as the Collateral, including delivery of legal opinions, in form and substance satisfactory to Agent, as it shall deem appropriate.

10.1.13. Landlord and Storage Agreements. Upon request, provide Agent with copies of all existing agreements, and promptly after execution thereof provide Agent with copies of all future agreements, between an Obligor and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral may be kept or that otherwise may possess or handle any Collateral.

10.1.14. Licenses. (a) Keep each License affecting any Collateral (including the manufacture, distribution or disposition of Inventory) or any other material Property of Borrowers and Subsidiaries in full force and effect except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) pay all Royalties when due except as would not materially adversely affect the value of the Collateral; and (d) notify Agent of any default or breach asserted by any Person to have occurred under any License which breach would materially adversely affect the value of the Collateral.

10.1.15. U.K. Pension Plans. Each U.K. Domiciled Obligor shall ensure that it is not and will not be and none of its U.K. subsidiaries will be at any time: (i) an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004 of the United Kingdom) of an occupational pension scheme which is not a money purchase scheme (as those terms are defined in the Pension Schemes Act 1993 of the United Kingdom); or (ii) “connected” with or an “associate” of the Parent or any of its Subsidiaries which is an employer (as those terms are used in Sections 38 or 43 of the Pensions Act 2004 of the United Kingdom) in relation to an occupational pension scheme in the United Kingdom which is not a money purchase scheme.

10.1.16. Anti-Corruption Laws. Each Obligor will maintain in effect and enforce policies and procedures designed to ensure compliance by such Obligor, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws of Canada, United

Kingdom, United States, and any of the member states of the European Union and applicable Sanctions.

**10.1.17. Post-Closing.**

(a) In order to include the U.S. Real Estate Formula Amount in the calculation of the U.S. Borrowing Base, deliver to Agent the Related Real Estate Documents and Mortgage for the Real Estate located at 2180 Rutherford Road, Carlsbad, CA 92008.

(b) Within 60 days of the date of this Agreement, Ogio shall close all Deposit Accounts and securities accounts maintained at Wells Fargo and each Obligor shall take all other necessary steps to be in compliance of **Sections 8.2.4, 8.2.5, and 8.5** of this Agreement.

**10.2 Negative Covenants.** As long as any Commitments or Obligations are outstanding, each Obligor shall not, and shall cause each Subsidiary not to:

10.2.1. Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, other than the following (collectively, "Permitted Liens"):

(a) Liens in favor of Agent;

(b) Liens existing on the Closing Date that are listed on **Schedule 10.2.1**;

(c) Liens for taxes, fees, assessments or other governmental charges not yet delinquent or being Properly Contested;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested;

(e) pledges or deposits in the Ordinary Course of Business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits or other Liens to secure the performance of bids, trade contracts and leases (other than Debt), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the Ordinary Course of Business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting Real Estate which, are (i) shown in any lender's policy of title insurance insuring any Mortgage, or (ii) in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution;

(i) Liens securing judgments for the payment of money not constituting an Event of Default under **Section 11.1(g)** or securing appeal or other surety bonds related to such judgments (so long as such judgments do not constitute an Event of Default under **Section 11.1(g)**);

(j) Liens securing Debt permitted under **Section 10.2.3(e)**; provided that (i) such Liens do not at any time encumber any property other than the property financed by such Debt and (ii) the Debt secured thereby does not exceed, on the date of acquisition, the cost or fair market value, whichever is lower, of the property being acquired;

(k) any Lien existing on any property or asset (other than Accounts, Inventory, Dominion Accounts, Restricted Assets, the Company Trademark, and Eligible Real Estate) prior to the acquisition thereof by any Obligor or any Subsidiary or existing on any property or asset (other than Accounts, Inventory, Dominion Accounts, Restricted Assets, the Company Trademark, and Eligible Real Estate) of any Person that becomes an Obligor or Subsidiary after the date hereof prior to the time such Person becomes an Obligor or Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming an Obligor or Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Obligor or Subsidiary, (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes an Obligor or Subsidiary, as the case may be, (iv) all obligations secured by a Lien permitted under this clause (k) shall not exceed an aggregate amount of \$25,000,000 at any one time outstanding, and (v) if requested by Agent, such Liens will be subject to an intercreditor agreement, in form and substance satisfactory to Agent;

(l) extensions, renewals and replacements of Liens referred to in clauses (a) through (k) above, provided that the property covered thereby is not increased and any renewal or extension of the obligations secured or benefited thereby is permitted by **Section 10.2.3**;

(m) Liens (other than on: (i) Accounts, Inventory, Dominion Accounts, and Restricted Assets of a Borrower or Guarantor; and (ii) the Company Trademark and Eligible Real Estate) arising under leases, subleases, licenses and rights to use granted to others and permitted under **Section 10.2.5(f)**;

(n) Liens (other than on: (i) Accounts, Inventory, Dominion Accounts, and Restricted Assets of a Borrower or Guarantor; and (ii) the Company Trademark and Eligible Real Estate) not expressly permitted by clauses (a) through (m) above and as to which the aggregate amount of obligations secured thereby does not exceed \$50,000,000 at any one time;

(o) Liens securing Debt permitted under **Section 10.2.3(q)** or **(s)** so long: (i) such Liens will be subject to an intercreditor agreement, in form and substance satisfactory to Agent; (ii) to the extent any such Liens are on any Collateral (as defined on the First Amendment to Third Amended and Restated Effective Date), such Liens are subordinated to the Liens of Agent pursuant to such intercreditor agreement (provided that, in the case of any Liens securing Debt

permitted under **Section 10.2.3(s)**, any such Liens on Term Loan Priority Intellectual Property (as defined in the Project Max Commitment Letter as in effect on the First Amendment to Third Amended and Restated Effective Date) shall be senior to the Liens of Agent hereunder and shall not be subordinated to the Liens of Agent; and (iii) to the extent such Liens extend to Property which does not (or would not) constitute Collateral (as defined on the First Amendment to Third Amended and Restated Effective Date) (“Additional Collateral”), at the request of the Required Lenders, the Obligors and their Subsidiaries shall execute and deliver such documents, instruments and agreements and take such other actions as Agent shall require to evidence and perfect a Lien in favor of Agent (for the benefit of Secured Parties) on all Additional Collateral (it being understood that any such Liens held by Agent on Additional Collateral shall be junior to the Liens permitted under this **Section 10.2.1(o)** as set forth in an intercreditor agreement in form and substance satisfactory to Agent); and

(p) Liens securing Debt permitted under **Section 10.2.3.(r)**; provided that such Liens do not at any time encumber any property other than the property financed or leased by such Debt.

10.2.2. Investments. Make any Investments, except:

(a) advances to officers, directors and employees of the Obligors and Subsidiaries for travel, entertainment, relocation and analogous ordinary business purposes;

(b) Investments in Subsidiaries to the extent existing on the Closing Date and other Investments in existence on the Closing Date and set forth on **Schedule 10.2.2**;

(c) Investments by: (i) a U.S. Borrower in another U.S. Borrower; (ii) a U.S. Domiciled Obligor (other than a U.S. Borrower) in another U.S. Domiciled Obligor; (iii) a U.S. Domiciled Obligor in the Canadian Borrower so long as: (A) the aggregate amount of such Investments shall not exceed \$10,000,000 at any time outstanding, and (B) no Event of Default has occurred and is continuing at the time of such Investment, or would result therefrom; (iv) a U.S. Domiciled Obligor in Callaway de México, S.A. de C.V. so long as such Investments are in the Ordinary Course of Business and consistent with historical practices; (v) any Canadian Domiciled Obligor or U.K. Domiciled Obligor in a Borrower; (vi) a Borrower in a Guarantor or Subsidiary that is not a Borrower or Guarantor so long as: (A) the aggregate amount of such Investments shall not exceed: (I) \$3,000,000 in any calendar year, and (II) \$10,000,000 at any time outstanding, and (B) no Event of Default has occurred and is continuing at the time of such Investment, or would result therefrom; and (vii) a Subsidiary that is not a Borrower or Guarantor in any other Subsidiary;

(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) Investments consisting of Permitted Acquisitions;

(f) Investments pursuant to Hedging Agreements otherwise permitted hereunder;

(g) Investments in Cash Equivalents;

(h) so long as no Event of Default has occurred and is continuing or would result therefrom, any other Investments (other than an Acquisition) made after the Third Amendment to Second Amended and Restated Effective Date in an aggregate amount not to exceed \$30,000,000 (such limitation, the "Investment Cap"); provided, however, that no such Investment shall count against the Investment Cap if either: (i) (A) on a pro forma basis after giving effect to such Investment, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the consummation of such Investment, (B) Net Excess Availability is greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount after giving effect to such Investment, and (C) the Fixed Charge Coverage Ratio, on a pro forma basis after giving effect to such Investment (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a pro forma basis after giving effect to such Investment, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the consummation of such Investment, (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Investment, and (C) no Term Loans are outstanding at the time such Investment is consummated and after giving effect to the payment of any consideration in connection with such Investment;

(i) Investments by a U.S. Domiciled Obligor in any Subsidiary that is not a Borrower or Guarantor to the extent such Investments are in the form of a transfer of assets (other than any Collateral) of such U.S. Domiciled Obligor so long as: (A) such assets are in existence as of the First Amendment to Second Amended and Restated Effective Date, and (B) such assets are predominantly used in connection with the golf ball manufacturing operations of Parent;

(j) [Reserved];

(k) Investments, so long as: (i) no Default or Event of Default has occurred and is continuing or would result therefrom; (ii) the amount expended in connection with any such Investment either (at the written election of Parent in accordance with the definition of Top Golf Proceeds): (A) is made solely using Top Golf Proceeds contained in the Top Golf Blocked Account, (B) does not exceed the U.S. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, (C)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the Canadian Borrower to Parent, or (II) repayment by the Canadian Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the Canadian Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, or (D)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the U.K. Borrower to Parent, or (II) repayment by the U.K. Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the U.K. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures; (iii) the aggregate amount expended in connection with all such Investments consummated under this clause (k) and transactions consummated under clause 10.2.6(g) does not exceed \$150,000,000 in the aggregate; (iv) Parent provides Agent with at least 7 days prior written notice of any such Investment (which notice shall contain the amount to be expended in such transaction and evidence of the source of funds for such

expenditure); (v) Parent provides Agent with evidence of the making of any Investment under this clause (k), and (vi) no Term Loans are outstanding at the time such Investment is made; and

(l) additional Investments in Top Golf in an amount not to exceed \$30,000,000 in the aggregate at any time so long as at the time of any such Investment, no Default or Event of Default has occurred and is continuing or would result therefrom.

10.2.3. Debt. Create, incur, guarantee or suffer to exist any Debt, except:

(a) the Obligations;

(b) Debt outstanding on the Closing Date and listed on **Schedule 10.2.3**;

(c) Debt consisting of unsecured intercompany loans among Parent and any Subsidiary or unsecured guarantees of Parent or any Subsidiary in respect of Debt of Parent or any Subsidiary so long as, in each case, the corresponding Investment is permitted under **Section 10.2.2**;

(d) Debt of Parent or any Subsidiary existing or arising under any Hedging Agreement, provided that such Hedging Agreement was entered into by such Person to hedge risks arising in the Ordinary Course of Business and not for speculative purposes;

(e) Debt in respect of Capital Leases, Off-Balance Sheet Liabilities and purchase money obligations for fixed or capital assets (other than Eligible Real Estate); provided, however, that the aggregate amount of all such Debt at any one time outstanding shall not exceed \$25,000,000;

(f) Debt that is in existence when a Person becomes a Subsidiary or that is secured by an asset when acquired by a Borrower or Subsidiary, as long as such Debt was not incurred in contemplation of such Person becoming a Subsidiary or such acquisition, and does not exceed \$25,000,000 in the aggregate at any time;

(g) Debt of any wholly owned Subsidiary to Parent or another wholly owned Subsidiary constituting the purchase price in respect of intercompany transfers of goods and services made in the Ordinary Course of Business to the extent otherwise permitted by **Section 10.2.8** and not constituting Debt for borrowed money;

(h) Debt of Parent or any Subsidiary in connection with guaranties resulting from endorsement of negotiable instruments in the Ordinary Course of Business;

(i) Debt on account of surety bonds and appeal bonds in connection with the enforcement of rights or claims of Parent or its Subsidiaries or in connection with judgments not resulting in an Event of Default under **Section 11.1(g)**;

(j) any refinancings, refundings, renewals or extensions of Debt permitted pursuant to **Sections 10.2.3(b) and (e)**; provided that (i) the amount of such Debt is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred,

in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, and (ii) Debt subordinated to the Obligations is not refinanced except on subordination terms at least as favorable to Agent and the Lenders and no more restrictive on Parent and its Subsidiaries than the subordinated Debt being refinanced;

(k) Bank Product Debt (other than Debt arising under Hedging Agreements);

(l) [Reserved];

(m) [Reserved];

(n) Debt that is not included in any of the preceding clauses of this Section, is not secured by a Lien, or is secured by a lien permitted by **Section 10.2.1(n)**, and does not exceed \$50,000,000 in the aggregate at any time;

(o) other Debt that is not included in any of the preceding clauses of this Section so long as such Debt: (i) is not secured by a Lien, (ii) has a maturity date that is at least 6 months after the Facility Termination Date, and (iii) does not have scheduled amortization in excess of 10% per year;

(p) Debt to the Person, or the beneficial holders of Equity Interests in the Person, whose assets or Equity Interests are acquired in a Permitted Acquisition where such Debt (i) is payable in full no sooner than three years from the date of such Acquisition, (ii) is repayable in installments of no more than one-third of the initial amount in any year after the date of such Permitted Acquisition, (iii) bears interest and fees that are consistent with then available market rates for such Debt, (iv) is not secured by a Lien and (v) does not exceed (together with all other Debt incurred under this clause (p)) \$25,000,000 in the aggregate at any time;

(q) other Debt that is not included in any of the preceding clauses of this Section so long as: (i) such Debt does not exceed \$250,000,000 in the aggregate at any one time outstanding, (ii) such Debt is not secured by a Lien, or is secured by a lien permitted by **Section 10.2.1(o)**, (iii) such Debt has a maturity date that is at least 6 months after the Facility Termination Date, (iv) such Debt does not have scheduled amortization in excess of 15% per year, and (v) immediately upon and after giving effect to such Debt, the Leverage Ratio is not greater than 4.5 to 1.0;

(r) Debt pursuant to equipment financing and/or leases entered into among one or more Obligors and Banc of America Leasing & Capital, LLC, in an aggregate amount not to exceed \$50,000,000 at any time outstanding; and

(s) Debt (i) as described in the Project Max Commitment Letter, as may be modified by the market flex conditions referenced in the Fee Letter (as defined in the Project Max Commitment Letter), as disclosed to Agent prior to the First Amendment to Third Amended and Restated Effective Date, so long as: (A) the aggregate outstanding principal amount of such Debt at any one time does not exceed the amount incurred in connection with the consummation of the Acquisition (as defined in the Project Max Commitment Letter) in accordance with the terms of the Project Max Commitment Letter, less any principal payments made on account of such Debt, (B) any Liens securing such Debt are permitted by **Section 10.2.1(o)**, (C) such Debt has a maturity

date that is at least 6 months after the Facility Termination Date; and (D) such Debt is incurred in accordance with the terms of the Project Max Commitment Letter as in effect on the First Amendment to Third Amended and Restated Effective Date, or as amended from time to time thereafter so long as such amendments are not materially adverse to the interest of the Lenders and (ii) any refinancings, refundings, renewals or extensions of such Debt permitted in clause (i) hereto, so long as (A) the amount of such Debt is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, (B) such Debt has a maturity date that is at least 6 months after the Facility Termination Date, (C) such Debt does not have scheduled amortization in excess of 15% per year, (D) any Liens securing such Debt are permitted by **Section 10.2.1(o)**, and (E) upon giving effect to it, no Default or Event of Default exists.

#### **10.2.4. Fundamental Changes.**

(a) Merge, amalgamate, dissolve, liquidate, consolidate with or into another Person, or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(i) ~~Intentionally Omitted;~~ Travis Mathew Retail may be dissolved, so long as (A) such dissolution is completed within 30 days of the Second Amendment to Third Amended and Restated Effective Date, and (B) all assets of Travis Mathew Retail are distributed to travisMathew in connection with such dissolution;

(ii) any Subsidiary may merge or amalgamate with Parent or any other Subsidiary, provided that (A) in such a merger in which a U.S. Borrower is involved, such U.S. Borrower is the continuing or surviving Person, (B) in such a merger or amalgamation in which the Canadian Borrower is involved (other than with a U.S. Borrower or the U.K. Borrower), the Canadian Borrower is the continuing or surviving Person, (C) in such a merger or amalgamation in which the U.K. Borrower is involved (other than with a U.S. Borrower or the Canadian Borrower), the U.K. Borrower is the continuing or surviving Person, (D) in such a merger in which a U.S. Domiciled Obligor (other than a U.S. Borrower) is involved (other than with a Borrower), the U.S. Domiciled Obligor is the continuing or surviving Person, (E) in such a merger or amalgamation in which a U.K. Domiciled Obligor (other than the U.K. Borrower) is involved (other than with a U.S. Domiciled Obligor, a Canadian Domiciled Obligor, or the U.K. Borrower), the U.K. Domiciled Obligor is the continuing or surviving Person, and (F) in such a merger or amalgamation in which a Canadian Domiciled Obligor (other than the Canadian Borrower) is involved (other than with a U.S. Domiciled Obligor, a U.K. Domiciled Obligor, or the Canadian Borrower), the Canadian Domiciled Obligor is the continuing or surviving Person;

(iii) any Subsidiary which is not an Obligor may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to its immediate parent or another Obligor;

(iv) any Immaterial Subsidiary may be wound up, liquidated or dissolved; and

(v) Parent and its Subsidiaries may make those Asset Dispositions permitted by **Section 10.2.5**; or

(b) Change its name; change its tax, charter or other organizational identification number; or change its form or state of organization without 10 Business Days' prior written notice to Agent.

10.2.5. **Disposition of Assets**. Make any Asset Disposition or enter into any agreement to make any Asset Disposition, except:

(a) Asset Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the Ordinary Course of Business;

(b) sales of Inventory in the Ordinary Course of Business, and consignments of Inventory in the Ordinary Course of Business so long as the aggregate Value of all such consigned Inventory at any one time does not exceed \$15,000,000;

(c) Asset Dispositions of Equipment or Real Estate (other than Eligible Real Estate unless the U.S. Real Estate Formula Amount has been removed from the U.S. Borrowing Base in accordance with **Sections 2.1.4(d)**) to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Asset Dispositions by (i) any U.S. Borrower to any other U.S. Borrower, (ii) any U.S. Domiciled Obligor (other than a U.S. Borrower) to any other U.S. Domiciled Obligor, (iii) any Canadian Domiciled Obligor or U.K. Domiciled Obligor to any U.S. Borrower, and (iv) any Subsidiary that is not a Borrower or Guarantor to any other Subsidiary;

(e) (i) Asset Dispositions permitted by **Section 10.2.4**, (ii) Investments permitted by **Section 10.2.2**, and (iii) Distributions permitted by **Section 10.2.6**;

(f) leases, subleases, licenses and rights to use granted to others in the Ordinary Course of Business and not otherwise prohibited by this Agreement so long as such leases, subleases, licenses and rights to use do not materially adversely affect the conduct by Parent and its Subsidiaries of their core golf products business or the value of the Collateral;

(g) Asset Dispositions made in connection with the closure, downsizing, restructuring, closure or partial closure of the golf ball manufacturing operations of Parent;

(h) (i) Asset Dispositions of excess Real Estate (other than Eligible Real Estate) and related assets made in connection with the consolidation of business activities in other locations and (ii) sale and leaseback transactions involving Real Estate (other than Eligible Real Estate unless the U.S. Real Estate Formula Amount has been removed from the U.S. Borrowing Base in accordance with **Sections 2.1.4(d)**) and related assets;

(i) Asset Dispositions consisting of Intellectual Property (other than the Company Trademark), manufacturing assets, inventory, accounts, contracts, domain names, marketing materials and marketing related assets related to the brands disclosed to the Agent and the Lenders on the Business Day prior to the Second Amended Original Closing Date; provided, in each case, that (i) at the time of such Asset Disposition, no Event of Default has occurred or is continuing or would result therefrom, (ii) the Borrowers shall have provided Agent with three (3) Business Days prior written notice of any such Asset Disposition, (iii) if any such Asset Disposition includes the disposition of Accounts or Inventory of an Obligor, the Borrowers shall have complied with **Section 5.2**, and (iv) if any such Asset Disposition includes the disposition of any Eligible Accounts or Eligible Inventory, the Borrowers shall have delivered pro forma Borrowing Base Certificates on or prior to the consummation of such Asset Disposition which give effect to such Asset Disposition; and

(j) other Asset Dispositions (other than with respect to Accounts, Inventory, the Company Trademark (unless the U.S. Trademark Formula Amount has been removed from the U.S. Borrowing Base in accordance with **Sections 2.1.4(c)**) and Eligible Real Estate (unless the U.S. Real Estate Formula Amount has been removed from the U.S. Borrowing Base in accordance with **Sections 2.1.4(d))**) in an aggregate amount in any fiscal year not to exceed 5% of the Consolidated Tangible Assets of Parent and its Subsidiaries as of the end of the most recently ended fiscal year of Parent;

provided, however, that any Asset Disposition pursuant to clauses (a) through (i) shall be for fair market value; provided, further, that Parent or any of its Subsidiaries may enter into an agreement to make an Asset Disposition otherwise prohibited by this **Section 10.2.5** if failure to consummate such Asset Disposition would not result in a liability or Debt otherwise prohibited by this Agreement and the consummation of the Asset Disposition contemplated by such agreement is conditioned upon either the termination of this Agreement or receipt of the prior written consent of the Agent and the Required Lenders.

10.2.6. **Distributions**. Declare or make, directly or indirectly, any Distribution, or incur any obligation (contingent or otherwise) to do so, except that:

(a) (i) a U.S. Borrower may make Distributions to another U.S. Borrower; (ii) a U.S. Domiciled Obligor (other than a U.S. Borrower) may make Distributions to another U.S. Domiciled Obligor; (iii) a Canadian Domiciled Obligor may make Distributions to a U.S. Borrower, the Canadian Borrower, and the U.K. Borrower; (iv) a U.K. Domiciled Obligor may make Distributions to a Borrower; and (v) a Subsidiary that is not a Borrower or Guarantor may make Distributions to Parent or any Subsidiary;

(b) Parent and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other Equity Interests of such Person;

(c) so long as no Event of Default has occurred and is continuing or would result therefrom, Parent and each Subsidiary may purchase, redeem or otherwise acquire shares of its common stock or other Equity Interests or warrants or options to acquire any such Equity Interests with the proceeds received from the substantially concurrent issue of new shares of its common stock or other Equity Interests;

(d) Parent may purchase Equity Interests in any Obligor or options with respect to Equity Interests in any Obligor held by employees or management of any Obligor in connection with the termination of employment of such employees or management so long as: (i) the aggregate amount of such purchases do not exceed \$5,000,000 in any fiscal year of Parent, and (ii) no Event of Default has occurred and is continuing at the time of any such purchase or would result therefrom; and

(e) so long as no Event of Default has occurred and is continuing or would result therefrom, Parent and its Subsidiaries may make other Distributions in an aggregate amount not to exceed \$20,000,000 during each year (the “Distributions Cap”); provided, however, that no such Distribution shall count against the Distributions Cap if at the time such Distribution is declared (subject to the last sentence of this clause (e)) either: (i) (A) on a pro forma basis after giving effect to such Distribution, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the making of such Distribution, (B) Net Excess Availability is greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount after giving effect to such Distribution, and (C) the Fixed Charge Coverage Ratio, on a pro forma basis after giving effect to such Distribution (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a pro forma basis after giving effect to such Distribution, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the making of such Distribution, (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Distribution, and (C) no Term Loans are outstanding at the time such Distribution is consummated.

(f) so long as no Event of Default has occurred and is continuing or would result therefrom, Parent may make cash payments in lieu of issuance of fractional shares in connection with the conversion of any convertible stock or debt securities of Parent, in an aggregate amount not to exceed \$5,000,000 for all such payments; and

(g) Parent may make Common Stock Repurchases and pay dividends on Parent’s common stock so long as: (i) no Default or Event of Default has occurred and is continuing or would result therefrom; (ii) the amount expended in connection with any such transaction either (at the written election of Parent in accordance with the definition of Top Golf Proceeds): (A) is made solely using Top Golf Proceeds contained in the Top Golf Blocked Account, (B) does not exceed the U.S. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, (C)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the Canadian Borrower to Parent, or (II) repayment by the Canadian Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the Canadian Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, or (D)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the U.K. Borrower to Parent, or (II) repayment by the U.K. Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the U.K. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures; (iii) the aggregate amount expended in connection with all such transactions consummated under this clause (g) and Investments made under clause 10.2.2(k) does not exceed \$150,000,000 in the aggregate; (iv) Parent provides Agent

with at least 7 days prior written notice of any such transaction (which notice shall contain the amount to be expended in such transaction and evidence of the source of funds for such expenditure); (v) Parent provides Agent with evidence of the completion of any such transaction under this clause (g), and (vi) no Term Loans are outstanding at the time any such transaction is consummated.

10.2.7. Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by Parent and its Subsidiaries on the date hereof, one or more of the leisure goods, products and services businesses generally or, in each case, any business substantially related or incidental thereto.

10.2.8. Affiliate Transactions. Enter into any transaction of any kind with any Affiliate of Parent, except (a) transactions between or among: (i) the U.S. Borrowers, (ii) the U.S. Domiciled Obligors (other than any U.S. Borrower), (iii) the Canadian Domiciled Obligors, (iv) the U.K. Domiciled Obligors, and (v) Subsidiaries that are not Borrowers or Guarantors; (b) transactions constituting Investments in Subsidiaries as permitted by **Section 10.2.2**, (c) transactions constituting Debt among Parent or any of its Subsidiaries, in each case as permitted by **Section 10.2.3**; (d) transactions among Parent or any of its Subsidiaries, in each case as permitted by **Section 10.2.4** or **Section 10.2.5**, (e) transactions constituting Distributions permitted by **Section 10.2.6**, (f) transactions constituting reasonable fees and compensation paid to (including issuance and grants of securities and stock options, employment agreements and stock option and ownership plans for the benefit of, and indemnities provided on behalf of) officers, directors, employees and consultants of Parent or any Subsidiary, (g) constituting loans or advances to employees and officers of Parent and its Subsidiaries to the extent permitted by **Section 10.2.2(a)**, and (h) transactions with Affiliates in the Ordinary Course of Business, upon fair and reasonable terms fully disclosed to Agent and no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate.

10.2.9. Burdensome Agreements. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability (a) of any Subsidiary to make Distributions to any Borrower or any Guarantor or to otherwise transfer property to any Borrower or any Guarantor, (b) of Parent or any Subsidiary to incur or repay the Obligations, (c) of Parent or any Subsidiary to grant Liens on any Collateral in favor of the Agent for the benefit of the Lenders, or (d) of any U.S. Subsidiary, U.K. Subsidiary, or Canadian Subsidiary to guarantee the Obligations; provided, that the restrictions set forth herein shall not apply to (i) customary restrictions on transfers of property subject to a capital lease as set forth in such capital lease; (ii) customary restrictions with respect to a Subsidiary (other than a Borrower) pursuant to an agreement that has been entered into for the sale or disposition (not otherwise prohibited by this Agreement or any other Loan Document) of all or substantially all of the capital stock or assets of such Subsidiary; (iii) customary prohibitions on assignment in any contract or lease; (iv) customary net worth provisions contained in leases and other agreements entered into by a Subsidiary in the Ordinary Course of Business; and (v) customary restrictions with respect to Debt permitted under **Section 10.2.3(s)**.

10.2.10. Restrictions on Payment of Certain Debt. Make any (a) payments (whether voluntary or mandatory, or a prepayment, redemption, retirement, defeasance or acquisition) with respect to any Debt which is subordinated to the Obligations (which, for the

avoidance of doubt, does not include any Debt permitted under **Section 10.2.3(s)**), except regularly scheduled payments of principal, interest and fees, but only to the extent permitted under any subordination agreement relating to such Debt (and a Senior Officer of Borrower Agent shall certify to Agent, not less than five Business Days prior to the date of payment, that all conditions under such agreement have been satisfied); (b) any voluntary payments with respect to any Borrowed Money (other than the Obligations and any intercompany obligations) prior to its due date; provided, however that the restriction set forth in clause (b) shall not apply to: (x) any voluntary payments made to consummate a refinancing in full of the Debt permitted under **Section 10.2.3(s)** to the extent such refinancing is permitted under the terms of **Section 10.2.3(s)**; and (y) any payment if either: (A) (1) on a pro forma basis after giving effect to such payment, Net Excess Availability has been greater than an amount equal to 15% of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the making of such payment, (2) Net Excess Availability is greater than an amount equal to 15% of the Maximum Facility Amount after giving effect to such payment, and (3) the Fixed Charge Coverage Ratio, on a pro forma basis after giving effect to such payment (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (B) (1) average daily Net Excess Availability, on a pro forma basis after giving effect to such payment, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the making of such payment, (2) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such payment, and (3) no Term Loans are outstanding at the time such payment is made.

10.2.11. Organic Documents. Amend, modify or otherwise change any of its Organic Documents as in effect on the Original Agreement Closing Date where such amendment, modification or other change would have a Material Adverse Effect.

10.2.12. Tax Consolidation. File or consent to the filing of any consolidated income tax return with any Person other than Borrowers and Subsidiaries.

10.2.13. Accounting Changes. Make any material change in accounting treatment or reporting practices, except as required by GAAP and in accordance with **Section 1.2**; or change its Fiscal Year.

10.2.14. Activities of uPlay. Unless Borrowers cause uPlay to become a Guarantor hereunder in accordance with **Section 10.1.12**, uPlay will not (a) engage in any business or activity or (b) own any assets or have any liabilities (other than liabilities reasonably incurred in connection with its maintenance of its existence).

10.2.15. Canadian Pension Plans. Without the prior written consent of Agent, no Obligor shall establish, or otherwise incur any obligations or liabilities under or in connection with any Canadian Pension Plan that provides benefits on a defined benefit basis.

### **10.3 Financial Covenants.** As long as any Commitments or Obligations are outstanding, Borrowers shall:

- (a) At any time the Term Loans or Term Loan Commitments are outstanding as of the last day of any Fiscal Quarter:

(i) Fixed Charge Coverage Ratio. Maintain a Fixed Charge Coverage Ratio, measured at the end of each such Fiscal Quarter, of at least 1.25 to 1.0; and

(ii) Leverage Ratio. Maintain a Leverage Ratio, measured at the end of each such Fiscal Quarter, of not greater than 4.0 to 1.0.

(b) At any time there are no Term Loans or Term Loan Commitment outstanding, maintain a Fixed Charge Coverage Ratio, measured on a Fiscal Quarter-end basis, of at least 1.0 to 1.0 as of (a) the end of the last Fiscal Quarter immediately preceding the occurrence of any Covenant Trigger Period for which financial statements have most recently been delivered pursuant to **Section 10.1.1**, and (b) the end of each Fiscal Quarter for which financial statements are delivered pursuant to **Section 10.1.1** during any Covenant Trigger Period.

**10.4 Company Trademark.** The Obligors shall maintain, defend and preserve the Company Trademark and its value, usefulness, merchantability and marketability in a manner consistent with past practices, and shall not sell, assign, transfer, encumber or license the Company Trademark to any Person (other than Liens created pursuant to the Loan Documents) to the extent that doing so would cause (i) the amount specified in clause (a) of the definition of "U.S. Trademark Formula Amount" to be less than the amount specified in clause (b) of the definition of "U.S. Trademark Formula Amount" or (ii) the amount of outstanding Term Loans to exceed the Term Loan Cap, in each case without the prior written consent of the U.S. Required Lenders.

## SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

**11.1 Events of Default.** Each of the following shall be an "Event of Default" hereunder, if the same shall occur for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) An Obligor fails to pay (i) when due (whether at stated maturity, on demand, upon acceleration or otherwise) any amount of principal of any Loan or any reimbursement obligation in respect of any LC Obligation, or (ii) any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a)(i) above), when and as the same shall become due and payable hereunder or under any other Loan Document (whether at stated maturity, on demand, upon acceleration or otherwise), and such failure shall continue unremedied for a period of three Business Days;

(b) Any representation, warranty or other written statement of an Obligor made in connection with any Loan Documents or transactions contemplated thereby is incorrect or misleading in any material respect when given;

(c) An Obligor breaches or fail to perform any covenant contained in **Section 7.2, 7.4, 7.6, 8.1, 8.2.4, 8.2.5, 8.6.2, 10.1.1, 10.1.2, 10.1.10, 10.2 or 10.3**;

(d) An Obligor breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 30 days after a Senior Officer of such Obligor has knowledge thereof or receives notice thereof from Agent, whichever is sooner; provided, however, that such notice and opportunity to cure shall not apply if the breach or failure to perform is not capable of being cured within such period;

(e) A Guarantor repudiates, revokes or attempts to revoke its Guarantee; an Obligor or third party denies or contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien granted to Agent; or any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Agent and Lenders);

(f) Any breach or default of an Obligor occurs under any Hedging Agreement, or any document, instrument or agreement to which it is a party or by which it or any of its Properties is bound, relating to any Debt (other than the Obligations) in excess of the Dollar Equivalent of \$10,000,000, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach;

(g) Any judgment or order for the payment of money is entered against an Obligor and is unsatisfied for a period of more than 30 days in an amount that exceeds, individually or cumulatively with all other unsatisfied judgments or orders against all Obligors, the Dollar Equivalent of \$5,000,000 (net of any insurance coverage therefor acknowledged in writing by the insurer), unless a stay of enforcement of such judgment or order is in effect, by reason of a pending appeal or otherwise;

(h) A loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance (either individually or in the aggregate) exceeds the Dollar Equivalent of \$2,500,000;

(i) An Obligor is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of its business and such injunction, restraint or prevention could reasonably be expected to have a Material Adverse Effect; an Obligor suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to its business and such loss, revocation or termination could reasonably be expected to have a Material Adverse Effect; there is a cessation of any material part of an Obligor's business for a material period of time and such cessation could reasonably be expected to have a Material Adverse Effect; any material Collateral or Property of an Obligor is taken or impaired through condemnation and such taking or impairment could reasonably be expected to have a Material Adverse Effect; a Borrower agrees to or commences any liquidation, dissolution or winding up of its affairs; or a Borrower is not Solvent;

(j) Any Obligor generally fails to pay, or admits in writing its inability or refusal to pay, its debts as they become due; or an Insolvency Proceeding is commenced by any Obligor; any Obligor agrees to, commences or is subject to a liquidation, dissolution or winding up of its affairs; any Obligor makes an offer of settlement, extension, proposal (or files a notice of intention to make a proposal), plan of arrangement or composition to its unsecured creditors generally; a Creditor Representative is appointed to take possession of any substantial Property of or to operate or sell any of the business of any Obligor; or an Insolvency Proceeding is commenced against any Obligor and such Obligor consents to the institution of the proceeding against it, such petition commencing the proceeding is not timely contested by such Obligor, such petition is not dismissed within 30 days after its filing, or an order for relief is entered in the proceeding;

(k) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC in an aggregate amount in excess of \$10,000,000, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$10,000,000; or any event similar to the foregoing occurs or exists with respect to a Foreign Plan;

(l) (A) a Termination Event shall occur or any Canadian Multi-Employer Plan shall be terminated, in each case, in circumstances which would result or could reasonably be expected to result in a Canadian Facility Obligor required to make a contribution to or in respect of a Canadian Pension Plan or a Canadian Multi-Employer Plan in an aggregate amount in excess of \$2,500,000 or results in the appointment, by FSCO, of an administrator to wind up a Canadian Pension Plan, (B) any Canadian Domiciled Obligor is in default with respect to any required contributions to a Canadian Pension Plan or fails to eliminate a solvency deficiency or keep such plan fully funded; or (C) any Lien arises (save for contribution amounts not yet due) in connection with any Canadian Pension Plan; or

(m) A Change of Control occurs.

**11.2 Remedies upon Default.** If an Event of Default described in **Section 11.1(j)** occurs with respect to any Obligor, then to the extent permitted by Applicable Law, all Obligations (other than Secured Bank Product Obligations) shall become automatically due and payable and all Commitments shall terminate, without any action by Agent or notice of any kind. In addition, or if any other Event of Default exists, Agent may in its discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrowers to the fullest extent permitted by law;

(b) terminate, reduce or condition any Commitment, or make any adjustment to the Borrowing Base;

(c) require Obligors to Cash Collateralize LC Obligations, Secured Bank Product Obligations and other Obligations that are contingent or not yet due and payable, and, if Obligors fail promptly to deposit such Cash Collateral, Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolver Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC and the PPSA. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Obligors to assemble Collateral, at Obligors' expense, and make it available to Agent at a place designated by Agent; (iii) enter any premises where Collateral is located and store Collateral

on such premises until sold (and if the premises are owned or leased by an Obligor, Obligors agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent, in its discretion, deems advisable. Each Obligor agrees that 10 days' notice of any proposed sale or other disposition of Collateral by Agent shall be reasonable. Agent shall have the right to conduct such sales on any Obligor's premises, without charge, and such sales may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

**11.3 License.** Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person), exercisable at any time following the occurrence and during the continuation of an Event of Default, any or all Intellectual Property of Obligors, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Each Obligor's rights and interests under Intellectual Property shall inure to Agent's benefit.

**11.4 Setoff.** At any time during an Event of Default, Agent, Issuing Banks, Lenders, and any of their Affiliates are authorized, 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 Agent, such Issuing Bank, such Lender or such Affiliate to or for the credit or the account of an Obligor against any Obligations, irrespective of whether or not Agent, such Issuing Bank, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, such Issuing Bank, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, each Issuing Bank, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

#### **11.5 Remedies Cumulative; No Waiver.**

11.5.1. **Cumulative Rights.** All agreements, warranties, guarantees, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent and Lenders are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

11.5.2. **Waivers.** No waiver or course of dealing shall be established by (a) the failure or delay of Agent or any Lender to require strict performance by Obligors with any terms of the Loan Documents, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Loan or issuance of any Letter of Credit during a Default, Event

of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. It is expressly acknowledged by Obligors that any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

**11.6 Judgment Currency.** If, for purposes of obtaining judgment in any court, it is necessary to convert a sum from the currency provided under a Loan Document (“Agreement Currency”) into another currency, the Spot Rate shall be used as the rate of exchange. Notwithstanding any judgment in a currency (“Judgment Currency”) other than the Agreement Currency, an Obligor shall discharge its obligation in respect of any sum due under a Loan Document only if, on the Business Day following receipt by Agent or any Secured Party of payment in the Judgment Currency, Agent or such Secured Party can use the amount paid to purchase the sum originally due in the Agreement Currency. If the purchased amount is less than the sum originally due, such Obligor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Agent and Secured Parties against such loss. If the purchased amount is greater than the sum originally due, Agent or such Secured Party shall return the excess amount to such Obligor (or to the Person legally entitled thereto).

## SECTION 12. AGENT

### 12.1 Appointment, Authority and Duties of Agent.

#### 12.1.1. Appointment and Authority.

(a) Each Secured Party appoints and designates Bank of America as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents, for the benefit of Secured Parties. Each Secured Party agrees that any action taken by Agent, Required Lenders, U.S. Required Lenders, U.S. Required Term Lenders, U.K. Required Lenders, or Canadian Required Lenders in accordance with the provisions of the Loan Documents, and the exercise by Agent or Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Obligor or other Person; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. The duties of Agent shall be ministerial and administrative in nature, and Agent shall not have a fiduciary relationship with any Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto. Agent alone shall be authorized to determine whether any Accounts or Inventory constitute Eligible Accounts, Eligible Inventory or Eligible In-Transit Inventory, whether to impose or release any reserve, or whether any conditions to funding or to issuance of a Letter of

Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Lender or other Person for any error in judgment.

(b) For the purposes of creating a solidarité active in accordance with Article 1541 of the Civil Code of Quebec between each Secured Party, taken individually, on the one hand, and the Agent, on the other hand, each Obligor and each such Secured Party acknowledge and agree with the Agent that such Secured Party and the Agent are hereby conferred the legal status of solidary creditors of each such Obligor in respect of all Obligations owed by each such Obligor to the Agent and such Secured Party hereunder and under the other Loan Documents (collectively, the "Solidary Claim") and that, accordingly, but subject (for the avoidance of doubt) to Article 1542 of the Civil Code of Quebec, each such Obligor is irrevocably bound towards the Agent and each Secured Party in respect of the entire Solidary Claim of the Agent and such Secured Party. As a result of the foregoing, the parties hereto acknowledge that the Agent and each Secured Party shall at all times have a valid and effective right of action for the entire Solidary Claim of the Agent and such Secured Party and the right to give full acquittance for it. Accordingly, and without limiting the generality of the foregoing, the Agent, as solidary creditor with each Secured Party, shall at all times have a valid and effective right of action in respect of the Solidary Claim and the right to give a full acquittance for same. By its execution of the Loan Documents to which it is a party, each such Obligor not a party hereto shall also be deemed to have accepted the stipulations hereinabove provided. The parties further agree and acknowledge that such Liens (hypothecs) under the Security Documents and the other Loan Documents shall be granted to the Agent, for its own benefit and for the benefit of the Secured Parties, as solidary creditor as hereinabove set forth.

(c) Without limiting the foregoing or any powers of Agent, for the purposes of holding any hypothec granted to the Attorney (as defined below) pursuant to the laws of the Province of Québec to secure the prompt payment and performance of any and all Obligations by any Obligor, each of the Secured Parties hereby irrevocably appoints and authorizes Agent and, to the extent necessary, ratifies the appointment and authorization of Agent, to act as the hypothecary representative of the present and future creditors as contemplated under Article 2692 of the Civil Code (in such capacity, the "Attorney"), and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Attorney under any related deed of hypothec. The Attorney shall: (i) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney pursuant to any such deed of hypothec and applicable law, and (ii) benefit from and be subject to all provisions hereof with respect to Agent mutatis mutandis, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Secured Parties and Obligors. Any person who becomes a Secured Party shall, by its execution of an Assignment and Acceptance, be deemed to have consented to and confirmed the Attorney as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Secured Party, all actions taken by the Attorney in such capacity. The substitution of Agent pursuant to the provisions of this Section 12 also constitutes the substitution of the Attorney.

12.1.2. Duties. Agent shall not have any duties except those expressly set forth in the Loan Documents. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

12.1.3. **Agent Professionals.** Agent may perform its duties through agents and employees. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

12.1.4. **Instructions of Required Lenders.** The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against all Claims that could be incurred by Agent in connection with any act. Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and Agent shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting in accordance with the instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that, in its opinion, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

12.1.5. **Agent as Security Trustee.** In this Agreement and the U.K. Security Agreement, any rights and remedies exercisable by, any documents to be delivered to, or any other indemnities or obligations in favor of Agent shall be, as the case may be, exercisable by, delivered to, or be indemnities or other obligations in favor of, Agent (or any other Person acting in such capacity) in its capacity as security trustee of Secured Parties to the extent that the rights, deliveries, indemnities or other obligations relate to the U.K. Security Agreement or the security thereby created. Any obligations of Agent (or any other Person acting in such capacity) in this Agreement and U.K. Security Agreement shall be obligations of Agent in its capacity as security trustee of Secured Parties to the extent that the obligations relate to the U.K. Security Agreement or the security thereby created. Additionally, in its capacity as security trustee of Secured Parties Agent (or any other Person acting in such capacity) shall have (i) all the rights, remedies and benefits in favor of Agent contained in the provisions of the whole of this **Section 12**; (ii) all the powers of an absolute owner of the security constituted by the U.K. Security Agreement and (iii) all the rights, remedies and powers granted to it and be subject to all the obligations and duties owed by it under the U.K. Security Agreement and/or any of the Loan Documents.

12.1.6. **Appointment of Agent as Security Trustee.** Each Secured Party hereby appoints Agent to act as its trustee under and in relation to the U.K. Security Agreement and to hold the assets subject to the security thereby created as trustee for Secured Parties on the trusts and other terms contained in the U.K. Security Agreement and each Secured Party hereby irrevocably authorizes Agent in its capacity as security trustee of Secured Parties to exercise such rights, remedies, powers and discretions as are specifically delegated to Agent as security trustee of Secured Parties by the terms of the U.K. Security Agreement together with all such rights, remedies, powers and discretions as are reasonably incidental thereto.

12.1.7. **Liens.** Any reference in this Agreement to Liens stated to be in favor of Agent shall be construed so as to include a reference to Liens granted in favor of Agent in its capacity as security trustee of Secured Parties.

12.1.8. **Successors.** Secured Parties agree that, if at any time that the Person acting as security trustee of Secured Parties in respect of the U.K. Security Agreement shall be a Person other than Agent, such other Person shall have the rights, remedies, benefits and powers granted to Agent in its capacity as security trustee of Secured Parties under this Agreement and the U.K. Security Agreement.

12.1.9. **Capacity.** Nothing in **Sections 12.1.5 to 12.1.8** shall require Agent in its capacity as security trustee of Secured Parties under this Agreement and the U.K. Security Agreement to act as a trustee at common law or to be holding any property on trust, in any jurisdiction outside the United States or the U.K. which may not operate under principles of trust or where such trust would not be recognized or its effects would not be enforceable.

## **12.2 Agreements Regarding Collateral and Field Examination Reports.**

12.2.1. **Lien Releases; Care of Collateral.** Secured Parties authorize Agent to release any Lien with respect to any Collateral (a) upon Full Payment of the Obligations; (b) that is the subject of an Asset Disposition which Borrowers certify in writing to Agent is a disposition permitted hereunder or a Lien which Borrowers certify is a Permitted Lien entitled to priority over Agent's Liens (and Agent may rely conclusively on any such certificate without further inquiry); (c) that does not have, when aggregated with all other released Collateral under this clause (c) in any calendar year, a book value greater than \$5,000,000; or (d) with the written consent of all Lenders. Secured Parties authorize Agent to subordinate its Liens to any Lien permitted under **Section 10.2.1(j).** Agent shall have no obligation to assure that any Collateral exists or is owned by a Borrower, or is cared for, protected, insured or encumbered, nor to assure that Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

12.2.2. **Possession of Collateral.** Agent and Secured Parties appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.

12.2.3. **Reports.** Agent shall promptly forward to each Lender, when complete, copies of any field audit, examination or appraisal report prepared by or for Agent with respect to any Obligor or Collateral ("Report"). Each Lender agrees (a) that neither Bank of America nor Agent makes any representation or warranty as to the accuracy or completeness of any Report, and shall not be liable for any information contained in or omitted from any Report; (b) that the Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing any audit or examination will inspect only specific information regarding Obligations or the Collateral and will rely significantly upon the applicable Obligors' books and records as well as upon representations of the applicable Obligors' officers and employees; and (c) to keep

all Reports confidential and strictly for such Lender's internal use, and not to distribute any Report (or the contents thereof) to any Person (except: (i) to such Lender's Participants, attorneys and accountants, (ii) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates, or (iii) to the extent required by Applicable Law or by any subpoena or other legal process) or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any Claims arising as a direct or indirect result of Agent furnishing a Report to such Lender.

**12.3 Reliance By Agent.** Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and upon the advice and statements of Agent Professionals. Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.

**12.4 Action Upon Default.** Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Section 6**, unless it has received written notice from a Borrower or Required Lenders specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations (other than Secured Bank Product Obligations), or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC or PPSA sales or other similar dispositions of Collateral or to assert any rights relating to any Collateral.

**12.5 Ratable Sharing.** No Lender shall set off against any Dominion Account without the prior consent of Agent. If any Lender shall obtain any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its share of such Obligation, determined on a Pro Rata basis or in accordance with **Section 5.6.1**, as applicable, such Lender shall forthwith purchase from Agent, the U.S. Issuing Bank (if such Obligation is a U.S. Facility Obligation), the Canadian Issuing Bank (if such Obligation is a Canadian Facility Obligation), the U.K. Issuing Bank (if such Obligation is a U.K. Facility Obligation), and the other Lenders such participations in the affected Obligation as are necessary to cause the purchasing Lender to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.6.1**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the amount thereof to Agent for application under **Section 4.2.2** and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction. No Lender shall set off against any Dominion Account without the prior consent of the Agent.

**12.6 Indemnification. EACH LENDER SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE**

**EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE (OTHER THAN CLAIMS THAT ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE), PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT).** In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee or Issuing Bank Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any Creditor Representative, debtor-in-possession or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Lender to the extent of its Pro Rata share.

**12.7 Limitation on Responsibilities of Agent.** Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

**12.8 Successor Agent and Co-Agents.**

12.8.1. **Resignation; Successor Agent.** Subject to the appointment and acceptance of a successor Agent as provided below, Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrower Agent. Upon receipt of such notice, Required Lenders shall have the right to appoint a successor Agent which shall be (a) a U.S. Lender or an Affiliate of a U.S. Lender; or (b) a commercial bank that is organized under the laws of the United States or any state or district thereof, has a combined capital surplus of at least \$200,000,000 and (provided no Default or Event of Default exists) is reasonably acceptable to Borrower Agent. If no successor agent is appointed prior to the effective date of the resignation of Agent, then Agent may appoint a successor agent from among Lenders or, if no Lender accepts such role, Agent may appoint Required Lenders as successor Agent. Upon acceptance by a successor Agent of an appointment to serve as Agent hereunder, or upon appointment of Required Lenders as successor Agent, such successor Agent shall thereupon succeed to and become vested

with all the powers and duties of the retiring Agent (including as security trustee of Secured Parties under the U.K. Security Agreements) without further act, and the retiring Agent shall be discharged from its duties and obligations hereunder but shall continue to have the benefits of the indemnification set forth in **Sections 12.6** and **14.2**. Notwithstanding any Agent's resignation, the provisions of this **Section 12** shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while Agent. Any successor to Bank of America by merger or acquisition of stock or this loan shall continue to be Agent (including as security trustee of Secured Parties under the U.K. Security Agreements) hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above.

**12.8.2. Separate Collateral Agent.** It is the intent of the parties that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to transact business in any jurisdiction. If Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any Applicable Law, Agent may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to Agent under the Loan Documents shall also be vested in such separate agent. Secured Parties shall execute and deliver such documents as Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

**12.9 Due Diligence and Non-Reliance.** Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans and participate in LC Obligations hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans and participating in LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates.

#### **12.10 Remittance of Payments and Collections.**

**12.10.1. Remittances Generally.** All payments by any Lender to Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Agent and request for payment is made by Agent by 11:00 a.m. (Applicable Time Zone) on a Business Day, payment shall be

made by Lender not later than 2:00 p.m. (Applicable Time Zone) on such day, and if request is made after 11:00 a.m. (Applicable Time Zone), then payment shall be made by 11:00 a.m. (Applicable Time Zone) on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.

**12.10.2. Failure to Pay.** If any Secured Party fails to pay any amount when due by it to Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by Agent as customary in the banking industry for interbank compensation. In no event shall Obligors be entitled to receive credit for any interest paid by a Secured Party to Agent, nor shall any Defaulting Lender be entitled to interest on any amounts held by Agent pursuant to **Section 4.2**.

**12.10.3. Recovery of Payments.** If Agent pays any amount to a Secured Party in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from each Secured Party that received it. If Agent determines at any time that an amount received under any Loan Document must be returned to an Obligor or paid to any other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Agent shall not be required to distribute such amount to any Lender. If any amounts received and applied by Agent to any Obligations are later required to be returned by Agent pursuant to Applicable Law, each Lender shall pay to Agent, **on demand**, such Lender's Pro Rata share of the amounts required to be returned.

**12.11 Agent in its Individual Capacity.** As a Lender, Bank of America shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders," "U.S. Required Lenders," "U.S. Required Term Lenders," "U.K. Required Lenders," "Canadian Required Lenders" or any similar term shall include Bank of America, if applicable, in its capacity as a Lender. Bank of America and its Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if Bank of America were not Agent hereunder, without any duty to account therefor to Lenders. In their individual capacities, Bank of America and its Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Secured Party agrees that Bank of America and its Affiliates shall be under no obligation to provide such information to any Secured Party, if acquired in such individual capacity.

**12.12 Agent Titles.** Each Lender, other than Bank of America, that is designated (on the cover page of this Agreement or otherwise) by Bank of America as an "Agent" or "Arranger" of any type shall not have any right, power, responsibility or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event be deemed to have any fiduciary relationship with any other Lender.

**12.13 Bank Product Providers.** Each Secured Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by **Section 5.6** and this **Section 12**. Each Secured Bank Product Provider shall indemnify and hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all Claims that may be incurred by or asserted against

any Agent Indemnitee in connection with such provider's Secured Bank Product Obligations, unless such Claim is caused by the gross negligence or willful misconduct of such Agent Indemnitee.

**12.14 No Third Party Beneficiaries.** This **Section 12** is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations. This **Section 12** does not confer any rights or benefits upon Obligors or any other Person. As between Obligors and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

## **SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS**

**13.1 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Obligors, Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) no Obligor shall have the right to assign its rights or delegate its obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with **Section 13.3**. Agent may treat the Person which made any Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

### **13.2 Participations.**

13.2.1. **Permitted Participants; Effect.** Any Lender may, in the Ordinary Course of Business and in accordance with Applicable Law, at any time sell to a financial institution ("Participant") a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for performance of such obligations, such Lender shall remain the holder of its Loans and Commitments for all purposes, all amounts payable by Obligors shall be determined as if such Lender had not sold such participating interests, and Obligors and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of **Section 5.9** unless Borrower Agent agrees otherwise in writing.

13.2.2. **Voting Rights.** Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of any Loan Documents other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Loan or Commitment in which such Participant has an interest, postpones the Canadian Revolver Commitment Termination Date (if such Participant has an interest in the Canadian Revolver Commitments), U.K. Revolver Commitment Termination Date (if such Participant has an interest in the U.K. Revolver Commitments), or U.S. Revolver Commitment Termination Date (if such Participant has an interest in the U.S. Revolver Commitments).

Commitments), or any date fixed for any regularly scheduled payment of principal, interest or fees on such Loan or Commitment, or releases any Borrower, Guarantor or substantial portion of the Collateral.

13.2.3. **Benefit of Set-Off.** Obligors agree that each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.

### **13.3 Assignments.**

13.3.1. **Permitted Assignments.** A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of \$10,000,000 (unless otherwise agreed by Agent in its discretion) and integral multiples of \$1,000,000 in excess of that amount; (b) except in the case of an assignment in whole of a Lender's rights and obligations, the aggregate amount of the Commitments retained by the transferor Lender is at least \$10,000,000 (unless otherwise agreed by Agent in its discretion); and (c) the parties to each such assignment shall execute and deliver to Agent, for its acceptance and recording, an Assignment and Acceptance. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to (i) any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors and any Operating Circular issued by such Federal Reserve Bank, or (ii) counterparties to swap agreements relating to any Loans; provided, however, that any payment by Obligors to the assigning Lender in respect of any Obligations assigned as described in this sentence shall satisfy Obligors' obligations hereunder to the extent of such payment, and no such assignment shall release the assigning Lender from its obligations hereunder.

13.3.2. **Effect; Effective Date.** Upon delivery to Agent of an assignment notice in the form of **Exhibit C** and a processing fee of \$3,500 (unless otherwise agreed by Agent in its discretion), the assignment shall become effective as specified in the notice, if it complies with this **Section 13.3**. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new Notes, as applicable. The transferee Lender shall comply with **Section 5.10** and deliver, upon request, an administrative questionnaire satisfactory to Agent.

13.3.3. **Certain Assignees.** No assignment or participation may be made to an Obligor, Affiliate of an Obligor, Defaulting Lender or natural person. In connection with any assignment by a Defaulting Lender, such assignment shall be effective only upon payment by the Eligible Assignee or Defaulting Lender to Agent of an aggregate amount sufficient, upon distribution (through direct payment, purchases of participations or other compensating actions as Agent deems appropriate), (a) to satisfy all funding and payment liabilities then owing by the

Defaulting Lender hereunder, and (b) to acquire its Pro Rata share of all Loans and LC Obligations. If an assignment by a Defaulting Lender shall become effective under Applicable Law for any reason without compliance with the foregoing sentence, then the assignee shall be deemed a Defaulting Lender for all purposes until such compliance occurs.

**13.4 Replacement of Certain Lenders.** If a Lender (a) fails to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, or (b) is a Defaulting Lender, then, in addition to any other rights and remedies that any Person may have, Agent or Borrower Agent may, by notice to such Lender within 120 days after such event, require such Lender to assign all of its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment and Acceptance(s), within 20 days after the notice. Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Acceptance if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents, including all principal, interest and fees through the date of assignment (but excluding any prepayment charge).

## SECTION 14. MISCELLANEOUS

### 14.1 Consents, Amendments and Waivers.

14.1.1. Amendment. No modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of the Required Lenders or of Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; provided, however, that

(a) without the prior written consent of Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

(b) without the prior written consent of each affected Issuing Bank, no modification shall be effective with respect to any LC Obligations, **Section 2.2, Section 2.3, Section 2.4**, or any other provision in a Loan Document that relates to any rights, duties or discretion of such affected Issuing Bank;

(c) without the prior written consent of each affected Lender, including a Defaulting Lender, no modification shall be effective that would (i) increase the Commitment of such Lender; (ii) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2**); (iii) extend the Commitment of such Lender, or (iv) amend this clause (c);

(d) without the prior written consent of all Lenders (except any Defaulting Lender), no modification shall be effective that would (i) extend the U.S. Revolver Commitment Termination Date, the U.K. Revolver Commitment Termination Date, the Canadian Revolver Commitment Termination Date, the Term Loan Maturity Date, or the Facility Termination Date, (ii) alter **Section 5.6, 7.1** (except to add Collateral), **12.5** or **14.1.1**; (iii) amend the definition of Pro Rata, Supermajority Lenders, or Required Lenders; (iv) increase any advance rate; (v) release

Collateral with a book value greater than \$5,000,000 during any calendar year, except as currently contemplated by the Loan Documents; or (vi) release any Obligor from liability for any Obligations;

(e) without the prior written consent of the Supermajority Lenders, no modification shall be effective that would amend the definition of U.S. Borrowing Base (or any defined term used in such definition, including any defined term used therein) to the extent that any such amendment results in more credit being made available to U.S. Borrowers, the Canadian Borrowing Base (or any defined term used in such definition, including any defined term used therein) to the extent that any such amendment results in more credit being made available to the Canadian Borrower, or the U.K. Borrowing Base (or any defined term used in such definition, including any defined term used therein) to the extent that any such amendment results in more credit being made available to the U.K. Borrower;

(f) without the prior written consent of a Secured Bank Product Provider, no modification shall be effective that affects its relative payment priority under **Section 5.6**;

(g) without the prior written consent of all Lenders, (i) the Obligations shall not be subordinated to any other obligations, and (ii) Agent shall not agree to subordinate its Liens in the Collateral to any other Liens except to the extent contemplated by **Section 12.2.1**;

(h) without the prior written consent of all: (i) U.S. Lenders, amend the definition of U.S. Required Lenders, (ii) Canadian Lenders, amend the definition of Canadian Required Lenders, (iii) U.K. Lenders, amend the definition of U.K. Required Lenders, and (iv) Term Lenders, amend the definition of U.S. Required Term Lenders; and

(i) if Real Estate secures any Obligations, no modification of a Loan Document shall add, increase, renew or extend any credit line hereunder until the completion of flood diligence and documentation as required by all Flood Laws.

**14.1.2. Limitations.** The agreement of Obligors shall not be necessary to the effectiveness of any modification of a Loan Document that deals solely with the rights and duties of Lenders, Agent and/or Issuing Banks as among themselves. Only the consent of the parties to the Fee Letters or any agreement relating to a Bank Product shall be required for any modification of such agreement, and any non-Lender that is party to a Bank Product agreement shall have no right to participate in any manner in modification of any other Loan Document. Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.

**14.1.3. Payment for Consents.** No Obligor will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

**14.2 Indemnity.** EACH OBLIGOR SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS

**ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE.** In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee.

#### **14.3 Notices and Communications.**

14.3.1. **Notice Address.** Subject to **Section 4.1.4**, all notices and other communications by or to a party hereto shall be in writing and shall be given to any Obligor, at Borrower Agent's address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment and Acceptance), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. Each such notice or other communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to Agent pursuant to **Section 2.1.4, 2.2, 2.3, 2.4, 3.1.2, 4.1.1 or 5.3.3** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written notice or other communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by Borrower Agent shall be deemed received by all Obligors.

14.3.2. **Electronic Communications; Voice Mail.** Electronic mail and internet websites may be used only for routine communications, such as financial statements, Borrowing Base Certificates and other information required by **Section 10.1.2**, administrative matters, distribution of Loan Documents, and matters permitted under **Section 4.1.4**. Agent and Lenders make no assurances as to the privacy and security of electronic communications. Electronic and voice mail may not be used as effective notice under the Loan Documents.

14.3.3. **Non-Conforming Communications.** Agent and Lenders may rely upon any notices purportedly given by or on behalf of any Obligor even if such notices were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Obligor shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any telephonic communication purportedly given by or on behalf of an Obligor.

**14.4 Performance of Obligors' Obligations.** Agent may, in its discretion at any time and from time to time, at the applicable Borrowers' expense, pay any amount or do any act required of an Obligor under any Loan Documents or otherwise lawfully requested by Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All payments, costs and expenses (including Extraordinary Expenses) of Agent under this Section shall be reimbursed to Agent by

Borrowers, **on demand**, with interest from the date incurred to the date of payment thereof at the Default Rate applicable to U.S. Base Rate Revolver Loans. Any payment made or action taken by Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

**14.5 Credit Inquiries.** Each Obligor hereby authorizes Agent and Lenders (but they shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

**14.6 Severability.** Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

**14.7 Cumulative Effect; Conflict of Terms.** The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations, tests or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

**14.8 Counterparts.** Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Agent has received counterparts bearing the signatures of all parties hereto. Delivery of a signature page of any Loan Document by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of such agreement.

**14.9 Entire Agreement.** Time is of the essence of the Loan Documents. The 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.

**14.10 Relationship with Lenders.** The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, association, joint venture or any other kind of entity, nor to constitute control of any Obligor.

**14.11 Lender Loss Sharing Agreement.**

(a) **Definitions.** As used in this **Section 14.11**, the following terms shall have the following meanings:

(i) CAM: the mechanism for the allocation and exchange of interests in the Loans, participations in Letters of Credit and collections thereunder established under **Section 14.11(b)**.

(ii) CAM Exchange: the exchange of the U.S. Lenders' interests, U.K. Lenders' interests, and the Canadian Lenders' interests provided for in **Section 14.11(b)**.

(iii) CAM Exchange Date: the first date after the Closing Date on which there shall occur (a) any event described in **Section 11.1(j)** with respect to any Borrower, or (b) an acceleration of Loans and termination of the Commitments pursuant to **Section 11.2**.

(iv) CAM Percentage: as to each Lender, a fraction, (a) the numerator of which shall be the aggregate amount of such Lender's Revolver Commitments immediately prior to the CAM Exchange Date and the termination of the Revolver Commitments, and (b) the denominator of which shall be the amount of the Revolver Commitments of all the Lenders immediately prior to the CAM Exchange Date and the termination of the Revolver Commitments.

(v) Designated Obligations: all Obligations of the Borrowers with respect to (a) principal and interest under the U.S. Revolver Loans, U.K. Revolver Loans, Canadian Revolver Loans, Overadvance Loans and Protective Advances, (b) unreimbursed drawings under Letters of Credit and interest thereon, and (c) fees under **Sections 3.2.1, 3.2.2(a), 3.2.3(a), and 3.2.4(a)**.

(vi) Revolver Facilities: the facility established under the U.S. Revolver Commitments, the U.K. Revolver Commitments, and the Canadian Revolver Commitments, and Revolver Facility means any one of such Revolver Facilities.

(b) **CAM Exchange.**

(i) On the CAM Exchange Date,

(A) the U.S. Revolver Commitments, the U.K. Revolver Commitments, and the Canadian Revolver Commitments shall have terminated in accordance with **Section 11.2**,

(B) each U.S. Lender shall fund its participation in any outstanding Protective Advances in accordance with **Section 2.1.6**, each U.K. Lender shall fund its participation in any outstanding Protective Advances in accordance with **Section 2.1.6**, and each Canadian Lender shall fund its participation in any outstanding Protective Advances in accordance with **Section 2.1.6**

(C) each U.S. Lender shall fund its participation in any unreimbursed drawings made under the applicable Letters of Credit pursuant to **Section 2.3.2(b)**, each Canadian Lender

shall fund its participation in any unreimbursed drawings made under the applicable Letters of Credit pursuant to **Section 2.4.2(b)**, and each U.K. Lender shall fund its participation in any unreimbursed drawings made under the applicable Letters of Credit pursuant to **Section 2.2.2(b)**, and

(D) the Lenders shall purchase at par interests (in Dollars) in the Designated Obligations under each Revolver Facility (and shall make payments to Agent for reallocation to other Lenders to the extent necessary to give effect to such purchases) and shall assume the obligations to reimburse the applicable Issuing Bank for unreimbursed drawings under outstanding Letters of Credit under such Revolver Facility such that, in lieu of the interests of each Lender in the Designated Obligations under the U.S. Revolver Commitments, the U.K. Revolver Commitments, and the Canadian Revolver Commitments in which it shall participate immediately prior to the CAM Exchange Date, such Lender shall own an interest equal to such Lender's CAM Percentage in each component of the Designated Obligations immediately following the CAM Exchange.

(ii) Each Lender and each Person acquiring a participation from any Lender as contemplated by **Section 13.2** hereby consents and agrees to the CAM Exchange. Each Borrower agrees from time to time to execute and deliver to Lenders all such promissory notes and other instruments and documents as Agent shall reasonably request to evidence and confirm the respective interests and obligations of Lenders after giving effect to the CAM Exchange, and each Lender agrees to surrender any promissory notes originally received by it in connection with its Loans under this Agreement to Agent against delivery of any promissory notes so executed and delivered; provided that the failure of any Lender to deliver or accept any such promissory note, instrument or document shall not affect the validity or effectiveness of the CAM Exchange.

(iii) As a result of the CAM Exchange, from and after the CAM Exchange Date, each payment received by Agent pursuant to any Loan Document in respect of any of the Designated Obligations shall be distributed to Lenders, pro rata in accordance with their respective CAM Percentages.

(iv) In the event that on or after the CAM Exchange Date, the aggregate amount of the Designated Obligations shall change as a result of the making of a disbursement under a Letter of Credit by any Issuing Bank that is not reimbursed by the applicable Borrowers, then each Lender shall promptly reimburse such Issuing Bank for its CAM Percentage of such unreimbursed payment.

(c) Notwithstanding any other provision of this **Section 14.11**, Agent and each Lender agree that if Agent or a Lender is required under Applicable Law to withhold or deduct any taxes or other amounts from payments made by it hereunder or as a result hereof, such Person

shall be entitled to withhold or deduct such amounts and pay over such taxes or other amounts to the applicable Governmental Authority imposing such tax without any obligation to indemnify Agent or any Lender with respect to such amounts and without any other obligation of gross up or offset with respect thereto and there shall be no recourse whatsoever by Agent or any Lender subject to such withholding to Agent or any other Lender making such withholding and paying over such amounts, but without diminution of the rights of Agent or such Lender subject to such withholding as against Borrowers and the other Obligors to the extent (if any) provided in this Agreement and the other Loan Documents. Any amounts so withheld or deducted shall be treated as, for the purpose of this **Section 14.11**, having been paid to Agent or such Lender with respect to which such withholding or deduction was made.

**14.12 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated by any Loan Document, Obligors acknowledge and agree that (a)(i) this credit facility and any related arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Obligors and such Person; (ii) Obligors have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Obligors are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger 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 Obligors, any of their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Obligors and their Affiliates, and have no obligation to disclose any of such interests to Obligors or their Affiliates. To the fullest extent permitted by Applicable Law, each Obligor hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

**14.13 Confidentiality.** Each of Agent, Lenders and Issuing Banks shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, advisors and representatives (provided such Persons are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto; (e) in connection with any action or proceeding, or other exercise of rights or remedies, relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product; (g) with the consent of Borrower Agent; or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) is available to Agent, any Lender, any Issuing Bank or any of their Affiliates on a nonconfidential basis from a source other than Obligors. Notwithstanding the foregoing, Agent and Lenders may publish or disseminate general information describing this credit facility, including the names and addresses of Obligors and a general description of Obligors' businesses, and may use Obligors' logos, trademarks or product photographs in advertising materials. As used herein, "Information"

means all information received from an Obligor or Subsidiary relating to it or its business that is identified as confidential when delivered. Any Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises the same degree of care that it accords its own confidential information. Each of Agent, Lenders and Issuing Banks acknowledges that (i) Information may include material non-public information concerning an Obligor or Subsidiary; (ii) it has developed compliance procedures regarding the use of material non-public information; and (iii) it will handle such material non-public information in accordance with Applicable Law, including federal, state, provincial and territorial securities laws.

**14.14 GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS OTHERWISE SPECIFIED, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES (BUT GIVING EFFECT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATION LAW AND FEDERAL LAWS RELATING TO NATIONAL BANKS).**

**14.15 Consent to Forum; Judicial Reference; Bail-In of EEA Financial Institutions.**

14.15.1. Forum. EACH OBLIGOR HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURT SITTING IN OR WITH JURISDICTION OVER NEW YORK, NEW YORK, IN ANY PROCEEDING OR DISPUTE RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY SUCH PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH OBLIGOR IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1. Nothing herein shall limit the right of Agent or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

14.15.2. Judicial Reference. If any controversy or claim among the parties relating in any way to any Obligations or Loan Documents, including any alleged tort, shall be pending before any court sitting in or with jurisdiction over California or applying California law, then at the request of any party such proceeding shall be referred by the court to a referee (who shall be an active or retired judge) to hear and determine all issues in such proceeding (whether of fact or law) and to report a statement of decision for adoption by the court. Nothing in this Section shall limit any right of Agent or any other Secured Party to exercise self-help remedies, such as setoff, foreclosure or sale of any Collateral, or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, during or after any judicial reference. The exercise of a remedy does not waive the right of any party to resort to judicial reference. At Agent's option, foreclosure under a mortgage or deed of trust may be accomplished either by exercise of power of sale thereunder or by judicial foreclosure.

**14.15.3. 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 the parties, each party hereto (including each Secured Party) acknowledges that, with respect to any Secured Party that is an EEA Financial Institution, any unsecured liability of such Secured Party arising under a Loan Document may be subject to the write-down and conversion powers of an EEA Resolution Authority, and each party hereto 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 liability which may be payable to it by such Secured Party; and (b) the effects of any Bail-in Action on any such liability, including (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, or a bridge institution that may be issued to the party 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 any Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of any Write-Down and Conversion Powers.

**14.16 Waivers by Obligors.** To the fullest extent permitted by Applicable Law, each Obligor waives (a) the right to trial by jury (which Agent and each Lender hereby also waives) in any proceeding or dispute of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent on which an Obligor may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisement and exemption laws; (f) any claim against Agent, any Issuing Bank or any Lender, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Obligor acknowledges that the foregoing waivers are a material inducement to Agent, Issuing Banks and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with Obligors. Each Obligor has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**14.17 Patriot Act Notice.** Agent and Lenders hereby notify Obligors that pursuant to the requirements of the Patriot Act, the Proceeds of Crime Act and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” policies, regulations, laws or rules (the Proceeds of Crime Act and such other applicable policies, regulations, laws or rules, collectively, including any guidelines or orders thereunder, “AML Legislation”), Agent and Lenders are required to obtain, verify and record information that identifies each Obligor, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act and the AML Legislation. Agent and Lenders will also require information regarding each personal guarantor,

if any, and may require information regarding Obligors' management and owners, such as legal name, address, social security number and date of birth. Each Obligor shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender, in order to comply with the Patriot Act and/or the applicable AML Legislation, whether now or hereafter in existence.

**14.18 Canadian Anti-Money Laundering Legislation.** If the Agent has ascertained the identity of any Canadian Facility Obligor or any authorized signatories of any Canadian Facility Obligor for the purposes of applicable AML Legislation, then the Agent: (a) shall be deemed to have done so as an agent for each Canadian Lender, and this Agreement shall constitute a "written agreement" in such regard between each Canadian Lender and the Agent within the meaning of the applicable AML Legislation; and (b) shall provide to each Canadian Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness. Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Canadian Lenders agrees that Agent has no obligation to ascertain the identity of the Canadian Facility Obligors or any authorized signatories of the Canadian Facility Obligors on behalf of any Canadian Lender, or to confirm the completeness or accuracy of any information it obtains from any Canadian Facility Obligor or any such authorized signatory in doing so.

**14.19 Reinstatement.** This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Obligor for liquidation or reorganization, should any Obligor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of such Obligor's assets, and shall continue to be effective or 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. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

**14.20 Nonliability of Lenders.** Neither the Agent, any Issuing Bank nor any Lender undertakes any responsibility to any Obligor to review or inform any Obligor of any matter in connection with any phase of any Obligor's business or operations. Each Obligor agrees, on behalf of itself and each other Obligor, that neither the Agent, any Issuing Bank nor any Lender shall have liability to any Obligor (whether sounding in tort, contract or otherwise) for losses suffered by any Obligor in connection with, arising out of or in any way related to any of the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final, non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence or willful misconduct of the party from which recovery is sought or a breach of obligations under this Agreement by the party from which recovery is sought. **NEITHER THE AGENT NOR ANY LENDER 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.**

**14.21 Know Your Customer.** Nothing in this Agreement shall oblige the Agent to carry out any “**know your customer**” or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent.

**14.22 Amendment and Restatement.**

14.22.1. This Agreement amends and restates in its entirety the Second Amended and Restated Loan Agreement and, upon the effectiveness of this Agreement, the terms and provisions of the Second Amended and Restated Loan Agreement shall, subject to **Section 14.22.3**, be superseded hereby.

14.22.2. Notwithstanding the amendment and restatement of the Second Amended and Restated Loan Agreement by this Agreement, all of the Obligations under the Second Amended and Restated Loan Agreement which remain outstanding as of the date hereof, shall constitute Obligations owing hereunder. This Agreement is given in substitution for the Second Amended and Restated Loan Agreement, and not as payment of the Obligations of the Borrowers thereunder, and is in no way intended to constitute a novation of the Second Amended and Restated Loan Agreement.

14.22.3. Upon the effectiveness of this Agreement, unless the context otherwise requires, each reference to the Second Amended and Restated Loan Agreement in any of the Loan Documents and in each document, instrument or agreement executed and/or delivered in connection therewith shall mean and be a reference to this Agreement. Except as expressly modified as of the Closing Date, all of the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed. Without limiting the generality of the foregoing, all security interests, pledges, assignments and other Liens and Guarantees previously granted by any Obligor pursuant to the Loan Documents executed and delivered in connection with the Original Loan Agreement, the Original Amended and Restated Loan Agreement or the Second Amended and Restated Loan Agreement are hereby reaffirmed, ratified, renewed and continued, and all such security interests, pledges, assignments and other Liens and Guarantees shall remain in full force and effect as security for the Obligations on and after the Closing Date.

**14.23 Intercreditor Agreement. Notwithstanding anything herein to the contrary, the priority of the Lien and security interest granted to the Agent pursuant to any Loan Document and the exercise of any right or remedy in respect of the Collateral by the Agent (or any Secured Party) hereunder or under any other Loan Document are subject to the provisions of the Intercreditor Agreement and in the event of any conflict between the terms of the Intercreditor Agreement and any Loan Document, the terms of the Intercreditor Agreement shall govern and control. Notwithstanding anything herein to the contrary, prior to the Discharge of Term Loan Obligations (as defined in the Intercreditor Agreement), (i) the delivery or granting of “control” (as defined in the UCC) to the extent only one Person can be granted “control” therein under applicable law of any Term Loan Collateral (as defined in the Intercreditor Agreement) by the Term Loan Collateral Agent pursuant to the terms of the Term Loan Collateral Documents (as defined in the Intercreditor Agreement) shall satisfy any such “control” requirement hereunder or under any other Loan Document with respect to any Term Loan Collateral to the extent that such “control” is consistent with the terms of the Intercreditor Agreement and (ii) the possession of any Term Loan Collateral**

by the Term Loan Collateral Agent pursuant to the terms of the Term Loan Collateral Documents shall satisfy any such possession requirement hereunder or under any other Loan Document with respect to Term Loan Collateral to the extent that such possession is consistent with the terms of the Intercreditor Agreement.

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

**OBLIGORS:**

**CALLAWAY GOLF COMPANY,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALLAWAY GOLF SALES COMPANY,**  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALLAWAY GOLF BALL OPERATIONS, INC.,**  
a Delaware corporation

[Signature Page to Third Amended and Restated Loan and Security Agreement]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALLAWAY GOLF CANADA LTD.,**  
a Canada corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALLAWAY GOLF EUROPE LTD.,**  
a company organized under the laws of England and Wales

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Third Amended and Restated Loan and Security Agreement]

**CALLAWAY GOLF INTERACTIVE, INC.**  
a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALLAWAY GOLF INTERNATIONAL SALES  
COMPANY,**  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Third Amended and Restated Loan and Security Agreement]

**CALLAWAY GOLF EUROPEAN HOLDING  
COMPANY LIMITED,**  
a company limited by shares incorporated under the laws of  
England and Wales

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OGIO INTERNATIONAL, INC.,**  
a Utah corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRAVIS MATHEW RETAIL, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_  
Name: \_\_\_\_\_  
\_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_

[Signature Page to Third Amended and Restated Loan and Security Agreement]

**TRAVISMATHEW, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Third Amended and Restated Loan and Security Agreement]

**AGENT AND LENDERS**

**BANK OF AMERICA, N.A.**, as Agent and as a U.S.  
Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BANK OF AMERICA, N.A.**  
(acting through its Canada branch), as a Canadian Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BANK OF AMERICA, N.A.**  
(acting through its London branch), as a U.K. Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Third Amended and Restated Loan and Security Agreement]

**[Additional Lender sig pages to be provided]**

[Signature Page to Third Amended and Restated Loan and Security Agreement]

**Exhibit B**

Unmarked Conformed Loan Agreement

(see attached)

**CONFORMED THROUGH SECOND AMENDMENT TO THIRD AMENDED AND  
RESTATE LOAN AGREEMENT**

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**CALLAWAY GOLF COMPANY,  
CALLAWAY GOLF SALES COMPANY,  
CALLAWAY GOLF BALL OPERATIONS, INC.,  
OGIO INTERNATIONAL INC., and  
TRAVISMATHEW, LLC**

as U.S. Borrowers, Canadian Facility Guarantors, and U.K. Facility Guarantors

**CALLAWAY GOLF CANADA LTD.,**  
as the Canadian Borrower and a U.K. Facility Guarantor,

**CALLAWAY GOLF EUROPE LTD.,**  
as the U.K. Borrower and a Canadian Facility Guarantor, and

**THE OTHER OBLIGORS PARTY HERETO**

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**THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

Dated as of November 20, 2017

\$360,000,000

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**CERTAIN FINANCIAL INSTITUTIONS,**  
as Lenders,

**BANK OF AMERICA, N.A.,**  
as Administrative Agent

**MUFG UNION BANK N.A.**  
as Syndication Agent

**SUNTRUST BANK,**  
as Documentation Agent

and

**BANK OF AMERICA, N.A.,**  
as Sole Lead Arranger and Sole Bookrunner

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## TABLE OF CONTENTS

		<u>Page</u>
Section 1.	Definitions; Rules of Construction	2
1.1	Definitions	2
1.2	Accounting Terms	61
1.3	Uniform Commercial Code/PPSA	61
1.4	Certain Matters of Construction	62
1.5	Calculations	62
1.6	Interpretation (Quebec)	63
Section 2.	Credit Facilities	63
2.1	Revolver Commitments	63
2.2	U.K. Letter of Credit Facility	68
2.3	U.S. Letter of Credit Facility	71
2.4	Canadian Letter of Credit Facility	74
2.5	Term Loans	78
Section 3.	Interest, Fees and Charges	78
3.1	Interest	78
3.2	Fees	81
3.3	Computation of Interest, Fees, Yield Protection	83
3.4	Reimbursement Obligations	83
3.5	Illegality	84
3.6	Inability to Determine Rates	84
3.7	Increased Costs; Capital Adequacy	85
3.8	Mitigation	86
3.9	Funding Losses	86
3.10	Maximum Interest	87
Section 4.	Loan Administration	88
4.1	Manner of Borrowing and Funding Revolver Loans	88
4.2	Defaulting Lender	91
4.3	Number and Amount of LIBOR Loans and Canadian BA Rate Loans; Determination of Rate	92
4.4	Borrower Agent	93
4.5	One Obligation	93
4.6	Effect of Termination	93
Section 5.	Payments	93
5.1	General Payment Provisions	93
5.2	Repayment of Revolver Loans	94
5.3	Repayment of Term Loans	94
5.4	Payment of Other Obligations	95
5.5	Marshaling; Payments Set Aside	95
5.6	Post-Default Allocation of Payments	96
5.7	Application of Payments	99

5.8	Loan Account; Account Stated	100
5.9	Taxes	100
5.10	Lender Tax Information	104
5.11	Guarantee by Obligors	105
5.12	Currency Matters	112
5.13	Currency Fluctuations	113
Section 6.	Conditions Precedent	114
6.1	Conditions Precedent to Effectiveness and Loans	114
6.2	Conditions Precedent to All Credit Extensions	115
Section 7.	Collateral	115
7.1	Grant of Security Interest	115
7.2	Lien on Deposit Accounts; Cash Collateral	118
7.3	Intentionally Omitted	118
7.4	Certain After-Acquired Collateral	118
7.5	No Assumption of Liability	119
7.6	Further Assurances	119
Section 8.	Collateral Administration	120
8.1	Borrowing Base Certificates	120
8.2	Administration of Accounts	120
8.3	Administration of Inventory	122
8.4	Intentionally Omitted	122
8.5	Administration of Deposit Accounts	122
8.6	General Provisions	123
8.7	Power of Attorney	124
Section 9.	Representations and Warranties	124
9.1	General Representations and Warranties	124
Section 10.	Covenants and Continuing Agreements	132
10.1	Affirmative Covenants	132
10.2	Negative Covenants	138
10.3	Financial Covenants	150
10.4	Company Trademark	150
Section 11.	Events of Default; Remedies on Default	151
11.1	Events of Default	151
11.2	Remedies upon Default	153
11.3	License	153
11.4	Setoff	154
11.5	Remedies Cumulative; No Waiver	154
11.6	Judgment Currency	154
Section 12.	Agent	155
12.1	Appointment, Authority and Duties of Agent	155

12.2	Agreements Regarding Collateral and Field Examination Reports	158
12.3	Reliance By Agent	158
12.4	Action Upon Default	159
12.5	Ratable Sharing	159
12.6	Indemnification	159
12.7	Limitation on Responsibilities of Agent	160
12.8	Successor Agent and Co-Agents	160
12.9	Due Diligence and Non-Reliance	161
12.10	Remittance of Payments and Collections	161
12.11	Agent in its Individual Capacity	162
12.12	Agent Titles	162
12.13	Bank Product Providers	162
12.14	No Third Party Beneficiaries	162
<b>Section 13.</b>	<b>Benefit of Agreement; Assignments</b>	<b>163</b>
13.1	Successors and Assigns	163
13.2	Participations	163
13.3	Assignments	164
13.4	Replacement of Certain Lenders	164
<b>Section 14.</b>	<b>Miscellaneous</b>	<b>165</b>
14.1	Consents, Amendments and Waivers	165
14.2	Indemnity	166
14.3	Notices and Communications	166
14.4	Performance of Obligors' Obligations	167
14.5	Credit Inquiries	167
14.6	Severability	167
14.7	Cumulative Effect; Conflict of Terms	168
14.8	Counterparts	168
14.9	Entire Agreement	168
14.10	Relationship with Lenders	168
14.11	Lender Loss Sharing Agreement	168
14.12	No Advisory or Fiduciary Responsibility	171
14.13	Confidentiality	171
14.14	GOVERNING LAW	171
14.15	Consent to Forum; Judicial Reference; Bail-In of EEA Financial Institutions	172
14.16	Waivers by Obligors	173
14.17	Patriot Act Notice	173
14.18	Canadian Anti-Money Laundering Legislation	173
14.19	Reinstatement	174
14.20	Nonliability of Lenders	174
14.21	Know Your Customer	174
14.22	Amendment and Restatement	174

**LIST OF EXHIBITS AND SCHEDULES**

Exhibit A-1	Form of Canadian Revolver Note
Exhibit A-2	Form of U.S. Revolver Note
Exhibit A-3	Form of U.K. Revolver Note
Exhibit B	Assignment and Acceptance
Exhibit C	Assignment Notice
Exhibit D	Form of Compliance Certificate
Exhibit E	Form of Mortgage
Schedule E-1	Existing Letters of Credit
Schedule F-1	Company Trademarks
Schedule 1.1	Commitments of Lenders
Schedule 1.1A	Mandatory Cost Formulae
Schedule 1.1C	U.K. Eligible Foreign Accounts
Schedule 1.1D	U.K. Non-Bank Lenders
Schedule 5.9.9	Treaty Lenders under HMRC DT Passport Scheme
Schedule 8.6.1	Business Locations
Schedule 9.1.8	Real Property in a Special Flood Hazard Zone
Schedule 9.1.9	Environmental Matters
Schedule 9.1.12	ERISA Compliance
Schedule 9.1.13	Names and Capital Structure
Schedule 9.1.17	Patents, Trademarks, Copyrights and Licenses
Schedule 9.1.21	Labor Contracts
Schedule 9.1.24	Commercial Tort Claims
Schedule 10.2.1	Existing Liens
Schedule 10.2.2	Permitted Investments
Schedule 10.2.3	Permitted Debt

**THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

**THIS THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT** is dated as of November 20, 2017, among **CALLAWAY GOLF COMPANY**, a Delaware corporation (“Parent”), **CALLAWAY GOLF SALES COMPANY**, a California corporation (“Callaway Sales”), **CALLAWAY GOLF BALL OPERATIONS, INC.**, a Delaware corporation (“Callaway Operations”), **OGIO INTERNATIONAL INC.**, a Utah corporation, (“Ogio”), **TRAVISMATHEW, LLC**, a California limited liability company (“travisMathew” and together with Parent, Callaway Sales and Callaway Operations, collectively, “U.S. Borrowers”), **CALLAWAY GOLF CANADA LTD.**, a Canada corporation (“Canadian Borrower”) **CALLAWAY GOLF EUROPE LTD.**, a company organized under the laws of England (registered number 02756321) (“U.K. Borrower” and together with the U.S. Borrowers and the Canadian Borrower, collectively, “Borrowers”), the other Obligors party to this Agreement from time to time, the financial institutions party to this Agreement from time to time as lenders (collectively, “Lenders”), and **BANK OF AMERICA, N.A.**, a national banking association, as administrative agent and as security trustee for the Lenders (“Agent”).

**RECITALS:**

**WHEREAS**, Agent, the Lenders party thereto, Parent, Callaway Sales, Callaway Operations, the Canadian Borrower, and the other Obligors party thereto entered into that certain Second Amended and Restated Loan and Security Agreement (the “Second Amended and Restated Loan Agreement”), dated as of December 22, 2011 (the “Second Amended Original Closing Date”), which amended and restated that certain Amended and Restated Loan and Security Agreement dated as of July 22, 2011 (the “Original Amended and Restated Loan Agreement”), which amended and restated that certain Loan and Security Agreement dated as of June 30, 2011 (the “Original Loan Agreement”);

**WHEREAS**, the parties hereto have agreed to amend and restate in their entirety the agreements contained in the Second Amended and Restated Loan Agreement as amongst themselves;

**WHEREAS**, the Obligors have requested that: (i) the U.S. Lenders provide a credit facility to the U.S. Borrowers; (ii) the Canadian Lenders provide a credit facility to the Canadian Borrower; and (iii) the U.K. Lenders provide a credit facility to the U.K. Borrower, in each case, to finance their mutual and collective business enterprise;

**WHEREAS**, the applicable Lenders are willing to provide such credit facilities on the terms and conditions set forth herein; and

**WHEREAS**, each Obligor hereby restates, ratifies and reaffirms each and every term and condition set forth in the Second Amended and Restated Loan Agreement, as amended and restated hereby, and the other Loan Documents effective as of the date hereof;

**NOW, THEREFORE**, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto amend and restate the Second Amended and Restated Loan Agreement and agree as follows:

## **SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION**

**1.1 Definitions.** As used herein, the following terms have the meanings set forth below:

**Account:** as defined in the UCC (and/or, with respect to any Accounts of a Canadian Subsidiary, as defined in the PPSA), including all rights to payment for goods sold or leased, or for services rendered.

**Account Debtor:** a Person who is obligated under an Account, Chattel Paper or General Intangible.

**Acquisition:** any transaction, or any series of related transactions, consummated on or after the Original Agreement Closing Date, by which Parent, directly or indirectly, acquires (a) any going business or all or substantially all of the assets of any Person or division thereof, whether through purchase of assets, merger, or otherwise or (b) in one transaction or as the most recent transaction in a series of transactions, a majority (in number of votes) of the Equity Interests of a Person which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

**Acquisition Cap:** \$25,000,000.

**Additional Collateral:** as defined in **Section 10.2.1(o).**

**Affiliate:** with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “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 correlative meanings.

**Agent:** as defined in the preamble to this Agreement.

**Agent Indemnitees:** Agent and its officers, directors, employees, Affiliates, agents and attorneys.

**Agent Professionals:** attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Agent.

**Agreement:** this Third Amended and Restated Loan and Security Agreement.

**Allocable Amount:** as defined in **Section 5.11.**

**AML Legislation:** as defined in **Section 14.17.**

Anti-Corruption Laws: means all laws, rules, and regulations of any jurisdiction applicable to any Obligor or any Subsidiaries from time to time concerning or relating to bribery or corruption.

Anti-Terrorism Laws: any laws relating to terrorism or money laundering, including the Patriot Act and the Proceeds of Crime Act.

Applicable Law: all laws, rules, regulations and governmental guidelines with the force of law applicable to the Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

Applicable Lenders: with respect to: (a) the U.S. Borrowers, the U.S. Lenders who have a U.S. Revolver Commitments (and if the U.S. Revolver Commitments have terminated, each U.S. Lender that had a U.S. Revolver Commitment immediately prior to such termination), (b) the Canadian Borrower, the Canadian Lenders, and (c) the U.K. Borrower, the U.K. Lenders.

Applicable Margin: with respect to any Type of Loan, the respective margin set forth in the grid below (the “Pricing Grid”), as determined by the Availability Ratio for the last calendar month:

Level	Availability Ratio	U.S.				Canadian				LIBOR			
		Base Rate Revolver Loans	LIBOR Revolver Loans	Canadian BA Rate Loans	Canadian Prime Rate Loans	U.K. Base Rate Loans	U.K. Base Rate Loans	Base Rate Term Loans	LIBOR Term Loans	Base Rate Term Loans	Base Rate Term Loans	LIBOR Term Loans	
I	Greater than or equal to 67%	0.50%	1.50%	1.50%	0.50%	1.50%	2.00%	3.00%					
II	Less than 67% but greater than or equal to 33%	0.75%	1.75%	1.75%	0.75%	1.75%	2.25%	3.25%					
III	Less than 33%	1.00%	2.00%	2.00%	1.00%	2.00%	2.50%	3.50%					

Margins shall be subject to increase or decrease based upon the Availability Ratio for the prior calendar month, as determined by Agent. If, by the first day of a calendar month, any Borrowing Base Certificate due in the preceding calendar month has not been received, then, at

the option of Agent or Required Lenders, the margins shall be determined as if Level III were applicable, from such day until the first day of the calendar month following actual receipt.

Notwithstanding the foregoing, the Applicable Margin for any month with respect to (i) U.S. Base Rate Revolver Loans, Canadian Prime Rate Loans, Canadian Base Rate Loans, LIBOR Revolver Loans, Canadian BA Rate Loans and U.K. Base Rate Loans shall be increased by .50% if any U.S. Availability is generated under both clause (b)(iii) and clause (b)(iv) of the definition of the U.S. Borrowing Base at any time in such month, and (ii) U.S. Base Rate Revolver Loans, Canadian Prime Rate Loans, Canadian Base Rate Loans, LIBOR Revolver Loans, Canadian BA Rate Loans and U.K. Base Rate Loans, shall be increased by .25% if any U.S. Availability is generated under either clause (b)(iii) or clause (b)(iv) of the definition of the U.S. Borrowing Base (but not both such clauses) at any time in such month.

Applicable Time Zone: for borrowings under, and payments due by Borrowers or Lenders on (a) with respect to U.S. Revolver Loans, Term Loans and Canadian Revolver Loans, Pacific time, and (b) with respect to U.K. Revolver Loans, London time.

Approved Fund: any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, and is administered or managed by a Lender, an entity that administers or manages a Lender, or an Affiliate of either.

Asset Disposition: a sale, lease, license, consignment, transfer or other disposition of Property of an Obligor or a Subsidiary, including a disposition of Property in connection with a sale-leaseback transaction or synthetic lease.

Assignment and Acceptance: an assignment agreement between a Lender and Eligible Assignee, in the form of **Exhibit B**.

Assignment of Claims Act: Assignment of Claims Act of 1940, 31 U.S.C. § 3727, 41 U.S.C. § 15, as amended.

Attorney: as defined in **Section 12.1.1(c)**.

Availability: as of any date of determination, the sum of the U.S. Availability plus the Canadian Availability plus the U.K. Availability.

Availability Ratio: the ratio (expressed as a percentage), for any calendar month, of (a) the average daily Availability for such calendar month to (b) an amount equal to the sum of (i) the average daily Canadian Borrowing Base (without giving effect to the Canadian LC Reserve for purposes of this calculation) for such calendar month, plus (ii) the average daily U.S. Borrowing Base (without giving effect to the U.S. LC Reserve, the Canadian Overadvance Loan Balance, and the U.K. Overadvance Loan Balance for purposes of this calculation) for such calendar month, plus (iii) the average daily U.K. Borrowing Base (without giving effect to the U.K. LC Reserve for purposes of this calculation) for such calendar month.

Available Currency: (i) in the case of a U.S. Borrower, Dollars, (ii) in the case of the Canadian Borrower, Dollars or Canadian Dollars, and (iii) in the case of the U.K. Borrower, Dollars, British Pounds or Euro (but in the case of U.K. Base Rate Loans, Dollars only).

Bail-In Action: 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: 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: Bank of America, N.A., a national banking association, and its successors and assigns.

Bank of America (Canada): Bank of America, N.A. (acting through its Canada branch), and its successors and assigns.

Bank of America Indemnitees: Bank of America and its officers, directors, employees, Affiliates, branches, agents and attorneys.

Bank Product: any of the following products, services or facilities extended to any Obligor or Subsidiary by a Lender or any of its Affiliates:

(a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; (d) purchase cards (including so-called “procurement cards” or “P-cards”), and (e) other banking products or services as may be requested by any Obligor or Subsidiary unless otherwise agreed in writing between such Obligor or Subsidiary and the provider of such products or services, other than Letters of Credit.

Bank Product Debt: Debt and other obligations of an Obligor or Subsidiary relating to Bank Products.

Base Rate Loan: a U.S. Base Rate Loan, a Canadian Base Rate Loan or a U.K. Base Rate Loan, as applicable.

Base Rate Term Loan: a Term Loan that bears interest based on the U.S. Base Rate.

Board of Governors: the Board of Governors of the Federal Reserve System.

Borrowed Money: with respect to any Obligor or Subsidiary, without duplication, its (a) Debt that (i) arises from the lending of money by any Person to such Obligor or Subsidiary, (ii) is evidenced by notes, drafts, bonds, debentures, credit documents or similar instruments, (iii) accrues interest or is a type upon which interest charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business), or (iv) was issued or assumed as full or partial payment for Property; (b) Capital Leases; (c) reimbursement obligations with respect to letters of credit; and (d) guaranties of any Debt of the foregoing types owing by another Person.

Borrower Agent: as defined in **Section 4.4**.

Borrower Group: a group consisting of (i) the U.S. Borrowers, (ii) the Canadian Borrower, or (iii) the U.K. Borrower, as the context requires.

Borrowers: as defined in the preamble to this Agreement.

Borrowing: a group of Loans of one Type that are made on the same day or are converted into Loans of one Type on the same day.

Borrowing Base: the Canadian Borrowing Base and/or the U.S. Borrowing Base and/or the U.K. Borrowing Base, as the context requires.

Borrowing Base Certificate: a U.S. Borrowing Base Certificate, a Canadian Borrowing Base Certificate, or a U.K. Borrowing Base Certificate, as applicable.

British Pounds or £: the lawful currency of the United Kingdom.

Business Day: 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, North Carolina and New York, and if such day relates to: (a) a LIBOR Loan, any such day on which dealings in deposits in the relevant Available Currency of that LIBOR Loan are conducted between banks in the London interbank eurocurrency market, (b) a Canadian Revolver Loan, any such day on which banks in Toronto, Ontario, Canada are open for the transaction of banking business, (c) any U.K. Revolver Loan or U.K. Lender, any day on which commercial banks are open for the transaction of banking business in London, or (d) any Revolver Loan denominated in Euro, any day which is a TARGET Day.

CAM: as defined in **Section 14.11(a)(i)**.

CAM Exchange: as defined in **Section 14.11(a)(ii)**.

CAM Exchange Date: as defined in **Section 14.11(a)(iii)**.

CAM Percentage: as defined in **Section 14.11(a)(iv)**.

Calculation Date: as defined in **Section 5.13**.

Canadian Accounts Formula Amount: (a) as of any date of determination within the period beginning on May 1 through and including October 31 of each Fiscal Year, 85% of the Value of Eligible Accounts of the Canadian Borrower; and (b) as of any date of determination within the period beginning on November 1 through and including April 30 of each Fiscal Year, 90% of the Value of Eligible Accounts of the Canadian Borrower.

Canadian Availability: as of any date of determination, the Canadian Borrowing Base as of such date of determination minus the aggregate principal amount of all Canadian Revolver Loans outstanding on such date of determination.

Canadian Availability Reserve: the sum (without duplication) of (a) the Inventory Reserve with respect to the Canadian Borrower's Inventory; (b) the Canadian Rent and Charges Reserve;

(c) the Canadian LC Reserve; (d) the Canadian Bank Product Reserve; (e) all accrued Royalties of the Canadian Domiciled Obligors, whether or not then due and payable by a Canadian Domiciled Obligor; (f) the aggregate amount of liabilities secured by Liens upon Canadian Facility Collateral that are senior to the Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (g) the Canadian Priority Payables Reserve; (h) the Wage Earner Protection Act Reserve; (i) the Canadian Dilution Reserve; (j) the Canadian Top Golf Reserve; and (k) such additional reserves, in such amounts and with respect to such matters, as Agent in its Credit Judgment may elect to impose from time to time with respect to the Canadian Borrowing Base.

**Canadian BA Rate:** with respect to each Interest Period for a Canadian BA Rate Loan, a per annum rate of interest equal to the Canadian Dollar bankers' acceptance rate, or comparable or successor rate approved by Agent, determined by it at or about 10:00 a.m. (Toronto time) on the applicable day (or the preceding Business Day, if the applicable day is not a Business Day) for a term comparable to the Canadian BA Rate Loan, as published on the CDOR Page or other applicable Reuters screen page (or other commercially available source designated by Agent from time to time), provided, that in no event shall the Canadian BA Rate be less than zero.

**Canadian BA Rate Loan:** a Canadian Revolver Loan, or portion thereof, funded in Canadian Dollars and bearing interest calculated by reference to the Canadian BA Rate.

**Canadian Bank Product Reserve:** the aggregate amount of reserves established by Agent from time to time in its discretion in respect of Secured Bank Product Obligations owing by the Canadian Domiciled Obligors and their Subsidiaries.

**Canadian Base Rate:** for any day, the greater of (i) the per annum rate of interest designated by Bank of America (Canada) from time to time as its base rate for commercial loans made by it in Dollars, which rate is based on various factors, including its 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 rate; (ii) the Federal Funds Rate for such day, plus 0.50% per annum; or (iii) LIBOR for a 30 day interest period as of such day, plus 1.00%; provided, that in no event shall the Canadian Base Rate be less than zero. Any change in such rate shall take effect at the opening of business on the applicable Business Day.

**Canadian Base Rate Loan:** a Canadian Revolver Loan, or portion thereof, funded in Dollars and bearing interest calculated by reference to the Canadian Base Rate.

**Canadian Borrower:** as defined in the preamble to this Agreement.

**Canadian Borrowing Base:** on any date of determination, an amount equal to the lesser of (a) the result of: (i) the Maximum Canadian Facility Amount, minus (ii) the Canadian LC Reserve, minus (iii) the Canadian Top Golf Reserve; or (b) the result of: (i) the Canadian Accounts Formula Amount, plus (ii) the Canadian Inventory Formula Amount, plus (iii) 100% of the amount of Canadian Pledged Cash, minus (iv) the Canadian Availability Reserve.

**Canadian Borrowing Base Certificate:** a certificate, in form and substance satisfactory to Agent, by which the Canadian Borrower certifies calculation of the Canadian Borrowing Base.

**Canadian Cash Collateral Account:** a demand deposit, money market or other account established by Agent at Bank of America (Canada) or such other financial institution as Agent may select in its discretion, which account shall be for the benefit of the Canadian Facility Secured Parties and shall be subject to Agent's Liens securing the Canadian Facility Obligations.

**Canadian Dilution Reserve:** as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts of the Canadian Borrower by 1% for each whole percentage point (or portion thereof) by which the Dilution Percent is in excess of 5.0%.

**Canadian Dollars or Cdn\$:** the lawful currency of Canada.

**Canadian Domiciled Obligor:** each Canadian Subsidiary which is at any time an Obligor, and "**Canadian Domiciled Obligors**" means all such Persons, collectively.

**Canadian Dominion Account:** a special account established by the Canadian Borrower at Bank of America (Canada) or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes during any Dominion Trigger Period.

**Canadian Employee Benefits Legislation:** the *Employment Pensions Plan Act* (Alberta), *Pension Benefits Standards Act* (British Columbia), the *Supplemental Pension Plans Act* (Quebec) and any Canadian federal, provincial or local counterparts or equivalents, in each case, as applicable and as amended from time to time.

**Canadian Employee Plan:** any payroll practice and other employee benefit plan, policy, program, agreement or arrangement, including retirement, pension, profit sharing, employment, individual consultant or other compensation agreement, collective bargaining agreement, bonus or other incentive compensation, retention, stock purchase, equity or equity-based compensation, deferred compensation, change in control, severance, sick leave, vacation, loans, salary continuation, hospitalization, health, life insurance, educational assistance or other fringe benefit or perquisite plan, policy, agreement which is or was sponsored, maintained or contributed to by, or required to be contributed to by, a Canadian Domiciled Obligor, or with respect to which a Canadian Domiciled Obligor has or could have any obligation or liability, contingent or otherwise.

**Canadian Expeditors Reserve:** as of any date of determination, the aggregate amount of accounts payable owed by any Canadian Facility Obligor to Expeditors, as determined by Agent in its Credit Judgment.

**Canadian Facility Collateral:** all Collateral that now or hereafter secures (or is intended to secure) any of the Canadian Facility Obligations, including Property of each Canadian Domiciled Obligor, each U.S. Domiciled Obligor, and each U.K. Domiciled Obligor.

**Canadian Facility Guarantee:** each guarantee agreement (including this Agreement) at any time executed by a Canadian Facility Guarantor in favor of Agent guaranteeing all or any portion of the Canadian Facility Obligations.

**Canadian Facility Guarantor:** Parent, each Canadian Subsidiary, each U.S. Subsidiary (other than uPlay unless uPlay becomes a Guarantor in accordance with **Section 10.2.15**), each

U.K. Subsidiary, and each other Person (if any) who guarantees payment and performance of any Canadian Facility Obligations.

Canadian Facility Obligations: all Obligations of the Canadian Facility Obligors (excluding, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of any U.S. Facility Obligations).

Canadian Facility Obligor: each of the Canadian Borrower or any Canadian Facility Guarantor, and “Canadian Facility Obligors” means all of such Persons, collectively.

Canadian Facility Secured Parties: Agent, the Canadian Issuing Bank, the Canadian Lenders and the Secured Bank Product Providers who provide Bank Products to the Canadian Facility Obligors and their Subsidiaries.

Canadian Inventory Formula Amount: as of any date of determination, the lesser of (a) the sum of (i) with respect to Eligible Inventory that has been owned by the Canadian Borrower for less than one (1) calendar year as of the applicable date of determination, (A) for the period beginning on March 1 through and including September 30 of each Fiscal Year, 65% of the Value of the Canadian Borrower’s Eligible Inventory, and (B) for the period beginning on October 1 through and including February 28 (or February 29, as applicable) of each Fiscal Year, 75% of the Value of the Canadian Borrower’s Eligible Inventory, plus (ii) with respect to Eligible Inventory that has been owned by the Canadian Borrower for more than one (1) calendar year, as of the applicable date of determination, 50% of the Value of the Canadian Borrower’s Eligible Inventory; or (b) 85% of the NOLV Percentage of the Value of the Canadian Borrower’s Eligible Inventory. Notwithstanding the foregoing, the aggregate amount of the Canadian Inventory Formula Amount which may be attributed to Eligible In-Transit Inventory (the “Canadian In-Transit Availability”) shall not exceed \$5,000,000; provided, that, the Canadian In-Transit Availability (after taking into effect the previous proviso) shall be reduced by the Canadian Expeditors Reserve if, as of any date of determination, either (I) Canadian Net Excess Availability is less than 10% of the Maximum Canadian Facility Amount, or (II) there are any accounts payable owed by any Canadian Facility Obligor to Expeditors which are aged in excess of historical levels (except in cases of good faith disputes).

Canadian Issuing Bank: Bank of America (Canada) or an Affiliate of Bank of America (Canada).

Canadian LC Obligations: the sum (without duplication) of (a) all amounts owing by the Canadian Borrower for any drawings under Letters of Credit; (b) the stated amount of all outstanding Letters of Credit issued for the account of the Canadian Borrower, which if such Letter of Credit is denominated in a currency other than Canadian Dollars or Dollars, may be stated by Agent (at its option) in Canadian Dollars or Dollars calculated at the Spot Rate; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account of the Canadian Borrower.

Canadian LC Reserve: the aggregate of all Canadian LC Obligations, other than those that have been Cash Collateralized.

**Canadian Lenders:** Bank of America (Canada) and each other Lender that has issued a Canadian Revolver Commitment (provided that such Person or an Affiliate of such Person also has a U.S. Revolver Commitment). Each Canadian Lender shall be a Canadian Qualified Lender.

**Canadian Letter of Credit Subline:** \$5,000,000.

**Canadian Letters of Credit:** any standby or documentary letter of credit issued by the Canadian Issuing Bank for the account of the Canadian Borrower, or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Agent or the Canadian Issuing Bank for the benefit of the Canadian Borrower.

**Canadian Multi-Employer Plan:** each multi-employer plan, within the meaning of the Regulations under the Income Tax Act (Canada).

**Canadian Net Excess Availability:** as of any date of determination, an amount equal to the Canadian Availability minus the aggregate amount, if any, of all trade payables of Canadian Domiciled Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of Canadian Domiciled Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

**Canadian Overadvance:** as defined in **Section 2.15.**

**Canadian Overadvance Loan:** a Canadian Revolver Loan made to the Canadian Borrower when a Canadian Overadvance exists or is caused by the funding thereof.

**Canadian Overadvance Loan Balance:** on any date, the amount by which the aggregate Canadian Revolver Exposure exceeds the amount of the Canadian Borrowing Base on such date.

**Canadian Pension Plan:** a “registered pension plan,” as defined in the Income Tax Act (Canada) and any other pension plan maintained or contributed to by, or to which there is or may be an obligation to contribute by, any Obligor in respect of its Canadian employees or former employees, excluding, for greater certainty, a Canadian Multi-Employer Plan.

**Canadian Pledged Cash:** the funds maintained in a blocked Deposit Account or securities account of the Canadian Borrower subject to a Deposit Account Control Agreement or securities account control agreement, as applicable, which give Agent at all times exclusive access and control for withdrawal purposes to the exclusion of the Canadian Borrower and precluding the Canadian Borrower from withdrawing or otherwise giving any instructions in connection therewith and which may not be withdrawn without the Agent’s prior written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such withdrawal, no Default or Event of Default shall have occurred and be continuing and (ii) immediately after such withdrawal (for clarification, including after giving effect to any recalculation of the Canadian Borrowing Base upon giving effect to such withdrawal), Canadian Availability would be a positive number), and which are subject to effective security documents, in form and substance satisfactory to Agent, that provide Agent with an unencumbered perfected first priority/ranking security interest in and Lien on such funds.

**Canadian Prime Rate:** on any date, the greater of (i) the per annum rate of interest designated by Bank of America (Canada) from time to time as its prime rate for commercial loans made by it in Canada in Canadian Dollars, which rate is based on various factors, including its 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 rate; or (ii) the Canadian BA Rate for a one month interest period as of such day, plus 1.00%; provided, that in no event shall the Canadian Prime Rate be less than zero. Any change in such rate shall take effect at the opening of business on the applicable Business Day.

**Canadian Prime Rate Loan:** a Canadian Revolver Loan, or portion thereof, funded in Canadian Dollars and bearing interest calculated by reference to the Canadian Prime Rate.

**Canadian Priority Payables Reserve:** on any date of determination, a reserve in such amount as Agent may determine which reflects the unpaid (when due) or un-remitted (when due) payroll tax deductions, unpaid (when due) pension plan contributions, employment insurance premiums, amounts deducted for vacation pay, wages, workers' compensation, unpaid (when due) or un-remitted (when due) sales tax, goods and services tax, value added tax, harmonized tax, excise tax, tax payable pursuant to Part IX of the Excise Tax Act (Canada) or similar applicable provincial legislation and other unpaid (when due) or unremitting (when due) amounts by any Canadian Domiciled Obligor which would give rise to a Lien with priority under Applicable Law over the Lien of Agent.

**Canadian Qualified Lender:** a financial institution that is not precluded from being a Canadian Lender under the terms of the Bank Act (Canada) or other applicable Canadian federal or provincial legislation.

**Canadian Reimbursement Date:** as defined in **Section 2.4.2.**

**Canadian Rent and Charges Reserve:** the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Canadian Facility Collateral or could assert a Lien on any Canadian Facility Collateral; and (b) a reserve at least equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

**Canadian Required Lenders:** Canadian Lenders (subject to **Section 4.2**) having (a) Canadian Revolver Commitments in excess of 50% of the aggregate Canadian Revolver Commitments; and (b) if the Canadian Revolver Commitments have terminated, Canadian Revolver Loans and Canadian LC Obligations in excess of 50% of all outstanding Canadian Revolver Loans and Canadian LC Obligations; provided, however, that the Canadian Revolver Commitments and Canadian Revolver Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more Canadian Lenders, "Canadian Required Lenders" must include at least 3 Canadian Lenders, and (ii) less than 3 Canadian Lenders, "Canadian Required Lenders" must include all Canadian Lenders.

**Canadian Revolver Commitment:** for any Canadian Lender, its obligation to make Canadian Revolver Loans and to participate in Canadian LC Obligations in the applicable

Available Currencies up to the maximum principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party, as such Canadian Revolver Commitment may be adjusted from time to time in accordance with the provisions of **Sections 2.1.4 or 11.2**. “Canadian Revolver Commitments” means the aggregate amount of such commitments of all Canadian Lenders.

Canadian Revolver Commitment Termination Date: the earliest of (a) the U.S. Revolver Commitment Termination Date (without regard to the reason therefor), (b) the date on which the Borrower Agent terminates or reduces to zero all of the Canadian Revolver Commitments pursuant to **Section 2.1.4**, and (c) the date on which the Canadian Revolver Commitments are terminated pursuant to **Section 11.2**.

Canadian Revolver Exposure: on any date, an amount equal to the sum of the Dollar Equivalent of the Canadian Revolver Loans outstanding on such date plus the Canadian LC Obligations on such date.

Canadian Revolver Loan: a Revolver Loan made by Canadian Lenders to Canadian Borrower pursuant to **Section 2.1.1(b)**, which Revolver Loan shall, if denominated in Canadian Dollars, be either a Canadian BA Rate Loan or a Canadian Prime Rate Loan and, if denominated in Dollars, shall be either a Canadian Base Rate Loan or a LIBOR Loan, in each case as selected by the Borrower Agent, and any Canadian Swingline Loan, Canadian Overadvance Loan or Protective Advance made to or owed by the Canadian Borrower.

Canadian Revolver Notes: a promissory note executed by Canadian Borrower in favor of a Canadian Lender in the form of **Exhibit A-1**, in the amount of such Canadian Lender’s Canadian Revolver Commitment.

Canadian Security Agreement: each (a) general security agreement, security agreement, deed of hypothec, pledge agreement, mortgage or similar agreement pursuant to which any Canadian Domiciled Obligor grants to Agent, for the benefit of the Canadian Facility Secured Parties, Liens upon its Property as security for the Canadian Facility Obligations or (b) security agreement, deed of hypothec, pledge agreement, mortgage or similar agreement pursuant to which any U.S. Domiciled Obligor or U.K. Domiciled Obligor grants to Agent, for the benefit of the Secured Parties, Liens on its Property located in Canada or otherwise subject to Canadian law as security for the Obligations.

Canadian Subsidiary: a Subsidiary of Parent incorporated or organized under the laws of Canada or any province or territory of Canada.

Canadian Swingline Loan: any Borrowing of Canadian Base Rate Loans funded with Agent’s funds, until such Borrowing is settled among the Canadian Lenders or repaid by the Canadian Borrower.

Canadian Top Golf Reserve: a reserve established by Agent at Parent’s request in accordance with the definition of Top Golf Proceeds, in an initial amount as of such establishment equal to \$0. The Canadian Top Golf Reserve (a) shall be reduced on a dollar for dollar basis for the amount expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent’s common stock, in each case after the Third Amendment to Second Amended and

Restated Effective Date in accordance with **Section 10.2.6(g)(ii)(C)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)(ii)(C)**; (b) may be permanently reduced from time to time upon Parent's written request to Agent; and (c) subject to Agent's written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such adjustment, no Default or Event of Default shall have occurred and be continuing, and (ii) immediately after such adjustment (for clarification, including after giving effect to any recalculation of the U.K. Borrowing Base and U.S. Borrowing Base upon giving effect to such adjustment), U.K. Availability and U.S. Availability would be a positive number), may be reallocated on a dollar for dollar basis to the U.K. Top Golf Reserve and/or the U.S. Top Golf Reserve upon Parent's written request to Agent; provided, however, that once reduced pursuant to clause (b) above, the Canadian Top Golf Reserve may not be increased. The parties agree that the Canadian Top Golf Reserve shall never be less than zero (-0-). For clarification, the aggregate amount of the Canadian Top Golf Reserve, the U.K. Top Golf Reserve, and the U.S. Top Golf Reserve may not exceed an amount equal to the aggregate amount of Top Golf Proceeds received by Parent as reflected in all Top Golf Proceeds Notices (less any amounts Parent elects to deposit into the Top Golf Blocked Account) less all amounts expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)** and less all permanent reductions elected by Parent pursuant to clause (b) of each of the definitions of Canadian Top Golf Reserve, U.K. Top Golf Reserve, and U.S. Top Golf Reserve.

Canadian Unused Line Fee Rate: a per annum rate equal to 0.25%.

Capital Expenditures: all liabilities incurred or expenditures made by an Obligor or Subsidiary for the acquisition of fixed assets, or any improvements, replacements, substitutions or additions thereto with a useful life of more than one year.

Capital Lease: any lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

Cash Collateral: cash, and any interest or other income earned thereon, that is delivered to Agent to Cash Collateralize any Obligations.

Cash Collateral Account: the U.S. Cash Collateral Account and/or the Canadian Cash Collateral Account and/or the U.K. Cash Collateral Account, as the context may require.

Cash Collateralize: the delivery of cash to Agent, as security for the payment of Obligations, in an amount equal to (a) with respect to LC Obligations, 105% of the aggregate LC Obligations, and (b) with respect to any inchoate, contingent or other Obligations (including Secured Bank Product Obligations), Agent's good faith estimate of the amount due or to become due, including all fees and other amounts relating to such Obligations. "Cash Collateralization" has a correlative meaning.

Cash Equivalents: (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the United States, Canadian or United Kingdom government,

maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by Bank of America or a commercial bank organized under the laws of the United States (or any state or district of the United States), Canada (or any province or territory of Canada), England, Wales, Scotland or Northern Ireland, rated A-1 (or better) by S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) entered into with any bank described in clause (b); (d) commercial paper issued by Bank of America or rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within nine months of the date of acquisition; and (e) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least \$500,000,000 and has the highest rating obtainable from either Moody's or S&P.

Cash Management Services: any services provided from time to time by any Lender or any of its Affiliates to any Obligor or Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

CERCLA: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*).

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; 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: (a) 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 Parent or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) 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 (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the Equity Interests of Parent entitled to vote for members of the board of directors or equivalent governing body of Parent on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or (b) Parent ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests in all other Obligors.

**Claims:** all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys' fees and Extraordinary Expenses) at any time (including after Full Payment of the Obligations or replacement of Agent or any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person, in any way relating to (a) any Loans, Letters of Credit, Loan Documents, or the use thereof or transactions relating thereto, (b) any action taken or omitted in connection with any Loan Documents, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law, or (e) failure by any Obligor to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

**Closing Date:** as defined in **Section 6.1**.

**Code:** the Internal Revenue Code of 1986.

**Collateral:** all Property described in **Section 7.1**, all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

**Commitment:** for any Lender, the aggregate amount of such Lender's U.S. Revolver Commitment, Term Loan Commitment, Canadian Revolver Commitment, and U.K. Revolver Commitment. "**Commitments**" means the aggregate amount of all U.S. Revolver Commitments, Canadian Revolver Commitments, and U.K. Revolver Commitments.

**Commodity Exchange Act:** the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

**Common Stock Repurchase:** a repurchase, redemption or other retirement for value of Parent's common stock.

**Company Trademark:** collectively, the trademarks owned by the U.S. Borrowers set forth on **Schedule F-1** (as such Schedule may be updated to include additional trademarks with the written consent of all Lenders).

**Compliance Certificate:** a certificate, in the form of **Exhibit D**, by which Borrowers certify compliance with **Section 10.3** and for purposes of determination of the Applicable Margin (such certificate to include a calculation of the Fixed Charge Coverage Ratio and the Leverage Ratio in all cases, whether or not a Covenant Trigger Period is in effect and regardless of the current pricing level as set forth in the Pricing Grid).

**Consolidated Tangible Assets:** as of any date of determination, the Consolidated Total Assets of Parent and its Subsidiaries minus consolidated intangible assets of Parent and its Subsidiaries, all determined in accordance with GAAP.

**Consolidated Total Assets:** as of any date of determination, the consolidated total assets of Parent and its Subsidiaries as of such date, determined in accordance with GAAP.

Contingent Obligation: as to any Person, any (a) obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt 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 Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt 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 Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt 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) Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person. The amount of any Contingent Obligation 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 Contingent Obligation 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.

Contractual Obligation: 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.

Costco: Costco Wholesale Corporation, a Washington corporation.

Covenant Trigger Period: the period (a) commencing on the day that Net Excess Availability is less than, at any time, an amount equal to the Covenant Trigger Period Threshold Percentage of the Maximum Facility Amount; and (b) continuing until, during the preceding 30 consecutive days, Net Excess Availability has been greater than, at all times, an amount equal to the Covenant Trigger Period Threshold Percentage of the Maximum Facility Amount.

Covenant Trigger Period Threshold Percentage: 10%.

Credit Judgment: Agent's judgment exercised in good faith, based upon its consideration of any factor that it believes (a) could reasonably be expected to adversely affect the quantity, quality, mix or value of Collateral (including any Applicable Law that may inhibit collection of an Account), the enforceability or priority of Agent's Liens, or the amount that Agent and Lenders could receive in liquidation of any Collateral; (b) provides a reasonable basis to conclude that any collateral report or financial information delivered by any Obligor is incomplete, inaccurate or misleading in any material respect; (c) materially increases the likelihood of any Insolvency Proceeding involving an Obligor; or (d) creates or could reasonably be expected to result in a Default or Event of Default. In exercising such judgment, Agent may consider any factors that could reasonably be expected to increase the credit risk of lending to Borrowers on the security of the Collateral.

Credit Party: Agent, a Lender or an Issuing Bank; and "Credit Parties" means Agent, Lenders and Issuing Banks.

Creditor Representative: under any Applicable Law, a receiver, interim receiver, receiver and manager, trustee (including any trustee in bankruptcy), custodian, conservator, administrator, examiner, sheriff, monitor, assignee, liquidator, provisional liquidator, sequestrator or similar officer or fiduciary.

CWA: the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*).

Debt: 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) 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) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable and accrued expenses arising in the Ordinary Course of Business); (d) 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; (e) Capital Leases and Off-Balance Sheet Liabilities; (f) all Contingent Obligations of such Person in respect of the foregoing clauses (a) through (e); and (g) in the case of an Obligor, the Obligations.

Default: an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

Default Rate: for any Obligation (including, to the extent permitted by law, interest not paid when due), 2% plus the interest rate otherwise applicable thereto.

Defaulting Lender: any Lender that, as determined by Agent, (a) has failed to perform any funding obligations hereunder, and such failure is not cured within three Business Days; (b) has notified Agent or any Borrower that such Lender does not intend to comply with its funding obligations hereunder or has made a public statement to the effect that it does not intend to comply with its funding obligations hereunder or under any other credit facility; (c) has failed, within three Business Days following request by Agent, to confirm in a manner satisfactory to Agent that such Lender will comply with its funding obligations hereunder; or (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority), or Bail-In Action; provided, however, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent company unless the ownership provides immunity for such Lender from jurisdiction of courts within the United States or from enforcement of judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate or otherwise to reject such Lender's agreements.

Deposit Account: as defined in the UCC (and/or with respect to any Deposit Account located in Canada and/or the U.K., any bank account with a deposit function).

**Deposit Account Control Agreements:** the deposit account control agreements to be executed by each institution maintaining a Deposit Account for an Obligor, in favor of Agent, for the benefit of Secured Parties.

**Designated Jurisdiction:** a country or territory that is the target of Sanctions.

**Designated Obligations:** as defined in **Section 14.11(a)(v).**

**Dilution Percent:** the percent, for any period determined by Agent, equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts of the U.S. Borrowers (in the case of the U.S. Dilution Reserve), the Canadian Borrower (in the case of the Canadian Dilution Reserve), or the U.K. Borrower (in the case of the U.K. Dilution Reserve), divided by (b) gross sales of the U.S. Borrowers (in the case of the U.S. Dilution Reserve), of the Canadian Borrower (in the case of the Canadian Dilution Reserve), or of the U.K. Borrower (in the case of the U.K. Dilution Reserve).

**Direction:** as defined in **Section 5.9.2(b)(i).**

**Distribution:** any declaration or payment of a distribution, interest or dividend on any Equity Interest (other than payment-in-kind); any distribution, advance or repayment of Debt to a holder of Equity Interests; or any purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

**Document:** as defined in the UCC (and/or with respect to any Document of a Canadian Subsidiary, a “document of title” as defined in the PPSA).

**Dollars:** lawful money of the United States.

**Dollar Equivalent:** on any date, with respect to any amount denominated in Dollars, such amount in Dollars, and with respect to any stated amount in a currency other than Dollars, the amount of Dollars that Agent determines (which determination shall be conclusive and binding absent manifest error) would be necessary to be sold on such date at the applicable Exchange Rate to obtain the stated amount of the other currency.

**Dominion Account:** with respect to the U.S. Domiciled Obligors, a U.S. Dominion Account, with respect to the Canadian Domiciled Obligors, a Canadian Dominion Account, and with respect to the U.K. Domiciled Obligors, a U.K. Dominion Account.

**Dominion Trigger Period:** the period (a) commencing on the day that an Event of Default occurs, or Net Excess Availability is less than: (i) an amount equal to 10% of the Maximum Facility Amount for five (5) consecutive Business Days, or (ii) 7.5% of the Maximum Facility Amount at any time, and (b) continuing until, during the preceding 30 consecutive days, no Event of Default has existed and Net Excess Availability has been greater than, at all times, an amount equal to 10% of the Maximum Facility Amount. Agent will endeavor to provide copies of each notice of control Agent sends to any Dominion Account bank to Borrower Agent substantially contemporaneously with providing such notice to such Dominion Account bank; provided, however, that the failure of Agent to provide a copy of any such notice to Borrower Agent shall not give rise to any liability on the part of Agent and shall not affect the validity and effectiveness of such notice.

**EBITDA**: determined on a consolidated basis for Parent and Subsidiaries, net income, calculated before interest expense, non-cash stock compensation expense, provision for income taxes, depreciation and amortization expense, other non-cash expenses (except to the extent representing a reserve or accrual for cash expenses in another period) of Borrower Agent and its subsidiaries (including, without limitation, non-cash amounts related to any downsizing, restructuring or partial close of any operations of Borrower Agent or any of its subsidiaries), gains or losses arising from the sale of capital assets, gains arising from the write-up of assets, any extraordinary gains, any gains on account of a transaction which results in Parent receiving Top Golf Proceeds, the transaction expenses incurred during the 2017 Fiscal Year in an aggregate amount not to exceed \$4,000,000, and one-time transaction expenses incurred with respect to any Debt incurrence permitted by **Section 10.2.3** (in each case, to the extent included in determining net income).

**EEA Financial Institution**: (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) above; or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in the foregoing clauses and is subject to consolidated supervision with its parent.

**EEA Member Country**: any of the member states of the European Union, Iceland, Liechtenstein and Norway.

**EEA Resolution Authority**: any public administrative authority or any Person entrusted with public administrative authority of an EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

**Eligible Account**: an Account owing to a Borrower that arises in the Ordinary Course of Business from the sale of goods or rendition of services, is payable in Dollars (or, in the case of: (x) an Account owing to the Canadian Borrower, in Dollars or Canadian Dollars, and (y) an Account owing to the U.K. Borrower, in Dollars, Euro, or British Pounds), and is deemed by Agent, in its Credit Judgment, to satisfy the criteria set forth below. No Account shall be an Eligible Account if (a) it is unpaid for more than 60 days after the original due date (or up to an additional 30 days as Agent may approve on an Account Debtor by Account Debtor basis in its sole discretion), or it is unpaid for more than 150 days after the original invoice date (or up to an additional 30 days as Agent may approve on an Account Debtor by Account Debtor basis in its sole discretion); (b) 50% or more of the Accounts owing by the Account Debtor are not Eligible Accounts under the foregoing clause; (c) when aggregated with other Accounts owing by the Account Debtor and such Account Debtor's Affiliates, it exceeds 15% of the aggregate Eligible Accounts (or such higher percentage as Agent may establish for the Account Debtor and its Affiliates from time to time); provided that, with respect to Accounts owing by Dick's Sporting Goods, such percentage shall be 30%; (d) it does not conform with a covenant or representation herein; (e) it is owing by a creditor or supplier, or is otherwise subject to a potential offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance (but ineligibility shall be limited to the amount thereof); (f) an Insolvency Proceeding has been commenced by or against the Account Debtor; or the Account Debtor has failed, has suspended or ceased doing business, is liquidating, dissolving or winding up its affairs, or is not

Solvent, or is the target of any Sanction or on any specially designated nationals list maintained by OFAC; or the Borrower that originated such Account is not able to bring suit or enforce remedies against the Account Debtor through judicial process; (g) with respect to Accounts owing to: (i) the U.S. Borrowers or the Canadian Borrower, the Account Debtor is organized or has its principal offices or assets outside the United States or Canada, and (ii) the U.K. Borrower, the Account Debtor is organized or has its principal offices or assets outside of England, Wales, Scotland or Northern Ireland other than a U.K. Eligible Foreign Account; (h) it is owing by a Government Authority, unless the Account Debtor is the United States or any department, agency or instrumentality thereof and the Account has been assigned to Agent in compliance with the Assignment of Claims Act or the Account Debtor is the federal government of Canada or any Crown corporation, department, agency or instrumentality of Canada and the Canadian Borrower has complied, to the satisfaction of Agent, with the Financial Administration Act or other Applicable Law; (i) it is not subject to a duly perfected, first priority (in the case of U.K. Accounts, expressed as a fixed charge) Lien in favor of Agent, or is subject to any other Lien; (j) the goods giving rise to it have not been delivered to the Account Debtor, the services giving rise to it have not been accepted by the Account Debtor, or it otherwise does not represent a final sale; (k) it is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment; (l) its payment has been extended or the Account Debtor has made a partial payment; (m) it arises from a sale to an Affiliate, from a sale on a cash-on-delivery, bill-and-hold, sale-or-return, sale-on-approval, consignment, or other repurchase or return basis, or from a sale for personal, family or household purposes; (n) it represents a progress billing or retainage, or relates to services for which a performance, surety or completion bond or similar assurance has been issued; or (o) it includes a billing for interest, fees or late charges, but ineligibility shall be limited to the extent thereof. In calculating delinquent portions of Accounts under clauses (a) and (b), credit balances more than 60 days old (or such later date as Agent may approve in its sole discretion) will be excluded.

The criteria for Eligible Accounts set forth above may only be changed and any new criteria for Eligible Accounts may only be established by Agent in its Credit Judgment, based on: (i) an event, condition or other circumstance arising after the date hereof, (ii) an event, condition or other circumstance existing on the date hereof to the extent that the Agent has no knowledge thereof or its effect on the Account, or (iii) facts, information, or circumstances provided to or learned by Agent in the course of its administration of the facility, including, without limitation, in connection with field exams, audits, reports and other information received, and observance of Collateral and the Obligors' business performance, in any case under clauses (i), (ii) or (iii), which adversely affects or would reasonably be expected to adversely affect the Accounts as determined by Agent in its Credit Judgment.

**Eligible Assignee:** a Person that is (i) a Lender or a U.S.-based Affiliate of a Lender, (ii) if such Person is to hold U.S. Facility Obligations, an Approved Fund; (iii) if such Person is to hold Canadian Facility Obligations, such person is at all times, other than during any Event of Default, a Canadian Qualified Lender and an Affiliate or branch of a U.S. Lender; (iv) if such Person is to hold U.K. Facility Obligations, such person is at all times, other than during any Event of Default, a U.K. Qualified Lender and an Affiliate of a U.S. Lender, (v) any other financial institution approved by Agent and Borrower Agent (which approval by Borrower Agent shall not be unreasonably withheld or delayed), that is organized under the laws of the United States or Canada or any state, province or district thereof, has total assets in excess of \$5 billion, extends

asset-based lending facilities in its Ordinary Course of Business and whose becoming an assignee would not constitute a prohibited transaction under Section 4975 of the Code or any other Applicable Law; and (vi) during any Event of Default, any Person acceptable to Agent in its discretion.

Eligible Costco Inventory: Inventory consisting of finished goods owned by a U.S. Borrower and consigned to Costco that would otherwise be Eligible Inventory if it were not consigned to a Person in violation of clause (h)(i) of the definition of "Eligible Inventory" and either (a) Costco has delivered to Agent a Lien Waiver with respect to such Inventory, or (b) Costco is rated BBB- (or better) by S&P and Baa3 (or better) by Moody's as of the applicable date of determination.

Eligible Inventory: Inventory owned by a Borrower that Agent, in its Credit Judgment, deems to satisfy the criteria set forth below. No Inventory shall be Eligible Inventory unless it (a) is finished goods or raw materials, and not packaging or shipping materials, labels, samples, display items, bags, replacement parts or manufacturing supplies; (b) is not held on consignment, nor subject to any deposit or down payment; (c) is in new and saleable condition and is not damaged, defective, shopworn or otherwise unfit for sale; (d) is not slow-moving (as determined by Agent from time to time), perishable, obsolete or unmerchantable, and does not constitute returned or reposessed goods; (e) meets all standards imposed by any Governmental Authority, has not been acquired from a Person that is the target of any Sanction or on any specially designated nationals list maintained by OFAC, and does not constitute hazardous materials under any Environmental Law; (f) conforms with the covenants and representations herein; (g) is subject to Agent's duly perfected, first priority Lien, and no other Lien; (h) (i) other than Eligible Costco Inventory, is not consigned to any Person, and (ii) other than Eligible In-Transit Inventory, is within: (A) the continental United States, in the case of Inventory of a U.S. Borrower, (B) Canada, in the case of Inventory of the Canadian Borrower, and (C) England, Wales, Scotland or Northern Ireland, in the case of Inventory of the U.K. Borrower; (i) other than Eligible In-Transit Inventory, is not in transit unless it is, in the case of: (i) Inventory of a U.S. Borrower, in transit between facilities in the United States of the U.S. Borrowers, (ii) Inventory of the Canadian Borrower, in transit between facilities in Canada of the Canadian Borrower, and (iii) Inventory of the U.K. Borrower, in transit between facilities in England, Wales, Scotland or Northern Ireland of the U.K. Borrower; (j) is not subject to any warehouse receipt or negotiable Document; (k) is not subject to any License or other arrangement that restricts such Borrower's or Agent's right to dispose of such Inventory, unless Agent has received an appropriate Lien Waiver; (l) is not located on leased premises or in the possession of a warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person, unless the lessor or such Person has delivered a Lien Waiver or an appropriate U.S. Rent and Charges Reserve (in the case of the U.S. Borrowers), a Canadian Rent and Charges Reserve (in the case of the Canadian Borrower), or a U.K. Rent and Charges Reserve (in the case of the U.K. Borrower) has been established; and (m) is reflected in the details of a current perpetual inventory report.

The criteria for Eligible Inventory set forth above may only be changed and any new criteria for Eligible Inventory may only be established by Agent in its Credit Judgment, based on: (i) an event, condition or other circumstance arising after the date hereof, (ii) an event, condition or other circumstance existing on the date hereof to the extent that the Agent has no knowledge thereof or its effect on Inventory, or (iii) facts, information, or circumstances provided to or learned

by Agent in the course of its administration of the facility, including, without limitation, in connection with field exams, audits, reports and other information received, and observance of Collateral and the Obligors' business performance, in any case under clauses (i), (ii) or (iii), which adversely affects or would reasonably be expected to adversely affect the Inventory as determined by Agent in its Credit Judgment.

**Eligible In-Transit Inventory:** Inventory consisting of finished goods owned by a Borrower that would be Eligible Inventory if it were not subject to a Document and in transit from a foreign location to a location of a Borrower within the United States, Canada or England, and that Agent, in its Credit Judgment, deems to be Eligible In-Transit Inventory, and thus to be Eligible Inventory. Without limiting the foregoing, no Inventory shall be Eligible In-Transit Inventory unless it (a) is finished goods, (b) has been delivered to a carrier in a foreign port or foreign airport for receipt by a Borrower in the United States (in the case of the U.S. Borrowers) or Canada (in the case of the Canadian Borrower) or England, Wales, Scotland or Northern Ireland (in the case of the U.K. Borrower) within sixty (60) days of the date of determination, but which has not yet been received by the applicable Borrower, (c) is subject to a negotiable Document showing Agent (or, with the consent of Agent, the applicable Borrower) as consignee, which Document is in the possession of Agent or such other Person as Agent shall approve; (d) is fully insured in a manner satisfactory to Agent; (e) has been identified to the applicable sales contract and title has passed to the applicable Borrower; (f) is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against the Inventory, or with respect to whom any Borrower is in default of any obligations; (g) is subject to purchase orders and other sale documentation satisfactory to Agent; (h) is shipped by a common carrier that is not affiliated with the vendor and is not the target of any Sanction or on any specially designated nationals list maintained by OFAC; and (i) is being handled by a customs broker, freight-forwarder or other handler that has delivered a Lien Waiver.

**Eligible Real Estate:** Real Estate owned by a U.S. Borrower that is located at 2180 Rutherford Road, Carlsbad, CA 92008, and that Agent, in its Credit Judgment, deems to satisfy the criteria set forth in the subsequent sentence. Such Real Estate shall not be Eligible Real Estate unless: (a) a first priority Mortgage, in substantially the form attached hereto as **Exhibit E**, has been executed, delivered and recorded with respect to such Real Estate, and (b) Agent shall have received the Related Real Estate Documents with respect to such Real Estate.

**EMU Legislation:** the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

**Enforcement Action:** any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, exercise of any right to vote or act in an Obligor's Insolvency Proceeding, or otherwise).

**Environmental Laws:** all Applicable Laws (including all programs, permits and guidance promulgated by regulatory agencies) relating to public health (but excluding occupational safety and health, to the extent regulated by OSHA) or the protection or pollution of the environment,

including CERCLA, RCRA, CWA, the Environmental Protection Act (Ontario) and similar Applicable Laws of foreign jurisdictions.

Environmental Notice: a notice (whether written or oral) from any Governmental Authority or other Person of any possible noncompliance with, investigation of a possible violation of, litigation relating to, or potential fine or liability under any Environmental Law, or with respect to any Environmental Release, environmental pollution or hazardous materials, including any complaint, summons, citation, order, claim, demand or request for correction, remediation or otherwise.

Environmental Release: a release as defined in CERCLA or under any other Environmental Law.

Equity Interest: the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest.

ERISA: the Employee Retirement Income Security Act of 1974.

ERISA Affiliate: any trade or business (whether or not incorporated) under common control with an Obligor 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: (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Obligor or ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) any Obligor or ERISA Affiliate fails to meet any funding obligations with respect to any Pension Plan or Multiemployer Plan, or requests a minimum funding waiver; (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; or (g) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or ERISA Affiliate.

EU Bail-In Legislation Schedule: the EU Bail-In Legislation Schedule published by the Loan Market Association, as in effect from time to time.

Euro: the lawful currency of the Participating Member States introduced in accordance with EMU Legislation.

Event of Default: as defined in **Section 11**.

Excess Amount: as defined in **Section 5.13**.

Excess Cash Flow: determined on a consolidated basis for Parent and Subsidiaries for any period, EBITDA, minus (a) cash interest expense; (b) Capital Expenditures (except those financed with Borrowed Money other than Revolver Loans or Term Loans); (c) principal payments made on Borrowed Money and Capital Leases; (d) Distributions made (to the extent permitted hereunder and other than Distributions made among Parent and its Subsidiaries) to the extent such Distributions are consistent with prior practice as of the Closing Date; (e) any non-cash items to the extent added to the calculation of EBITDA in accordance with the definition thereof; (f) amounts expended (including transaction costs) in connection with any Acquisition and other Investment permitted hereunder provided that the aggregate amount under this clause (f) shall not exceed \$10,000,000; and (g) cash taxes paid.

Exchange Rate: on any date of determination, with respect to Canadian Dollars, British Pounds, Euro or another foreign currency in relation to Dollars, the Spot Rate for Canadian Dollars, British Pounds, Euro or such other foreign currency, as applicable.

Excluded Intellectual Property: any Intellectual Property: (i) owned by travisMathew or Travis Mathew Retail as of the date hereof; (ii) hereafter developed by travisMathew or Travis Mathew Retail (and unrelated to any Intellectual Property of the Obligors (other than travisMathew or Travis Mathew Retail) as of the date hereof); or (iii) related to the brands of travisMathew or Travis Mathew Retail as of the date hereof. For the avoidance of doubt, any Intellectual Property listed on Schedule 9.1.17 shall not constitute Excluded Intellectual Property.

"Excluded Property" shall mean

(a) any permit or license issued by a Governmental Authority to any U.S. Domiciled Obligor or any agreement to which any U.S. Domiciled Obligor is a party, in each case, only to the extent and for so long as the terms of such permit, license or agreement or any requirement of law applicable thereto, validly prohibit the creation by such U.S. Domiciled Obligor of a security interest in such permit, license or agreement in favor of the Agent (after giving effect to Sections 9-406(d), 9-407(a), 9-408(a) or 9-409 of the UCC (or any successor provision or provisions) or any other applicable law (including the U.S. Bankruptcy Code) or principles of equity);

(b) assets owned by any U.S. Domiciled Obligor on the date hereof or hereafter acquired and any proceeds thereof that are subject to a Lien permitted by Section 10.2.1(j) of the Credit Agreement to the extent and for so long as the contract or other agreement in which such Lien is granted (or the documentation providing for the Capital Lease, Off-Balance Sheet Liability or purchase money obligation subject to such Lien) validly prohibits the creation of any other Lien on such assets and proceeds;

(c) any Equity Interests of a Foreign Subsidiary to the extent and for so long as the pledge thereof to the Agent would constitute an investment of earnings in United States property under Section 956 (or a successor provision) of the Code, which investment would or could reasonably be expected to trigger a material increase in the net income of a United States shareholder of such Foreign Subsidiary pursuant to Section 951 (or a successor provision) of the Code, as reasonably determined by the Agent; *provided* that this clause (c) shall not apply to (a) voting stock of any Subsidiary which is a first-tier controlled foreign corporation (as defined

in Section 957(a) of the Code) representing 65% of the total voting power of all outstanding voting stock of such Subsidiary and (b) 100% of the Equity Interests not constituting voting stock of any such Subsidiary, except that any such Equity Interests constituting “stock entitled to vote” within the meaning of Treasury Regulation Section 1.956-2(c)(2) shall be treated as voting stock for purposes of this clause (c);

(d) any intent-to-use trademark application to the extent and for so long as creation by a U.S. Domiciled Obligor of a security interest therein would result in the loss by such U.S. Domiciled Obligor of any material rights therein;

(e) any fee owned real property (other than Material Real Property and the fee-owned real property located at 2180 Rutherford Road, Carlsbad, CA 92008), and any leasehold rights and interests in such real property;

(f) Margin Stock;

(g) motor vehicles and other assets subject to certificates of title other than to the extent a security interest therein can be perfected by a UCC filing;

(h) pledges and security interests prohibited by applicable law, rule, regulation or contractual obligation after giving effect to the anti-assignment provisions of the UCC and other applicable law; and

(i) those assets as to which the Agent and the Borrowers reasonably agree that the cost or other consequence (including any adverse tax consequences to the Borrowers or any of their Subsidiaries) of obtaining such a security interest or perfection thereof are excessive in relation to the value afforded thereby;

provided, however, that Excluded Property shall not include any Proceeds, substitutions or replacements of any Excluded Property referred to in clause (a), (b), (c), (d), (e), (f), (g), (h) or (i) (unless such Proceeds, substitutions or replacements would constitute Excluded Property referred to in clauses (a), (b), (c), (d), (e), (f), (g), (h) or (i)).

Excluded Stock Repurchases: any Common Stock Repurchases made, or dividends paid on Parent’s common stock, in accordance with Section **10.2.6(g)**.

Excluded Swap Obligation: with respect to an Obligor, each Swap Obligation as to which, and only to the extent that, such Obligor’s guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Obligor does not constitute an “eligible contract participant” as defined in the Act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Obligor and all guarantees of Swap Obligations by other Obligors) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Obligor.

Excluded Tax: with respect to Agent, any Lender, any Issuing Bank or any other recipient of a payment to be made by or on account of any Obligation, (a) taxes imposed on or measured by

its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located; (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Borrower Agent is located; (c) any backup withholding tax required by the Code to be withheld from amounts payable to a Lender that has failed to comply with **Section 5.10**; (d) in the case of a Foreign Lender, any United States withholding tax that is (i) required pursuant to laws in force at the time such Lender becomes a Lender (or designates a new Lending Office) hereunder, or (ii) attributable to such Lender's failure or inability (other than as a result of a Change in Law) to comply with **Section 5.10**, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from Borrowers with respect to such withholding tax; and (e) any U.S. federal withholding Taxes imposed under FATCA.

Expeditors: Expeditors International of Washington, Inc., a Washington corporation.

Existing Letters of Credit: those letter(s) of credit described on **Schedule E-1**.

Extraordinary Expenses: all costs, expenses or advances that Agent or any Lender may incur during a Default or Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents, Letters of Credit or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Agent or any Lender in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses. Notwithstanding the forgoing, absent a conflict of interest among Lenders, Extraordinary Expenses shall not include (i) legal fees for more than one counsel to the Lenders (plus any local counsel deemed necessary by the Lenders) in addition to any counsel engaged by Agent or (ii) other costs, expenses or advances incurred by any Lender to the extent unreasonably duplicative of such costs, expenses or advances incurred by the Agent.

Facility Termination Date: November 19, 2022.

FATCA: Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantially comparable and not materially more onerous to

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

**Federal Funds Rate:** (a) the weighted average of interest rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on the applicable Business Day (or on the preceding Business Day, if the applicable day is not a Business Day), as published by the Federal Reserve Bank of New York on the next Business Day; or (b) if no such rate is published on the next Business Day, the average rate (rounded up, if necessary, to the nearest 1/8 of 1%) charged to Bank of America on the applicable day on such transactions, as determined by Agent; provided, that in no event shall the Federal Funds Rate be less than zero.

**Fee Letters:** each fee letter agreement between Agent and Borrowers (or any of them).

**Financial Administration Act:** the Financial Administration Act (Canada) and all regulations and schedules thereunder.

**First Amendment to Second Amended and Restated Effective Date:** June 11, 2012.

**First Amendment to Third Amended and Restated Effective Date:** November 29, 2018.

**Fiscal Quarter:** each period of three months, commencing on the first day of a Fiscal Year.

**Fiscal Year:** the fiscal year of Parent and its Subsidiaries for accounting and tax purposes, ending on December 31 of each year.

**Fixed Charge Coverage Ratio:** the ratio, determined on a consolidated basis for Parent and its Subsidiaries for the most recent twelve calendar months, of (a) EBITDA minus Capital Expenditures (except those financed with Borrowed Money other than Revolver Loans or Term Loans) and cash taxes paid (which amount may not be less than zero), to (b) Fixed Charges; provided, however, that solely for the purposes of calculating the Fixed Charge Coverage Ratio under **Section 10.3**, Fixed Charges shall not include any Excluded Stock Repurchases.

**Fixed Charges:** the sum of cash interest expense, principal payments made on Borrowed Money, and Distributions made (other than Distributions made to Obligors to the extent permitted hereunder).

**FLSA:** the Fair Labor Standards Act of 1938.

**Flood Laws:** the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973 and related laws.

**Foreign Lender:** any Lender that is (a) in the case of the U.S. Borrowers, organized under the laws of a jurisdiction other than the laws of the United States, or any state or district thereof, (b) in the case of the Canadian Borrower, not a Canadian Qualified Lender, and (c) in the case of the U.K. Borrower, not a U.K. Qualified Lender.

Foreign Plan: any employee benefit plan or arrangement (a) maintained or contributed to by any Obligor or Subsidiary that is not subject to the laws of the United States or Canada; or (b) mandated by a government other than the United States or Canada for employees of any Obligor or Subsidiary.

Foreign Subsidiary: a Subsidiary of Parent that is a “controlled foreign corporation” under Section 957 of the Code.

Fronting Exposure: a Defaulting Lender’s Pro Rata share of U.S. LC Obligations, Canadian LC Obligations, U.K. LC Obligations, U.S. Swingline Loans, Canadian Swingline Loans, or U.K. Swingline Loans, as applicable, except to the extent allocated to other Lenders under **Section 4.2**.

FSCO: the Financial Services Commission of Ontario or like body in any other province of Canada and any other Governmental Authority succeeding to the functions thereof.

Full Payment: with respect to any Obligations, (a) the full and indefeasible cash payment thereof in the applicable currency required hereunder, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); (b) if such Obligations are LC Obligations or inchoate or contingent in nature, Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Agent in its discretion, in the amount of required Cash Collateral); and (c) a release of any Claims of Obligors against Agent, Lenders and Issuing Banks arising on or before the payment date. No Loans shall be deemed to have been paid in full until all Commitments related to such Loans have expired or been terminated.

Funded Debt: as of any date of determination, all Debt for borrowed money of Parent and its Subsidiaries, determined on a consolidated basis in accordance with GAAP.

GAAP: generally accepted accounting principles in effect in the United States from time to time.

General Intangibles: as defined in the UCC (and/or with respect to any General Intangible of a Canadian Subsidiary, an “intangible” as defined in the PPSA).

Governmental Approvals: all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority: any federal, state, provincial, municipal, foreign or other governmental department, agency, commission, board, bureau, court, tribunal, instrumentality, political subdivision, or other entity or officer exercising executive, legislative, judicial, regulatory or administrative functions for or pertaining to any government or court, in each case whether it is or is not associated with the United States, a state, district or territory thereof, Canada, a province or territory thereof or any other foreign entity or government.

Guarantee: each guarantee agreement (including this Agreement, the Canadian Facility Guarantee, and the U.K. Facility Guarantee) executed by a Guarantor in favor of Agent guaranteeing all or any portion of any Canadian Facility Obligation, U.S. Facility Obligation, or U.K. Facility Obligation.

Guarantor Payment: as defined in **Section 5.11**.

Guarantors: Canadian Facility Guarantors, U.S. Facility Guarantors, U.K. Facility Guarantors, and each other Person who guarantees payment or performance of any Obligations.

Hedging Agreement: any “swap agreement” as defined in Section 101(53B)(A) of the U.S. Bankruptcy Code.

Immaterial Subsidiary: at any time, any Subsidiary of Parent that is not a Material Subsidiary.

Indemnified Taxes: Taxes other than Excluded Taxes.

Indemnitees: Agent Indemnitees, Lender Indemnitees, Issuing Bank Indemnitees and Bank of America Indemnitees.

Insolvency Proceeding: any case or proceeding or proposal commenced by or against a Person under any state, provincial, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the U.S. Bankruptcy Code, or any other insolvency, debtor relief, bankruptcy, receivership, debt adjustment law or other similar law (whether state, provincial, federal or foreign), including the Bankruptcy and Insolvency Act (Canada), the Companies’ Creditors Arrangement Act (Canada), the United Kingdom Insolvency Act 1986 and/or the Enterprise Act 2002; (b) the appointment of a Creditor Representative or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights (and all associated moral and neighboring rights), mask works, industrial design rights, trademarks and service marks (together with all associated goodwill), trade names, trade dress, domain names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

Intellectual Property Claim: any claim or assertion (whether in writing, by suit or otherwise) that an Obligor’s or Subsidiary’s ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person’s Intellectual Property.

Intercreditor Agreement: that certain Intercreditor Agreement dated as of the Second Amendment to Third Amended and Restated Effective Date between Agent and the Term Loan Collateral Agent, relating to the Debt permitted under **Section 10.2.3(s)**.

Interest Period: as defined in **Section 3.1.4**.

Interest Period Loans: LIBOR Loans or Canadian BA Rate Loans.

Inventory: as defined in the UCC (and/or with respect to any inventory located in Canada, as defined in the PPSA), including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in the applicable Obligor's business (but excluding Equipment).

Inventory Reserve: reserves established by Agent in its Credit Judgment to reflect factors that may negatively impact the Value of Inventory, including change in salability, obsolescence, seasonality, theft, shrinkage, imbalance, change in composition or mix, markdowns and vendor chargebacks.

Investment: 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 capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Contingent Obligation in respect of Debt of, assumption of Debt of, or purchase or other acquisition of any other Debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

IP Assignment: a collateral assignment or security agreement pursuant to which an Obligor grants a Lien on its Intellectual Property to Agent, as security for its Obligations.

IRS: the United States Internal Revenue Service.

Issuing Bank Indemnitees: the Issuing Banks and their officers, directors, employees, Affiliates, branches, agents and attorneys.

Issuing Banks: the U.S. Issuing Bank, the Canadian Issuing Bank, and the U.K. Issuing Bank.

LC Application: an application by a Borrower or Borrower Agent on behalf of a Borrower to an Issuing Bank for issuance of a Letter of Credit, in form and substance satisfactory to such Issuing Bank.

LC Conditions: the following conditions necessary for issuance of a Letter of Credit: (a) each of the conditions set forth in **Section 6**; (b) after giving effect to such issuance, total U.S. LC Obligations do not exceed the U.S. Letter of Credit Subline, no U.S. Overadvance exists or would result therefrom and, if no U.S. Revolver Loans are outstanding, the U.S. LC Obligations do not exceed the U.S. Borrowing Base (without giving effect to the U.S. LC Reserve for purposes of this calculation); (c) after giving effect to such issuance, total Canadian LC Obligations do not exceed the Canadian Letter of Credit Subline, no Canadian Overadvance exists or would result therefrom and, if no Canadian Revolver Loans are outstanding, the Canadian LC Obligations do not exceed the Canadian Borrowing Base (without giving effect to the Canadian LC Reserve for purposes of this calculation); (d) after giving effect to such issuance, total U.K. LC Obligations do not exceed the U.K. Letter of Credit Subline, no U.K. Overadvance exists or would result therefrom and, if

no U.K. Revolver Loans are outstanding, the U.K. LC Obligations do not exceed the U.K. Borrowing Base (without giving effect to the U.K. LC Reserve for purposes of this calculation); (e) the expiration date of such Letter of Credit is (i) no more than 365 days from issuance, in the case of standby Letters of Credit, provided, however, that any standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to 365 days in duration, and (ii) no more than 120 days from issuance, in the case of documentary Letters of Credit; (f) in the case of U.S. Letters of Credit, the Letter of Credit and payments thereunder are denominated in Dollars or any foreign currency acceptable to Agent and U.S. Issuing Bank and, unless otherwise specified by Agent or U.S. Issuing Bank (at their respective option) that it requires payment in Dollars calculated at the Spot Rate, payments thereunder are to be made in the same currency in which the Letter of Credit was denominated; (g) in the case of Canadian Letters of Credit, the Letter of Credit and payments thereunder are denominated in Dollars, Canadian Dollars, or any foreign currency acceptable to Agent and Canadian Issuing Bank and, unless otherwise specified by Agent or Canadian Issuing Bank (at their respective option) that it requires payment in Dollars or Canadian Dollars calculated at the Spot Rate, payments thereunder are to be made in the same currency in which the Letter of Credit was denominated; (h) in the case of U.K. Letters of Credit, the Letter of Credit and payments thereunder are denominated in Dollars, British Pounds, Euros, or any foreign currency acceptable to the Agent and U.K. Issuing Bank and, unless otherwise specified by Agent or U.K. Issuing Bank (at their respective option) that it requires payment in Dollars, British Pounds or Euros calculated at the Spot Rate, payments thereunder are to be made in the same currency in which the Letter of Credit was denominated, and (i) the form of the proposed Letter of Credit is satisfactory to Agent and the applicable Issuing Bank in their discretion.

**LC Documents:** all documents, instruments and agreements (including LC Requests and LC Applications) delivered by the Borrower Agent on behalf of a Borrower or by any other Person to an Issuing Bank or Agent in connection with the issuance, amendment or renewal of, or payment under, any Letter of Credit.

**LC Obligations:** the U.S. LC Obligations, the Canadian LC Obligations, and the U.K. LC Obligations.

**LC Request:** a request for issuance of a Letter of Credit, to be provided by the U.S. Borrowers, the Canadian Borrower, the U.K. Borrower, or the Borrower Agent, as applicable, to an Issuing Bank, in form satisfactory to Agent and such Issuing Bank.

**Lender Indemnitees:** Lenders and their officers, directors, employees, Affiliates, agents and attorneys.

**Lenders:** as defined in the preamble to this Agreement, including the U.S. Lenders, the Canadian Lenders, the U.K. Lenders, Agent in its capacity as a provider of Swingline Loans and any other Person who hereafter becomes a “Lender” pursuant to an Assignment and Acceptance or in accordance with **Section 2.1.7**.

**Lending Office:** the office designated as such by the applicable Lender at the time it becomes party to this Agreement or thereafter by notice to Agent and Borrower Agent.

Letter of Credit: any U.S. Letter of Credit, Canadian Letter of Credit, or U.K. Letter of Credit.

Leverage Ratio: means, as of any date of determination, the ratio of (a) the amount of Funded Debt as of such date, to (b) EBITDA for the most recently 12 month period ended for which financial statements have been delivered pursuant to **Section 10.1.1**, in each case, determined on a consolidated basis for Parent and its Subsidiaries.

LIBOR: for any Interest Period with respect to a LIBOR Loan, the per annum rate of interest, determined by Agent at approximately 11:00 a.m. (London time) two Business Days prior to commencement of such Interest Period, for a term comparable to such Interest Period, equal to (a) the applicable Screen Rate for the currency of that LIBOR Loan; or (b) if the Screen Rate is not available for any reason, the interest rate at which deposits in the applicable Available Currency in the approximate amount of the LIBOR Loan would be offered by Bank of America's London branch to major banks in the London interbank eurocurrency market; provided, that in no event shall LIBOR be less than zero. If the Board of Governors imposes a Reserve Percentage with respect to LIBOR deposits, then LIBOR shall be the foregoing rate, divided by 1 minus the Reserve Percentage.

LIBOR Loan: each set of LIBOR Revolver Loans or LIBOR Term Loans having a common length and commencement of Interest Period.

LIBOR Revolver Loan: a Revolver Loan that bears interest based on LIBOR.

LIBOR Term Loan: a Term Loan that bears interest based on LIBOR.

License: any license or agreement under which an Obligor or Subsidiary is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor: any Person from whom an Obligor obtains the right to use any Intellectual Property.

Lien: any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever in respect of property (including any conditional sale or other title retention agreement and any financing lease having substantially the same economic effect as any of the foregoing).

Lien Waiver: an agreement, in form and substance satisfactory to Agent, by which (unless, in each case, otherwise agreed to by Agent in its sole discretion) (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Agent, and agrees to deliver the Collateral to Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person

acknowledges Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Agent upon request; (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Agent the right, vis-à-vis such Licensor, to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License; and (e) for any Collateral held by Costco on consignment on behalf of a U.S. Domiciled Obligor, Costco acknowledges the applicable Obligor's ownership of such Collateral, acknowledges Agent's Lien on such Collateral, authorizes the filing of UCC financing statements naming Costco as consignee, the applicable Obligor as consignor, and Agent as such Obligor's assignee, and agrees to deliver the Collateral to Agent upon request.

Loan: a Revolver Loan or Term Loan.

Loan Account: the loan account established by each Lender on its books pursuant to **Section 5.8**.

Loan Documents: this Agreement, Other Agreements and Security Documents.

Mandatory Costs: the percentage rate per annum calculated by Agent in accordance with **Schedule 1.1A**.

Margin Stock: as defined in Regulation U of the Board of Governors.

Material Adverse Effect: (a) a material adverse change in, or a material adverse effect upon, the operations, business, Properties, condition (financial or otherwise) of Parent and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Borrower or Guarantor to perform its obligations under any Loan Document to which it is a party; (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Borrower or Guarantor of any Loan Document to which it is a party or on the validity or priority of Agent's Liens on the Collateral; or (d) the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, otherwise impairs the ability of Agent or any Lender to enforce or collect any Obligations or to realize upon any material portion of the Collateral.

Material Real Property: means any fee-owned real property that is owned by any U.S Domiciled Obligor with a fair market value in excess of \$15,000,000 (at the Second Amendment Third Amended and Restated Effective Date or, with respect to fee-owned real property acquired after the Second Amendment Third Amended and Restated Effective Date, at the time of acquisition, in each case, as reasonably estimated by the U.S. Borrowers in good faith), other than the property located at 2180 Rutherford Road, Carlsbad, CA 92008.

Material Subsidiary: at any time, any Subsidiary of Parent (other than an Obligor) (a) in which the aggregate Investments made by Parent and its Subsidiaries (excluding Investments in the nature of inter-company receivables payable by such Subsidiary arising in the Ordinary Course of Business for the sale of Inventory and provision of services but, in the case of Investments in a Foreign Subsidiary, including Investments in Subsidiaries of such Foreign Subsidiary other than any such receivables) exceed \$20,000,000 or (b) that had net annual sales during the four fiscal

quarters most recently ended (calculated on a Pro Forma Basis after giving effect to any Acquisition made during such period) of \$50,000,000 or more

**Maximum Canadian Facility Amount:** on any date of determination, the lesser of (i) the Canadian Revolver Commitments on such date and (ii) \$25,000,000 (or such lesser amount after giving effect to any reductions in the Commitments pursuant to and in accordance with **Section 2.1.4**); it being acknowledged and agreed that at no time can the sum of the Maximum Canadian Facility Amount plus the Maximum U.S. Facility Amount plus the Maximum U.K. Facility Amount exceed the Maximum Facility Amount in effect at such time.

**Maximum Facility Amount:** \$330,000,000, or such greater or lesser amount as shall then be in effect after giving effect to any reductions in the Commitments pursuant to and in accordance with **Section 2.1.4** and increases in the U.S. Revolver Commitments pursuant to and in accordance with **Section 2.1.7**.

**Maximum U.K. Facility Amount:** on any date of determination, the lesser of (i) the U.K. Revolver Commitments on such date and (ii) \$45,000,000 (or such lesser amount after giving effect to any reductions in the Commitments pursuant to and in accordance with **Section 2.1.4**); it being acknowledged and agreed that at no time can the sum of the Maximum Canadian Facility Amount plus the Maximum U.S. Facility Amount plus the Maximum U.K. Facility Amount exceed the Maximum Facility Amount in effect at such time.

**Maximum U.S. Facility Amount:** on any date of determination, the lesser of (i) the U.S. Revolver Commitments on such date and (ii) \$260,000,000 (or such greater or lesser amount after giving effect to any reductions in the Commitments pursuant to and in accordance with **Section 2.1.4** and increases in the Commitments pursuant to and in accordance with **Section 2.1.7**; it being acknowledged and agreed that at no time can the sum of the Maximum U.S. Facility Amount plus the Maximum Canadian Facility Amount plus the Maximum U.K. Facility Amount exceed the Maximum Facility Amount in effect at such time.

**Moody's:** Moody's Investors Service, Inc., and its successors.

**Mortgage:** a mortgage, deed of trust, deed of immovable hypothec or deed to secure debt pursuant to which an Obligor grants a Lien on its Real Estate to Agent, as security for the applicable Obligations.

**Multiemployer Plan:** any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

**Net Excess Availability:** as of any date of determination, an amount equal to the Availability minus the aggregate amount, if any, of all trade payables of Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

**Net Orderly Liquidation Value:** with respect to trademarks of any Person, the net orderly liquidation value of such trademarks expected to be realized at an orderly, negotiated sale held

within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of such trademarks performed by an appraiser and on terms satisfactory to Agent.

**Net Proceeds:** with respect to an Asset Disposition, proceeds (including, when received, any deferred or escrowed payments) received by an Obligor or Subsidiary in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (c) transfer or similar taxes; and (d) reserves for indemnities, until such reserves are no longer needed (after which, any such amounts previously held as reserves shall become Net Proceeds when received).

**New Lender:** as defined in **Section 5.9.15.**

**NOLV Percentage:** with respect to each category of each Borrower's Inventory (as determined by Agent from time to time in its discretion) the net orderly liquidation value of such Inventory, expressed as a percentage (such percentage to be adjusted seasonally at such times consistent with the most recently delivered appraisal, as determined by Agent), expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of such Inventory performed by an appraiser and on terms satisfactory to Agent.

**Notes:** each Revolver Note or other promissory note executed by a Borrower to evidence any Obligations.

**Notice of Borrowing:** a Notice of Borrowing to be provided by Borrower Agent to request a Borrowing of Loans, in form satisfactory to Agent.

**Notice of Conversion/Continuation:** a Notice of Conversion/Continuation to be provided by Borrower Agent to request a conversion or continuation of any Loans as LIBOR Loans or Canadian BA Rate Loans, in form satisfactory to Agent.

**Noticed Hedge:** Secured Bank Product Obligations arising under a Hedging Agreement.

**Obligations:** all (a) principal of and premium, if any, on the Loans, (b) U.S. LC Obligations and other obligations of the U.S. Facility Obligors with respect to Letters of Credit, (c) Canadian LC Obligations and other obligations of the Canadian Facility Obligors with respect to Letters of Credit, (d) U.K. LC Obligations and other obligations of the U.K. Facility Obligors with respect to Letters of Credit, (e) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under Loan Documents, (f) Secured Bank Product Obligations, and (g) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several; provided, that Obligations of an Obligor shall not include its Excluded Swap Obligations.

Obligor: each Borrower, Guarantor, or other Person that is liable for payment of any Obligations or that has granted a Lien in favor of Agent on its assets to secure any Obligations.

Obligor Group: a group consisting of (a) Canadian Facility Obligors, (b) U.S. Facility Obligors, or (c) U.K. Facility Obligors.

OFAC: Office of Foreign Assets Control of the U.S. Treasury Department.

Off-Balance Sheet Liabilities: with respect to any Person, the (a) monetary obligations of such Person under a so-called synthetic lease, off-balance sheet or tax retention lease, if such obligations are considered indebtedness for borrowed money for tax purposes but such lease is classified as an operating lease under GAAP, but in any case excluding any obligations (i) that are liabilities of any such Person as lessee under any operating lease so long as the terms of such operating lease do not require any payment by or on behalf of such Person at termination of such operating lease pursuant to a required purchase by or on behalf of such Person of the property or assets subject to such operating lease or (ii) under any arrangement pursuant to which such Person guarantees or otherwise assures any other Person of the value of the property or assets subject to such operating lease and (b) the monetary obligations under any sale and leaseback transaction which does not create a liability on the consolidated balance sheet of such Person.

Ordinary Course of Business: with respect to any Person, the ordinary course of business of such Person, consistent with past practices.

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, amalgamation or continuance, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, memorandum of association, articles of association, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

Original Agreement Closing Date: June 30, 2011.

Original Amended and Restated Loan Agreement: as defined in the recitals hereto.

Original Loan Agreement: as defined in the recitals hereto.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: the Intercreditor Agreement; each Note; LC Document; Fee Letter; Lien Waiver; Borrowing Base Certificate, Compliance Certificate, financial statement or report delivered hereunder; or other document, instrument or agreement (other than this Agreement or a Security Document) now or hereafter delivered by an Obligor or other Person to Agent or a Lender in connection with any transactions relating hereto.

Other Taxes: all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

Overadvance: a Canadian Overadvance, U.S. Overadvance, or U.K. Overadvance, as the context requires.

Overadvance Loan: a Canadian Overadvance Loan and/or a U.S. Overadvance Loan, and/or a U.K. Overadvance Loan, as the context requires.

Parent: as defined in the preamble to this Agreement.

Participant: as defined in **Section 13.2**.

Participating Member State: each member state of the European Union that has Euro as its lawful currency so described in any EMU Legislation.

Patriot Act: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment Item: each check, draft or other item of payment payable to an Obligor, including those constituting proceeds of any Collateral.

PBA: the Pension Benefits Act (Ontario) or any other Canadian federal or provincial statute in relation to Canadian Pension Plans, and any regulations thereunder, as amended from time to time.

PBGC: the Pension Benefit Guaranty Corporation.

Pension Plan: 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 Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

Permitted Acquisition: any Acquisition by Parent or any of its Subsidiaries where:

- (a) the Board of Directors or authorized management committee of Parent or of the applicable Subsidiary and of the Person whose assets or Equity Interests are being acquired has approved such Acquisition;
- (b) the business acquired in connection with such Acquisition is engaged in one or more of the leisure goods, products and services businesses generally or any business activities that are substantially similar, related, incidental or complementary thereto;
- (c) both before and after giving effect to such Acquisition and the Loans and Letters of Credit (if any) requested to be made in connection therewith, each of the representations and warranties in the Loan Documents is true and correct in all material (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) respects (except (i) any such representation or warranty

which relates to a specified prior date and (ii) to the extent the Agent has been notified in writing by Borrower Agent that any representation or warranty is not correct and the Required Lenders have explicitly waived in writing compliance with such representation or warranty) and no Default or Event of Default exists, will exist, or would result therefrom;

(d) after giving effect to the Acquisition, the Parent and its Subsidiaries will continue to be in compliance with the covenants in this Agreement, determined on a Pro Forma Basis;

(e) the purchase consideration payable in respect of all Permitted Acquisitions (including the proposed Acquisition and including deferred payment obligations) shall not exceed the Acquisition Cap in the aggregate; provided, however, that no such Acquisition shall count against the Acquisition Cap if either: (i) (A) on a Pro Forma Basis after giving effect to such Acquisition, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount after giving effect to such Acquisition, and (C) the Fixed Charge Coverage Ratio, on a Pro Forma Basis after giving effect to such Acquisition (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a Pro Forma Basis after giving effect to such Acquisition, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Acquisition, and (C) no Term Loans are outstanding at the time such Acquisition is consummated and after giving effect to the payment of any consideration in connection with such Acquisition;

(f) as soon as available, but not less than 15 Business Days prior to such Acquisition, Borrower Agent has provided Agent (i) notice of such Acquisition and (ii) a copy of all available business and financial information reasonably requested by Agent including pro forma financial statements, statements of cash flow, financial covenant projections, and Availability projections;

(g) not later than: (i) 15 Business Days prior to the anticipated closing date of such Acquisition, Borrower Agent shall have provided Agent with the then current drafts of the acquisition agreement and other material documents relative to such Acquisition, and (ii) 3 Business Days prior to the anticipated closing date of such Acquisition, Borrower Agent shall have provided Agent with the final copies of the acquisition agreement and other material documents relative to such Acquisition;

(h) the assets being acquired (other than a *de minimis* amount of assets in relation to the assets being acquired) are located within the United States, Canada or the U.K., or the Person whose Equity Interests are being acquired is organized in a jurisdiction located within the United States, Canada or the U.K.; provided, however, that this clause (h) shall not be applicable to any Acquisition if either: (i) (A) on a Pro Forma Basis after giving effect to such Acquisition, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to

the Threshold Percentage of the Maximum Facility Amount after giving effect to such Acquisition, and (C) the Fixed Charge Coverage Ratio, on a Pro Forma Basis after giving effect to such Acquisition (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a Pro Forma Basis after giving effect to such Acquisition, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Acquisition, and (C) no Term Loans are outstanding at the time such Acquisition is consummated and after giving effect to the payment of any consideration in connection with such Acquisition; and

(i) concurrently with such Acquisition, any Person required to become a Guarantor or to execute or to deliver any Loan Document will do so in accordance with the requirements of this Agreement.

In no event will assets exceeding \$15,000,000 in Value acquired pursuant to a Permitted Acquisition constitute assets eligible for inclusion in the Borrowing Base prior to completion of a field examination, appraisal and other due diligence acceptable to Agent in its discretion, and if such satisfactory field examination, appraisal and due diligence is undertaken prior to the closing of such Acquisition, the assets acquired pursuant to such Acquisition may be taken into account in the applicable Borrowing Base (subject to all eligibility criteria) in determining whether the foregoing conditions are satisfied. Assets less than \$15,000,000 in Value acquired pursuant to a Permitted Acquisition shall constitute assets eligible for inclusion in the applicable Borrowing Base (subject to all eligibility criteria) on a temporary basis pending completion of a field examination, appraisal and other due diligence acceptable to Agent in its discretion.

Permitted Lien: as defined in **Section 10.2.1.**

Person: any individual, corporation, limited liability company, unlimited liability company, partnership, joint venture, joint stock company, land trust, business trust, unincorporated organization, Governmental Authority or other entity.

Plan: any employee benefit plan (as such term is defined in Section 3(3) of ERISA) established by an Obligor or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, an ERISA Affiliate.

PPSA: the Personal Property Security Act (Ontario) and the regulations thereunder; provided, however, if validity, perfection and effect of perfection and non-perfection of Agent's security interest in and Lien on any Collateral are governed by the personal property security laws of any jurisdiction other than Ontario, PPSA shall mean those personal property security laws (including the Civil Code of Quebec) in such other jurisdiction for the purposes of the provisions hereof relating to such validity, perfection, and effect of perfection and non-perfection and for the definitions related to such provisions, as from time to time in effect.

Pro Forma Basis: with respect to compliance with any test or covenant hereunder, in connection with or after the occurrence of an Acquisition, compliance with such covenant or test

after giving effect to any such Acquisition as if such Acquisition had occurred on the first day of the relevant test period (including pro forma adjustments arising out of events which are directly attributable to the proposed Acquisition, are factually supportable and are expected to have a continuing impact, in each case to be mutually and reasonably agreed upon by Borrower Agent and Agent).

Pro Rata: (a) with respect to any U.S. Lender and in reference to its U.S. Revolver Commitment or other matters (including (A) payments of principal, accrued interest and fees related thereto, (B) participations in U.S. LC Obligations and U.S. Swingline Loans, and (C) increases or reductions to the U.S. Revolver Commitments pursuant to **Section 2.1.4** or **2.1.7**) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the U.S. Revolver Commitments are outstanding, by dividing the amount of such U.S. Lender's U.S. Revolver Commitment by the aggregate amount of all U.S. Revolver Commitments, and (ii) at any other time, by dividing the amount of such U.S. Lender's U.S. Revolver Loans and U.S. LC Obligations by the aggregate amount of all U.S. Revolver Loans and U.S. LC Obligations; (b) with respect to any Canadian Lender and in reference to its Canadian Revolver Commitment, Canadian Facility Obligations or other matters (including (A) payments of principal, accrued interest and fees related thereto, (B) participations in Canadian LC Obligations and Canadian Swingline Loans, (C) reductions to the Canadian Revolver Commitments pursuant to **Section 2.1.4**, and (D) obligations to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of the Canadian Facility Obligors or to indemnify any Indemnitees for Claims relating to the Canadian Facility Obligors) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the Canadian Revolver Commitments are outstanding, by dividing such Canadian Lender's Canadian Revolver Commitment by the aggregate amount of all Canadian Revolver Commitments, and (ii) at any other time, by dividing the amount of such Canadian Lender's Canadian Revolver Loans and Canadian LC Obligations by the aggregate amount of all Canadian Revolver Loans and Canadian LC Obligations; (c) with respect to any U.K. Lender and in reference to its U.K. Revolver Commitment, U.K. Facility Obligations or other matters (including (A) payments of principal, accrued interest and fees related thereto, (B) participations in U.K. LC Obligations and U.K. Swingline Loans, (C) reductions to the U.K. Revolver Commitments pursuant to **Section 2.1.4**, and (D) obligations to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of the U.K. Facility Obligors or to indemnify any Indemnitees for Claims relating to the U.K. Facility Obligors) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the U.K. Revolver Commitments are outstanding, by dividing such U.K. Lender's U.K. Revolver Commitment by the aggregate amount of all U.K. Revolver Commitments, and (ii) at any other time, by dividing the amount of such U.K. Lender's U.K. Revolver Loans and U.K. LC Obligations by the aggregate amount of all U.K. Revolver Loans and U.K. LC Obligations; (d) with respect to any U.S. Lender and in reference to its Term Loan Commitment or other matters (including payments of principal, accrued interest and fees related thereto) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the Term Loan Commitments are outstanding, by dividing the amount of such U.S. Lender's Term Loan Commitment by the aggregate amount of all Term Loan Commitments, and (ii) at any other time, by dividing the amount of such U.S. Lender's Term Loans and by the aggregate amount of all Term Loans; (e) with respect to any U.S. Lender and in reference to U.S. Facility Obligations or other matters (including obligations to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of the U.S. Facility Obligors or to indemnify any Indemnitees for Claims relating to the U.S. Facility Obligors) relating thereto

which, in each case, are not governed by clause (a) or clause (d) preceding of this definition (as reasonably determined by Agent from time to time), a percentage (carried out to the ninth decimal place) determined by dividing the amount of such U.S. Lender's unused U.S. Revolver Commitment, unused Term Loan Commitment, and outstanding U.S. Revolver Loans, U.S. LC Obligations, and Term Loans, by the aggregate amount of all unused U.S. Revolver Commitments, all unused Term Loan Commitments, and all U.S. Revolver Loans, U.S. LC Obligations, and Term Loans; and (f) with respect to any Lender and in reference to any other matter relating to this Agreement or any other Loan Document which is not governed by clause (a), clause (b), clause (c), clause (d), or clause (e) preceding of this definition (as reasonably determined by Agent from time to time), a percentage (carried out in the ninth decimal place) determined by dividing the amount of such Lender's unused Revolver Commitments, unused Term Loan Commitment, and outstanding Loans and LC Obligations, by the aggregate amount of all unused Revolver Commitments, all unused Term Loan Commitments, and all outstanding Loans and LC Obligations.

**Proceeds:** as defined in **Section 7.1.**

**Proceeds of Crime Act:** the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) (or any successor statute), as amended from time to time, and includes all regulations thereunder.

**Project Max Commitment Letter:** that certain Commitment Letter, dated as of the First Amendment to Third Amended and Restated Effective Date, by and among Parent, Bank of America, N.A. (or any of its designated affiliates), JPMorgan Chase Bank, N.A. (together with any of its designated affiliates) and any Additional Lead Arranger (as defined therein) and any Additional Initial Lender (as defined therein) appointed in accordance with the terms thereof].

**Properly Contested:** with respect to any obligation of any Person, (a) the obligation is subject to a bona fide dispute regarding amount or such Person's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not have a Material Adverse Effect; (e) no Lien is imposed on assets of such Person or its Affiliates in an aggregate amount in excess of \$1,000,000 for all such Liens, unless bonded and stayed to the reasonable satisfaction of Agent; and (f) if the obligation results from entry of a judgment or other order in an aggregate amount in excess of \$1,000,000 for all such obligations, such judgment or order is stayed pending appeal or other judicial review.

**Property:** any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

**Protective Advances:** as defined in **Section 2.1.6.**

**Qualified ECP:** an Obligor with total assets exceeding \$10,000,000, or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of such Act.

**RCRA:** the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon.

Related Real Estate Documents: with respect to any Real Estate subject to a Mortgage, the following, in form and substance reasonably satisfactory to Agent (or such other Persons as expressly set forth below): (a) all information requested by Agent or any Lender for due diligence and required for Agent or any Lender to comply with Flood Laws; and (b) (i) a mortgagee title policy (or binder therefor) covering Agent's interest under the Mortgage, by an insurer reasonably acceptable to Agent, which must be fully paid as of the date of the applicable Mortgage; (ii) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as Agent may reasonably require and which would be customarily obtained by a lender in connection with a mortgage financing of a property such as the Real Estate with respect to other Persons having an interest in the Real Estate; (iii) a current, as-built survey of the Real Estate and certified by a licensed surveyor reasonably acceptable to Agent; (iv) a life-of-loan flood hazard determination and, if any Real Estate is located in a special flood hazard zone, flood insurance documentation and coverage as required by Flood Laws; (v) a current appraisal of the Real Estate, prepared by an appraiser acceptable to Agent, and in form and substance satisfactory to all Lenders; (vi) an environmental assessment, prepared by environmental engineers acceptable to Agent, a customary environmental indemnity agreement if appropriate, and such other reports, certificates, studies or data as Agent may reasonably require, all in form and substance satisfactory to all Lenders; and (vii) such other documents, legal opinions, instruments or agreements as Agent may reasonably require with respect to the Real Estate and Mortgage and which are customary for a mortgage financing transaction.

Report: as defined in **Section 12.2.3**.

Reportable Event: 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.

Reporting Trigger Period: the period (a) commencing on the day that an Event of Default occurs, or Net Excess Availability is less than, at any time, an amount equal to 10% of the Maximum Facility Amount; and (b) continuing until, during the preceding 30 consecutive days, no Event of Default has existed and Net Excess Availability has been greater than, at all times, an amount equal to 10% of the Maximum Facility Amount.

Required Lenders: Lenders (subject to **Section 4.2**) having unused Revolver Commitments, unused Term Loan Commitments, and outstanding Loans and LC Obligations, in excess of 50% of the aggregate amount of all unused Revolver Commitments, all unused Term Loan Commitments, and all outstanding Loans and LC Obligations; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more Lenders, "Required Lenders" must include at least 3 Lenders, and (ii) less than 3 Lenders, "Required Lenders" must include all Lenders.

Reserve Percentage: the reserve percentage (expressed as a decimal, rounded up to the nearest 1/16th of 1%) applicable to member banks under regulations issued by the Board of Governors for determining the maximum reserve requirement for Eurocurrency liabilities.

Reset Date: as defined **Section 5.13**.

Restricted Assets: any of the following Property of any Obligor solely to the extent there are any Term Loan Commitments or Term Loans outstanding: (a) all Real Estate; (b) all Intellectual Property; (c) all Equity Interests of Top Golf.

Restrictive Agreement: an agreement (other than a Loan Document) that conditions or restricts the right of any Borrower, Subsidiary or other Obligor to incur or repay Borrowed Money, to grant Liens on any assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Borrowed Money, or to repay any intercompany Debt.

Revolver Commitment: a U.S. Revolver Commitment and/or a Canadian Revolver Commitment and/or a U.K. Revolver Commitment, as the context requires. “Revolver Commitments” means the aggregate of the U.S. Revolver Commitments, the Canadian Revolver Commitments, and the U.K. Revolver Commitments.

Revolver Facilities: as defined in **Section 14.11(a)(vi)**.

Revolver Loan: a U.S. Revolver Loan and/or a Canadian Revolver Loan and/or a U.K. Revolver Loan, as the context requires.

Revolver Notes: collectively, the U.S. Revolver Notes, the Canadian Revolver Notes, and the U.K. Revolver Notes.

Royalties: all royalties, fees, expense reimbursement and other amounts payable by an Obligor or a Subsidiary under a License.

S&P: Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

Sanction: any sanction administered or enforced by the U.S. government (including OFAC), United Nations Security Council, European Union, U.K. government, Canadian government or other sanctions authority.

Screen Rate: in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters.

SEC: the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

Second Amended and Restated Loan Agreement: as defined in the recitals hereto.

Second Amended Original Closing Date: as defined in the recitals hereto.

Second Amendment to Third Amended and Restated Effective Date: January 4, 2019.

Secured Bank Product Obligations: Bank Product Debt owing to a Secured Bank Product Provider, up to the maximum amount (in the case of any Secured Bank Product Provider other than Bank of America and its Affiliates) specified by such provider in writing to Agent, which amount may be established or increased (by further written notice to Agent from time to time) as long as no Default or Event of Default exists and no Overadvance would result from establishment of a Canadian Bank Product Reserve, U.S. Bank Product Reserve, or U.K. Bank Product Reserve, as applicable, for such amount and all other Secured Bank Product Obligations; provided, that Secured Bank Product Obligations of an Obligor shall not include its Excluded Swap Obligations.

Secured Bank Product Provider: (a) Bank of America or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender that is providing a Bank Product, provided such provider delivers written notice to Agent, in form and substance satisfactory to Agent, by the later of the Closing Date or 10 days following creation of the Bank Product, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 12.13**.

Secured Parties: Canadian Facility Secured Parties and/or U.S. Facility Secured Parties and/or U.K. Facility Secured Parties, as the context requires.

Security Documents: this Agreement, the Guarantees, Mortgages, IP Assignments, Canadian Security Agreements, U.K. Security Agreements, Deposit Account Control Agreements, and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Senior Officer: the chairman of the board, director, president, chief executive officer, chief financial officer or treasurer of a Borrower or, if the context requires, an Obligor.

Settlement Report: a report delivered by Agent to the Applicable Lenders summarizing the Revolver Loans and, if applicable, participations in LC Obligations outstanding as of a given settlement date, allocated to the Applicable Lenders on a Pro Rata basis in accordance with their Revolver Commitments.

Solidary Claim: as defined in **Section 12.1.1(b)**.

Solvent: as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not “insolvent” within the meaning of Section 101(32) of the U.S.

Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. “Fair salable value” means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase. In addition to the foregoing, “Solvent” means, with respect to any Canadian Subsidiary, that such Canadian Subsidiary is (i) adequately capitalized, (ii) owns assets, the value of which, on a going concern basis, exceeds the liabilities of such Person, (iii) will have sufficient working capital to pay its debts as they become due, (iv) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either the present or future creditors of such Subsidiary or any of its Affiliates, and (v) is not an “insolvent person” as defined in the Bankruptcy and Insolvency Act (Canada). “Solvent” means, with respect to any U.K. Subsidiary, it is not and is not deemed for the purpose of and under the Insolvency Act 1986 to be unable to pay its debts as they fall due (other than under section 123(1)(a) of the Insolvency Act 1986).

Specified Obligor: an Obligor that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to **Section 5.11**).

Spot Rate: the exchange rate, as determined by Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source designated by Agent) as of the end of the preceding business day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding business day in Agent’s principal foreign exchange trading office for the first currency.

Subsidiary: any entity at least 50% of whose voting securities or Equity Interests are owned by the Parent (including indirect ownership by the Parent through other entities in which the Parent directly or indirectly owns 50% of the voting securities or Equity Interests).

Supermajority Lenders: Lenders (subject to **Section 4.2**) having (a) Revolver Commitments in excess of 75% of the aggregate Revolver Commitments; and (b) if the Revolver Commitments have terminated, Revolver Loans and LC Obligations in excess of 75% of all outstanding Revolver Loans and LC Obligations; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation.

Swap Obligations: with respect to an Obligor, its obligations under a Hedging Agreement that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

Swingline Loans: the Canadian Swingline Loans, the U.S. Swingline Loans, and the U.K. Swingline Loans.

TARGET Day: any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be

operative, such other payment system (if any) determined by the Agent acting reasonably to be a suitable replacement) is open for the settlement of payments in Euro.

Tax Credit: a credit against, relief or remission for, or repayment of any Tax.

Tax Deduction: as defined in **Section 5.9.2**.

Taxes: 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: a loan made by a U.S. Lender to the U.S. Borrowers pursuant to **Section 2.5**, which Loan shall be denominated in Dollars and shall be either a U.S. Base Rate Loan or a LIBOR Loan, in each case as selected by Borrower Agent.

Term Loan Cap: as of any date of determination, 18% of the Net Orderly Liquidation Value of the Company Trademark, rounded up to the nearest million in Agent's sole discretion.

Term Loan Collateral Agent: as defined in the Intercreditor Agreement.

Term Loan Commitment: for any U.S. Lender, the obligation of such U.S. Lender to make a Term Loan hereunder, up to the principal amount shown on **Schedule 1.1**. "Term Loan Commitments" means the aggregate amount of such commitments of all Lenders.

Term Loan Commitment Termination Date: the earliest of (a) the Facility Termination Date, (b) the date on which the Borrower Agent terminates the Term Loan Commitments pursuant to **Section 2.5.4**, (c) the date that is six months after the Closing Date, and (d) the date on which the Term Loan Commitments are terminated pursuant to **Section 11.2**.

Term Loan Maturity Date: the earlier of (a) the Facility Termination Date, and (b) the date that is the four year anniversary of the making of the Terms Loans pursuant to **Section 2.5**.

Term Loan Unused Commitment Fee Rate: a per annum rate equal to 0.50%.

Termination Event: (a) the whole or partial withdrawal of a Canadian Subsidiary from a Canadian Pension Plan during a plan year; or (b) the filing of a notice of interest to terminate in whole or in part a Canadian Pension Plan or the treatment of a Canadian Pension Plan amendment as a termination or partial termination; or (c) the institution of proceedings by any Governmental Authority to terminate in whole or in part or have a trustee appointed to administer a Canadian Pension Plan; or (d) any other event or condition which might constitute grounds for the termination of or winding up, or partial termination of or winding up, or the appointment of a trustee to administer, any Canadian Pension Plan.

Third Amendment to Second Amended and Restated Effective Date: June 23, 2014.

Threshold Percentage: (a) 15% at any time no Term Loans are outstanding; (b) 17.5% at any time there are Term Loans outstanding in an aggregate principal amount of less than

\$15,000,000; and (c) 20% at any time there are Term Loans outstanding in an aggregate principal amount equal to \$15,000,000 or more.

Top Golf: Topgolf International, Inc., a Delaware corporation.

Top Golf Blocked Account: as defined in the definition of Top Golf Proceeds.

Top Golf Proceeds: cash proceeds received by Parent in connection with any: (a) sale of all or a portion of the Equity Interests of Top Golf owned by Parent, or (b) dividend received by Parent from Top Golf on account of Parent's ownership interest in Top Golf; provided that (i) Parent elects to designate such proceeds as Top Golf Proceeds by at least five (5) Business Days (or such lesser time as approved by Agent in its sole discretion) prior written notice (such notice, the "Top Golf Proceeds Notice") to Agent of the occurrence of such transaction which will give rise to such cash proceeds; (ii) Parent sends written notice to Agent on the Business Day prior to the consummation of such transaction which will give rise to such cash proceeds; (iii) on the day such cash proceeds are received by Parent, either (in accordance with Parent's election made in the Top Golf Proceeds Notice): (A) Parent deposits all of such proceeds in a separate Deposit Account (such Deposit Account, the "Top Golf Blocked Account"), and provides evidence to Agent, in form and substance satisfactory to Agent, of such deposit, or (B) Agent establishes or modifies, as applicable, the U.S. Top Golf Reserve, the U.K. Top Golf Reserve and the Canadian Top Golf Reserve; (iv) the Top Golf Blocked Account shall not contain any other funds other than Top Golf Proceeds; (v) Parent may remove Top Golf Proceeds from the Top Golf Blocked Account, provided, however that (A) once removed other than (1) to consummate Common Stock Repurchases or pay dividends on Parent's common stock, in each case in accordance with **Section 10.2.6(g)(A)** on the date of such removal or (2) to make Investments in accordance with **Section 10.2.2(k)(A)** on the date of such removal, such funds shall no longer constitute Top Golf Proceeds, and (B) Parent shall provide Agent (1) three (3) Business Days' prior written notice of such removal, and (2) evidence of the removal of such funds from the Top Golf Blocked Account within two (2) Business Days of such removal; (vi) Parent shall provide Agent with copies of all monthly statements with respect to the Top Golf Blocked Account and such other information with respect to such Deposit Account as reasonably requested by Agent from time to time; and (vii) the Top Golf Blocked Account shall be subject to a Deposit Account Control Agreement prior to any Top Golf Proceeds being deposited into the Top Golf Blocked Account.

Top Golf Proceeds Notice: as defined in the definition of Top Golf Proceeds.

Total Revolver Exposure: as of any date of determination, the sum of the U.S. Revolver Exposure plus the Canadian Revolver Exposure plus the U.K. Revolver Exposure.

Transferee: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

Travis Mathew Retail: Travis Mathew Retail, LLC, a California limited liability company.

Treaty Lender: a Lender which: (a) is treated as a resident of a Treaty State for the purposes of a Treaty; and (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected.

Treaty State: a jurisdiction having a double taxation agreement (a “Treaty”) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

Type: any type of a Loan (*i.e.*, a LIBOR Loan, a U.S. Base Rate Loan, a Canadian BA Rate Loan, a Canadian Base Rate Loan, a Canadian Prime Rate Loan, or a U.K. Base Rate Loan) and, in the case of LIBOR Loans and Canadian BA Rate Loans, the same Interest Period.

UCC: the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

Unfunded Pension Liability: the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year and includes any unfunded liability or solvency deficiency as determined for the purposes of the PBA in respect of any Canadian Pension Plan.

uPlay: uPlay, Inc., a Delaware corporation.

U.K./Canadian Allocable Amount: as defined in **Section 5.11**.

U.K./Canadian Guarantor Payment: as defined in **Section 5.11**.

U.K. and United Kingdom: the United Kingdom of Great Britain and Northern Ireland.

U.K. Accounts Formula Amount: (a) as of any date of determination within the period beginning on May 1 through and including October 31 of each Fiscal Year, 85% of the Value of Eligible Accounts of the U.K. Borrower; and (b) as of any date of determination within the period beginning on November 1 through and including April 30 of each Fiscal Year, 90% of the Value of Eligible Accounts of the U.K. Borrower.

U.K. Availability: as of any date of determination, the U.K. Borrowing Base as of such date of determination minus the aggregate principal amount of all U.K. Revolver Loans outstanding on such date of determination.

U.K. Availability Reserve: the sum (without duplication) of (a) the Inventory Reserve with respect to the U.K. Borrower’s Inventory; (b) the U.K. Rent and Charges Reserve; (c) the U.K. LC Reserve; (d) the U.K. Bank Product Reserve; (e) all accrued Royalties of the U.K. Domiciled Obligors, whether or not then due and payable by a U.K. Domiciled Obligor; (f) the aggregate amount of liabilities secured by Liens upon U.K. Facility Collateral that are senior to the Agent’s Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (g) the U.K. Dilution Reserve; (h) the U.K. Top Golf Reserve; and (i) such additional reserves, in such amounts and with respect to such matters, as Agent in its Credit Judgment may elect to impose from time to time with respect to the U.K. Borrowing Base.

**U.K. Bank Product Reserve:** the aggregate amount of reserves established by Agent from time to time in its discretion in respect of Secured Bank Product Obligations owing by the U.K. Domiciled Obligors and their Subsidiaries.

**U.K. Base Rate:** for any day, the reference rate for U.K. Base Rate Loans, being a fluctuating rate of interest per annum equal to the rate of interest in effect for such day as announced from time to time by the local branch of Bank of America in the jurisdiction in which such currency is funded as its “base rate” with respect to such currency. Any change in such rate shall take effect at the opening of business on the day of such change.

**U.K. Base Rate Loan:** a U.K. Revolver Loan, or portion thereof, funded in Dollars and bearing interest calculated by reference to U.K. Base Rate.

**U.K. Borrower:** as defined in the preamble to this Agreement.

**U.K. Borrowing Base:** on any date of determination, an amount equal to the lesser of (a) the result of: (i) the Maximum U.K. Facility Amount, minus (ii) the U.K. LC Reserve, minus (iii) the U.K. Top Golf Reserve; or (b) the result of: (i) the U.K. Accounts Formula Amount, plus (ii) the U.K. Inventory Formula Amount, plus (iii) 100% of the amount of U.K. Pledged Cash, minus (iv) the U.K. Availability Reserve.

**U.K. Borrowing Base Certificate:** a certificate, in form and substance satisfactory to Agent, by which the U.K. Borrower certifies calculation of the U.K. Borrowing Base.

**U.K. Cash Collateral Account:** a demand deposit, money market or other account established by Agent at Bank of America, N.A. (London Branch) or such other financial institution as Agent may select in its discretion, which account shall be for the benefit of the U.K. Facility Secured Parties and shall be subject to Agent’s Liens securing the U.K. Facility Obligations.

**U.K. Dilution Reserve:** as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts of the U.K. Borrower by 1% for each whole percentage point (or portion thereof) by which the Dilution Percent is in excess of 5.0%.

**U.K. Domiciled Obligor:** each U.K. Subsidiary which is at any time an Obligor, and “**U.K. Domiciled Obligors**” means all such Persons, collectively.

**U.K. Dominion Account:** a special account established by the U.K. Borrower at Bank of America, N.A. (London Branch) or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes at all times.

**U.K. Eligible Foreign Account:** an Account of the U.K. Borrower that is owed by an Account Debtor that is organized or has its principal offices or assets in a jurisdiction (a) that has been a Participating Member State since before May 2004 or (b) that is listed on **Schedule 1.1C**.

**U.K. Expeditors Reserve:** as of any date of determination, the aggregate amount of accounts payable owed by any U.K. Facility Obligor to Expeditors, as determined by Agent in its Credit Judgment.

**U.K. Facility Collateral**: all Collateral that now or hereafter secures (or is intended to secure) any of the U.K. Facility Obligations, including Property of each U.K. Domiciled Obligor, each U.S. Domiciled Obligor, and each Canadian Domiciled Obligor.

**U.K. Facility Guarantee**: each guarantee agreement (including this Agreement) at any time executed by a U.K. Facility Guarantor in favor of Agent guaranteeing all or any portion of the U.K. Facility Obligations.

**U.K. Facility Guarantor**: Parent, each U.K. Subsidiary, each Canadian Subsidiary, and each U.S. Subsidiary (other than uPlay unless uPlay becomes a Guarantor in accordance with Section 10.2.15) and each other Person (if any) who guarantees payment and performance of any U.K. Facility Obligations.

**U.K. Facility Obligations**: all Obligations of the U.K. Facility Obligors (excluding, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of any U.S. Facility Obligations).

**U.K. Facility Obligor**: each of the U.K. Borrower or any U.K. Facility Guarantor, and “**U.K. Facility Obligors**” means all of such Persons, collectively.

**U.K. Facility Secured Parties**: the Agent, the U.K. Issuing Bank, the U.K. Lenders and the Secured Bank Product Providers who provide Bank Products to the U.K. Facility Obligors and their Subsidiaries.

**U.K. Inventory Formula Amount**: as of any date of determination, the lesser of (a) the sum of (i) with respect to Eligible Inventory that has been owned by the U.K. Borrower for less than one (1) calendar year as of the applicable date of determination, (A) for the period beginning on March 1 through and including September 30 of each Fiscal Year, 65% of the Value of such U.K. Borrower’s Eligible Inventory, (B) for the period beginning on October 1 through and including February 28 (or February 29, as applicable) of each Fiscal Year, 75% of the Value of such U.K. Borrower’s Eligible Inventory, plus (ii) with respect to Eligible Inventory that has been owned by the U.K. Borrower for more than one (1) calendar year, as of the applicable date of determination, 50% of the Value of such U.K. Borrower’s Eligible Inventory; or (b) 85% of the NOLV Percentage of the Value of the U.K. Borrower’s Eligible Inventory. Notwithstanding the foregoing, the aggregate amount of the U.K. Inventory Formula Amount which may be attributed to Eligible In-Transit Inventory (the “**U.K. In-Transit Availability**”) shall not exceed \$2,000,000; provided that, the U.K. In-Transit Availability (after taking into effect the previous proviso) shall be reduced by the U.K. Expeditors Reserve if, as of any date of determination, either (I) U.K. Net Excess Availability is less than 10% of the Maximum U.K. Facility Amount, or (II) there are any accounts payable owed by any U.K. Facility Obligor to Expeditors which are aged in excess of historical levels (except in cases of good faith disputes).

**U.K. Issuing Bank**: Bank of America or an Affiliate of Bank of America.

**U.K. LC Obligations**: the sum (without duplication) of (a) all amounts owing by the U.K. Borrower for any drawings under Letters of Credit; (b) the stated amount of all outstanding Letters of Credit issued for the account of the U.K. Borrower, which if such Letter of Credit is denominated in a currency other than Dollars, British Pounds or Euros, may be stated by Agent (at

its option) in Dollars, British Pounds or Euros calculated at the Spot Rate; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account of the U.K. Borrower.

**U.K. LC Reserve:** the aggregate of all U.K. LC Obligations, other than those that have been Cash Collateralized.

**U.K. Lenders:** each Lender that has issued a U.K. Revolver Commitment (provided that such Person or an Affiliate of such Person also has a U.S. Revolver Commitment).

**U.K. Letter of Credit Subline:** \$2,000,000.

**U.K. Letters of Credit:** any standby or documentary letter of credit issued by the U.K. Issuing Bank for the account of the U.K. Borrower, or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Agent or the U.K. Issuing Bank for the benefit of the U.K. Borrower.

**U.K. Net Excess Availability:** as of any date of determination, an amount equal to the U.K. Availability minus the aggregate amount, if any, of all trade payables of U.K. Domiciled Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of U.K. Domiciled Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

**U.K. Non-Bank Lender:** means:

(a) where a Lender becomes a party to this Agreement on the day on which this Agreement is entered into, any Lender listed in **Schedule 1.1D**; and

(b) where a Lender becomes a party to this Agreement after the day on which this Agreement is entered into, a Lender which gives a U.K. Tax Confirmation in the assignment notice which it executes pursuant to, or in connection with, **Section 13.3** below.

**U.K. Overadvance:** as defined in **Section 2.15**.

**U.K. Overadvance Loan:** a U.K. Revolver Loan made to the U.K. Borrower when a U.K. Overadvance exists or is caused by the funding thereof.

**U.K. Overadvance Loan Balance:** on any date, the amount by which the aggregate U.K. Revolver Exposure exceeds the amount of the U.K. Borrowing Base on such date.

**U.K. Pledged Cash:** the funds maintained in a blocked Deposit Account or securities account of the U.K. Borrower subject to a Deposit Account Control Agreement or securities account control agreement, as applicable, which give Agent at all times exclusive access and control for withdrawal purposes to the exclusion of the U.K. Borrower and precluding the U.K. Borrower from withdrawing or otherwise giving any instructions in connection therewith and which may not be withdrawn without the Agent's prior written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such withdrawal, no Default or Event of Default shall have occurred and be continuing and (ii) immediately after such withdrawal (for clarification, including after giving effect to any recalculation of the U.K. Borrowing Base upon

giving effect to such withdrawal), U.K. Availability would be a positive number), and which are subject to effective security documents, in form and substance satisfactory to Agent, that provide Agent with an unencumbered perfected first priority/ranking security interest in and Lien on such funds.

**U.K. Qualified Lender:**

(i) a Lender (other than a Lender within paragraph (ii) below) which is beneficially entitled to interest payable to that Lender in respect of any advance under the Loan Documents and is:

(A) a Lender:

(1) which is a bank (as defined for the purpose of section 879 of the Income Tax Act 2007 (United Kingdom) (“ITA”) making an advance under the Loan Documents; or

(2) in respect of an advance made under the Loan Documents by a person that was a bank (as defined for the purpose of section 879 of ITA) at the time that that advance was made

and with respect to (i)(A)(1) and (i)(A)(2), which is within the charge to U.K. corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the Corporation Taxes Act 2009 (United Kingdom) (“CTA”); or

(B) a Lender which is:

(1) a company resident in the U.K. for U.K. tax purposes;

(2) a partnership each member of which is:

(a) a company so resident in the U.K.; or

(b) a company not so resident in the U.K. which carries on a trade in the U.K. through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

(3) a company not so resident in the U.K. which carries on a trade in the U.K. through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or

(C) a Treaty Lender; or

(ii) a building society (as defined for the purposes of section 880 of ITA) making an advance under the Loan Documents.

**U.K. Reimbursement Date:** as defined in **Section 2.2.2.**

**U.K. Rent and Charges Reserve:** the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any U.K. Facility Collateral or could assert a Lien on any U.K. Facility Collateral; and (b) a reserve at least equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

**U.K. Required Lenders:** U.K. Lenders (subject to **Section 4.2**) having (a) U.K. Revolver Commitments in excess of 50% of the aggregate U.K. Revolver Commitments; and (b) if the U.K. Revolver Commitments have terminated, U.K. Revolver Loans and U.K. LC Obligations in excess of 50% of all outstanding U.K. Revolver Loans and U.K. LC Obligations; provided, however, that the U.K. Revolver Commitments and U.K. Revolver Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more U.K. Lenders, "U.K. Required Lenders" must include at least 3 U.K. Lenders, and (ii) less than 3 U.K. Lenders, "U.K. Required Lenders" must include all U.K. Lenders.

**U.K. Revolver Commitment:** for any U.K. Lender, its obligation to make U.K. Revolver Loans and to participate in U.K. LC Obligations, in the applicable Available Currencies, up to the maximum principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party, as such U.K. Revolver Commitment may be adjusted from time to time in accordance with the provisions of **Sections 2.1.4 or 11.2.** "**U.K. Revolver Commitments**" means the aggregate amount of such commitments of all U.K. Lenders.

**U.K. Revolver Commitment Termination Date:** the earliest of (a) the U.S. Revolver Commitment Termination Date (without regard to the reason therefor), (b) the date on which the Borrower Agent terminates or reduces to zero all of the U.K. Revolver Commitments pursuant to **Section 2.1.4**, and (c) the date on which the U.K. Revolver Commitments are terminated pursuant to **Section 11.2.**

**U.K. Revolver Exposure:** on any date, an amount equal to the sum of the Dollar Equivalent of the U.K. Revolver Loans outstanding on such date plus the U.K. LC Obligations on such date.

**U.K. Revolver Loan:** a Revolver Loan made by U.K. Lenders to the U.K. Borrower pursuant to **Section 2.1.1(c)**, which Revolver Loan shall be either a U.K. Base Rate Loan (which shall be denominated in Dollars only) or a LIBOR Loan (which may be denominated in Dollars, British Pounds or Euros, as selected by the Borrower Agent), and any U.K. Swingline Loan, U.K. Overadvance Loan or Protective Advance made to or owed by the U.K. Borrower.

**U.K. Revolver Notes:** a promissory note executed by the U.K. Borrower in favor of a U.K. Lender in the form of **Exhibit A-3**, in the amount of such U.K. Lender's U.K. Revolver Commitment.

**U.K. Security Agreement:**

(a) the security agreements dated as of the date hereof made by each U.K. Domiciled Obligor in favor of the Agent;

- (b) the debenture dated 15 June 2012 and made by the U.K. Borrower in favor of the Agent;
- (c) the supplemental debenture dated 18 December 2013 and made by the U.K. Borrower in favor of the Agent;
- (d) the debenture dated 15 June 2012 and made by Callaway Golf European Holding Company Limited in favor of the Agent; and
- (e) any other debenture, deed of charge or other similar agreement, instrument or document governed by the laws of England and Wales, Scotland or Northern Ireland, in each case now or hereafter securing (or given with the interest to secure) the U.K. Facility Obligations.

**U.K. Subsidiary:** a Subsidiary of Parent incorporated or organized under the laws of England and Wales.

**U.K. Swingline Loan:** any Borrowing of U.K. Base Rate Loans funded with Agent's funds, until such Borrowing is settled among the U.K. Lenders or repaid by the U.K. Borrower.

**U.K. Tax Confirmation:** means a confirmation by a Lender that the person beneficially entitled to interest payable to it in respect of an advance under a Loan Document is either:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
  - (i) a company so resident in the United Kingdom; or
  - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of Section 19 of CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of CTA; or
- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of Section 19 of CTA) of that company.

**U.K. Tax Payment:** as defined in **Section 5.9.14.**

**U.K. Top Golf Reserve:** a reserve established by Agent at Parent's request in accordance with the definition of Top Golf Proceeds, in an initial amount as of such establishment equal to \$0. The U.K. Top Golf Reserve (a) shall be reduced on a dollar for dollar basis for the amount expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)(ii)(D)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)(ii)(D)**; (b) may be permanently reduced from time to time upon Parent's written request

to Agent; and (c) subject to Agent's written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such adjustment, no Default or Event of Default shall have occurred and be continuing, and (ii) immediately after such adjustment (for clarification, including after giving effect to any recalculation of the Canadian Borrowing Base and U.S. Borrowing Base upon giving effect to such adjustment), Canadian Availability and U.S. Availability would be a positive number), may be reallocated on a dollar for dollar basis to the Canadian Top Golf Reserve and/or the U.S. Top Golf Reserve upon Parent's written request to Agent; provided, however, that once reduced pursuant to clause (b) above, the U.K. Top Golf Reserve may not be increased. The parties agree that the U.K. Top Golf Reserve shall never be less than zero (-0-). For clarification, the aggregate amount of the Canadian Top Golf Reserve, the U.K. Top Golf Reserve, and the U.S. Top Golf Reserve may not exceed an amount equal to the aggregate amount of Top Golf Proceeds received by Parent as reflected in all Top Golf Proceeds Notices (less any amounts Parent elects to deposit into the Top Golf Blocked Account) less all amounts expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)** and less all permanent reductions elected by Parent pursuant to clause (b) of each of the definitions of Canadian Top Golf Reserve, U.K. Top Golf Reserve, and U.S. Top Golf Reserve.

**U.K. Unused Line Fee Rate:** a per annum rate equal to 0.25%.

**U.S. Accounts Formula Amount:** (a) as of any date of determination within the period beginning on May 1 through and including October 31 of each Fiscal Year, 85% of the Value of Eligible Accounts of the U.S. Borrowers; and (b) as of any date of determination within the period beginning on November 1 through and including April 30 of each Fiscal Year, 90% of the Value of Eligible Accounts of the U.S. Borrowers.

**U.S. Availability:** as of any date of determination, the U.S. Borrowing Base as of such date of determination minus the aggregate principal amount of U.S. Revolver Loans outstanding on such date of determination.

**U.S. Availability Reserve:** the sum (without duplication) of (a) the Inventory Reserve with respect to the U.S. Borrowers' Inventory; (b) the U.S. Rent and Charges Reserve; (c) the U.S. LC Reserve; (d) the U.S. Bank Product Reserve; (e) all accrued Royalties of the U.S. Facility Obligors, whether or not then due and payable by a U.S. Facility Obligor; (f) the aggregate amount of liabilities secured by Liens upon U.S. Facility Collateral that are senior to the Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (g) the U.S. Dilution Reserve; (h) the Canadian Overadvance Loan Balance, if any, outstanding on such date, and the U.K. Overadvance Loan Balance, if any, outstanding on such date; (i) the U.S. Top Golf Reserve; and (j) such additional reserves, in such amounts and with respect to such matters, as Agent in its Credit Judgment may elect to impose from time to time with respect to the U.S. Borrowing Base.

**U.S. Bank Product Reserve:** the aggregate amount of reserves established by Agent from time to time in its discretion in respect of Secured Bank Product Obligations owing by the U.S. Domiciled Obligors and their Subsidiaries.

**U.S. Bankruptcy Code:** Title 11 of the United States Code.

**U.S. Base Rate:** for any day, a per annum rate equal to the greater of (a) the U.S. Prime Rate for such day; (b) the Federal Funds Rate for such day, plus 0.50%; or (c) LIBOR for a 30 day interest period as determined on such day, plus 1.0%.

**U.S. Base Rate Loan:** a Loan that bears interest based on the U.S. Base Rate.

**U.S. Base Rate Revolver Loan:** a Revolver Loan that bears interest based on the U.S. Base Rate.

**U.S. Borrowers:** as defined in the preamble to this Agreement.

**U.S. Borrowing Base:** on any date of determination, an amount equal to the lesser of (a) the result of: (i) the Maximum U.S. Facility Amount, minus (ii) the U.S. LC Reserve, minus (iii) the Canadian Overadvance Loan Balance, if any, outstanding on such date, minus (iv) the U.K. Overadvance Loan Balance, if any, outstanding on such date, minus (v) the U.S. Top Golf Reserve; or (b) the result of: (i) the U.S. Accounts Formula Amount, plus (ii) the U.S. Inventory Formula Amount, plus (iii) the U.S. Trademark Formula Amount, plus (iv) the U.S. Real Estate Formula Amount, plus (v) 100% of the amount of U.S. Pledged Cash, minus (vi) the U.S. Availability Reserve; provided, that clauses (b)(iii) and (b)(iv) above may be removed from such calculation in accordance with **Sections 2.1.4(c)** and **(d)** respectively.

**U.S. Borrowing Base Certificate:** a certificate, in form and substance satisfactory to Agent, by which the U.S. Borrowers certify calculation of the U.S. Borrowing Base.

**U.S. Cash Collateral Account:** a demand deposit, money market or other account established by Agent at Bank of America or such other financial institution as Agent may select in its discretion, which account shall be for the benefit of the U.S. Facility Secured Parties and shall be subject to Agent's Liens securing the U.S. Facility Obligations.

**U.S. Dilution Reserve:** as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts of the U.S. Borrowers by one (1) percentage point for each whole percentage point (or portion thereof) by which the Dilution Percent is in excess of 5.0%.

**U.S. Domiciled Obligor:** each of the Parent, any U.S. Borrower or any U.S. Subsidiary which it is at any time an Obligor, and "**U.S. Domiciled Obligors**" means all such Persons, collectively.

**U.S. Dominion Account:** a special account established by the U.S. Borrowers at Bank of America or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes during any Dominion Trigger Period.

**U.S. Expeditors Reserve:** as of any date of determination, the aggregate amount of accounts payable owed by any U.S. Facility Obligor to Expeditors, as determined by Agent in its Credit Judgment.

**U.S. Facility Collateral:** all Collateral that now or hereafter secures (or is intended to secure) any of the U.S. Facility Obligations, including Property of each U.S. Domiciled Obligor.

**U.S. Facility Guarantee:** each guarantee agreement (including this Agreement) at any time executed by a U.S. Facility Guarantor in favor of Agent guaranteeing all or any portion of the U.S. Facility Obligations.

**U.S. Facility Guarantor:** each U.S. Subsidiary other than uPlay (unless uPlay becomes a Guarantor in accordance with **Section 10.2.15**) and each other Person (if any) who guarantees payment and performance of any U.S. Facility Obligations.

**U.S. Facility Obligations:** all Obligations of the U.S. Facility Obligors (including, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of the Canadian Facility Obligations and U.K. Facility Obligations).

**U.S. Facility Obligor:** each of any U.S. Borrower or any U.S. Facility Guarantor, and “**U.S. Facility Obligors**” means all of such Persons, collectively.

**U.S. Facility Secured Parties:** the Agent, the U.S. Issuing Bank, the U.S. Lenders and the Secured Bank Product Providers who provide Bank Products to the U.S. Facility Obligors and their Subsidiaries.

**U.S. Inventory Formula Amount:** as of any date of determination, the lesser of (a) the sum of (i) with respect to Eligible Inventory that has been owned by a U.S. Borrower for less than one (1) calendar year as of the applicable date of determination, (A) for the period beginning on March 1 through and including September 30 of each Fiscal Year, 65% of the Value of such U.S. Borrowers’ Eligible Inventory, (B) for the period beginning on October 1 through and including February 28 (or February 29, as applicable) of each Fiscal Year, 75% of the Value of such U.S. Borrowers’ Eligible Inventory, plus (ii) with respect to Eligible Inventory that has been owned by a U.S. Borrower for more than one (1) calendar year, as of the applicable date of determination, 50% of the Value of such U.S. Borrowers’ Eligible Inventory; or (b) 85% of the NOLV Percentage of the Value of the U.S. Borrowers’ Eligible Inventory. Notwithstanding the foregoing, (1) the aggregate amount of the U.S. Inventory Formula Amount which may be attributed to Eligible In-Transit Inventory (the “**U.S. In-Transit Availability**”) shall not exceed \$25,000,000; provided that, the U.S. In-Transit Availability (after taking into effect the previous proviso) shall be reduced by the U.S. Expeditors Reserve if, as of any date of determination, either (I) U.S. Net Excess Availability is less than 10% of the Maximum U.S. Facility Amount, or (II) there are any accounts payable owed by any U.S. Facility Obligor to Expeditors which are aged in excess of historical levels (except in cases of good faith disputes); and (2) so long as there is no Lien Waiver then in place with respect thereto, the aggregate amount of the U.S. Inventory Formula Amount which may be attributed to Eligible Costco Inventory shall not exceed \$20,000,000.

**U.S. Issuing Bank:** Bank of America or an Affiliate or branch of Bank of America

**U.S. LC Obligations:** the sum (without duplication) of (a) all amounts owing by the U.S. Borrowers for any drawings under Letters of Credit; (b) the stated amount of all outstanding Letters of Credit issued for the account of any U.S. Borrower, which if such Letter of Credit is denominated in a currency other than Dollars, may be stated by Agent (at its option) in Dollars

calculated at the Spot Rate; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account of any U.S. Borrower.

**U.S. LC Reserve:** the aggregate of all U.S. LC Obligations, other than those that have been Cash Collateralized.

**U.S. Lenders:** Bank of America and each other Lender (other than Canadian Lenders or U.K. Lenders) party hereto.

**U.S. Letter of Credit Subline:** \$20,000,000.

**U.S. Letters of Credit:** any standby or documentary letter of credit issued by the U.S. Issuing Bank for the account of the U.S. Borrowers (or any U.S. Borrower), or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Agent or the U.S. Issuing Bank for the benefit of any U.S. Borrower, and shall include the Existing Letters of Credit.

**U.S. Net Excess Availability:** as of any date of determination, an amount equal to the U.S. Availability minus the aggregate amount, if any, of all trade payables of U.S. Domiciled Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of U.S. Domiciled Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

**U.S. Overadvance:** as defined in **Section 2.1.5.**

**U.S. Overadvance Loan:** a U.S. Revolver Loan made to the U.S. Borrowers or the amount owed by the U.S. Borrowers when a U.S. Overadvance exists or is caused by the funding thereof.

**U.S. Pledged Cash:** the funds maintained in a blocked Deposit Account or securities account of a U.S. Borrower subject to a Deposit Account Control Agreement or securities account control agreement, as applicable, which give Agent at all times exclusive access and control for withdrawal purposes to the exclusion of the U.S. Borrowers and precluding the U.S. Borrowers from withdrawing or otherwise giving any instructions in connection therewith and which may not be withdrawn without the Agent's prior written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such withdrawal, no Default or Event of Default shall have occurred and be continuing and (ii) immediately after such withdrawal (for clarification, including after giving effect to any recalculation of the U.S. Borrowing Base upon giving effect to such withdrawal), U.S. Availability would be a positive number), and which are subject to effective security documents, in form and substance satisfactory to Agent, that provide Agent with an unencumbered perfected first priority/ranking security interest in and Lien on such funds.

**U.S. Prime Rate:** the rate of interest announced by Bank of America from time to time as its prime rate. Such rate is set by Bank of America on the basis of various factors, including its 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 rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

**U.S. Real Estate Formula Amount:** as of any date of determination, the lesser of (a) 80% of the fair market value of the Eligible Real Estate, as determined from the most recent appraisal of such Real Estate performed by an appraiser and on terms satisfactory to Agent; or (b) \$28,600,000 (such amount in this clause (b) to be reduced by \$476,666.67 on the first day of each calendar quarter occurring after the Closing Date, commencing with the calendar quarter beginning on April 1, 2018).

**U.S. Reimbursement Date:** as defined in **Section 2.3.2.**

**U.S. Rent and Charges Reserve:** the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any U.S. Facility Collateral or could assert a Lien on any U.S. Facility Collateral; and (b) a reserve at least equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

**U.S. Required Lenders:** U.S. Lenders (subject to **Section 4.2**) having (a) U.S. Revolver Commitments in excess of 50% of the aggregate U.S. Revolver Commitments; and (b) if the U.S. Revolver Commitments have terminated, U.S. Revolver Loans and U.S. LC Obligations in excess of 50% of all outstanding U.S. Revolver Loans and U.S. LC Obligations; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more U.S. Lenders with U.S. Revolver Commitments or outstanding U.S. Revolver Loans or U.S. LC Obligations, "U.S. Required Lenders" must include at least 3 such U.S. Lenders, and (ii) less than 3 U.S. Lenders with U.S. Revolver Commitments or outstanding U.S. Revolver Loans or U.S. LC Obligations, "U.S. Required Lenders" must include all such U.S. Lenders.

**U.S. Required Term Lenders:** U.S. Lenders (subject to **Section 4.2**) having (a) Term Loan Commitments in excess of 50% of the aggregate Term Loan Commitments; and (b) if the Term Loan Commitments have terminated, Term Loans in excess of 50% of all outstanding Term Loans; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more U.S. Lenders with Term Loan Commitments or outstanding Term Loans, "U.S. Required Term Lenders" must include at least 3 such U.S. Lenders, and (ii) less than 3 U.S. Lenders with Term Loan Commitments or outstanding Term Loans, "U.S. Required Term Lenders" must include all such U.S. Lenders.

**U.S. Revolver Commitment:** for any U.S. Lender, its obligation to make U.S. Revolver Loans and to participate in U.S. LC Obligations up to the maximum principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party, as such U.S. Revolver Commitment may be adjusted from time to time in accordance with the provisions of **Sections 2.1.4, 2.1.7, or 11.2.** "**U.S. Revolver Commitments**" means the aggregate amount of such commitments of all U.S. Lenders.

**U.S. Revolver Commitment Termination Date:** the earliest of (a) the Facility Termination Date, (b) the date on which the Borrower Agent terminates or reduces to zero the U.S. Revolver Commitments pursuant to **Section 2.1.4**, and (c) the date on which the U.S. Revolver Commitments are terminated pursuant to **Section 11.2.**

**U.S. Revolver Exposure:** on any date, an amount equal to the sum of the U.S. Revolver Loans outstanding on such date plus the U.S. LC Obligations on such date.

**U.S. Revolver Loan:** a Revolver Loan made by a U.S. Lender to a U.S. Borrower pursuant to **Section 2.1.1(a)**, which Loan shall be denominated in Dollars and shall be either a U.S. Base Rate Revolver Loan or a LIBOR Loan, in each case as selected by Borrower Agent, and any U.S. Swingline Loan, U.S. Overadvance Loan or Protective Advance made to or owed by the U.S. Borrowers.

**U.S. Revolver Notes:** a promissory note executed by U.S. Borrowers in favor of a U.S. Lender in the form of **Exhibit A-2**, in the amount of such U.S. Lender's U.S. Revolver Commitment.

**U.S. Subsidiary:** a Subsidiary of Parent that is organized under the laws of a state of the United States or the District of Columbia.

**U.S. Swingline Loan:** any Borrowing of U.S. Base Rate Revolver Loans funded with Agent's funds, until such Borrowing is settled among the U.S. Lenders or repaid by the U.S. Borrowers.

**U.S. Top Golf Reserve:** a reserve established by Agent at Parent's request in accordance with the definition of Top Golf Proceeds, in an initial amount as of such establishment equal to the amount of the Top Golf Proceeds received as of the date of such establishment. The U.S. Top Golf Reserve (a) shall be reduced on a dollar for dollar basis for the amount expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)(ii)(B)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)(ii)(B)**; (b) may be permanently reduced from time to time upon Parent's written request to Agent; and (c) subject to Agent's written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such adjustment, no Default or Event of Default shall have occurred and be continuing, and (ii) immediately after such adjustment (for clarification, including after giving effect to any recalculation of the Canadian Borrowing Base and U.K. Borrowing Base upon giving effect to such adjustment), Canadian Availability and U.K. Availability would be a positive number), may be reallocated on a dollar for dollar basis to the Canadian Top Golf Reserve and/or the U.K. Top Golf Reserve upon Parent's written request to Agent; provided, however, that once reduced pursuant to clause (b) above, the U.S. Top Golf Reserve may not be increased. The parties agree that the U.S. Top Golf Reserve shall never be less than zero (-0-). For clarification, the aggregate amount of the Canadian Top Golf Reserve, the U.K. Top Golf Reserve, and the U.S. Top Golf Reserve may not exceed an amount equal to the aggregate amount of Top Golf Proceeds received by Parent as reflected in all Top Golf Proceeds Notices (less any amounts Parent elects to deposit into the Top Golf Blocked Account) less all amounts expended in connection with (x) any Common Stock Repurchase made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)** and less all

permanent reductions elected by Parent pursuant to clause (b) of each of the definitions of Canadian Top Golf Reserve, U.K. Top Golf Reserve, and U.S. Top Golf Reserve.

**U.S. Trademark Formula Amount:** as of any date of determination, the lesser of (a) 42% of the Net Orderly Liquidation Value of the Company Trademark; or (b) \$70,000,000 (such amount in this clause (b) to be permanently reduced by \$1,666,666.67 on the first day of each calendar quarter occurring after the Closing Date, commencing with the calendar quarter beginning on April 1, 2018, until such amount (for the avoidance of doubt, at all times) is less than or equal to the lesser of (i) \$50,000,000 and (ii) 30% of the Net Orderly Liquidation Value of the Company Trademark).

**U.S. Unused Line Fee Rate:** a per annum rate equal to 0.25%.

**Value:** (a) for Inventory, its Dollar Equivalent value determined on the basis of the lower of cost or market, calculated on a first-in, first-out basis, and excluding any portion of cost attributable to intercompany profit among Borrowers and their Affiliates; and (b) for an Account, its Dollar Equivalent face amount, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could be claimed by the Account Debtor or any other Person.

**Wage Earner Protection Act Reserve:** on any date of determination, a reserve established from time to time by Agent in its Credit Judgment in such amount as Agent determines reflects the amounts that may become due under the *Wage Earner Protection Program Act* (Canada) with respect to the employees of any Obligor employed in Canada which would give rise to a Lien with priority under Applicable Law over the Lien of Agent.

**Write-Down and Conversion Powers:** the write-down and conversion powers of the applicable EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which powers are described in the EU Bail-In Legislation Schedule.

**1.2 Accounting Terms.** Under the Loan Documents (except as otherwise specified herein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of Obligors delivered to Agent before the Original Agreement Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if Obligors' certified public accountants concur in such change, the change is disclosed to Agent, and **Section 10.3** and any other provision hereof are amended in a manner satisfactory to Required Lenders to take into account the effects of the change, if any. No calculations under the Loan Documents shall give effect to any such change prior to any such amendment.

**1.3 Uniform Commercial Code/PPSA.** As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: "Chattel Paper," "Commercial Tort Claim," "Equipment," "Goods," "Instrument," "Investment Property," "Letter-of-Credit Right" and "Supporting Obligation" and, as such terms relate to any such

Property of any Canadian Domiciled Obligor, such terms shall refer to such Property as defined in the PPSA (to the extent such terms are defined therein).

**1.4 Certain Matters of Construction.** The terms “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, “from” means “from and including,” and “to” and “until” each mean “to but excluding.” The terms “including” and “include” shall mean “including, without limitation” and, for purposes of each Loan Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to (a) laws or statutes include all related rules, regulations, interpretations, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Loan Documents); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and assigns; (f) except as otherwise specified herein, time of day means time of day at Agent’s notice address under **Section 14.3.1**; or (g) discretion of Agent, any Issuing Bank or any Lender mean the sole and absolute discretion of such Person. Except as expressly otherwise provided herein, all calculations of Value, fundings of Loans, issuances of Letters of Credit and payments of Obligations shall be in Dollars and, unless the context otherwise requires, all determinations (including calculations of Borrowing Base and financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Agent (and not necessarily calculated in accordance with GAAP). Obligors shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by Agent, any Issuing Bank or any Lender under any Loan Documents. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Whenever the phrase “to the best of an Obligor’s knowledge” or words of similar import are used in any Loan Documents, it means actual knowledge of a Senior Officer of such Obligor, or knowledge that a Senior Officer of such Obligor would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter to which such phrase relates.

**1.5 Calculations.** All references in the Loan Documents to Loans, Letters of Credit, Obligations, Borrowing Base components and other amounts shall be denominated in Dollars, unless expressly provided otherwise. The Dollar equivalent of any amounts denominated or reported under a Loan Document in a currency other than Dollars shall be determined by Agent on a daily basis, based on the current Spot Rate. Borrowers shall report Value and other Borrowing Base components to Agent in the currency invoiced by Obligors or shown in Obligors’ financial records, and unless expressly provided otherwise, shall deliver financial statements and calculate financial covenants in Dollars. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than Dollars, Obligors shall repay such Obligation in such other currency.

**1.6 Interpretation (Quebec).** For purposes of any Collateral located in the Province of Quebec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) “personal property” shall be deemed to include “movable property”, (b) “real property” shall be deemed to include “immovable property”, (c) “tangible property” shall be deemed to include “corporeal property”, (d) “intangible property” shall be deemed to include “incorporeal property”, (e) “security interest” and “mortgage” shall be deemed to include a “hypothec”, (f) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (g) all references to “perfection” of or “perfected” Liens shall be deemed to include a reference to the “opposability” of such Liens to third parties, (h) any “right of offset”, “right of setoff” or similar expression shall be deemed to include a “right of compensation”, (i) “goods” shall be deemed to include “corporeal movable property” other than chattel paper, documents of title, instruments, money and securities, (j) an “agent” shall be deemed to include a “mandatary” (k) “construction liens” shall be deemed to include “legal hypothecs”, (l) “joint and several” shall be deemed to include “solidary”, (m) “gross negligence or willful misconduct” shall be deemed to be “intentional or gross fault”, (n) “beneficial ownership” shall be deemed to include “ownership on behalf of another as mandatary”, (o) “servitude” shall be deemed to include “easement”, (p) “priority” shall be deemed to include “prior claim”, (q) “survey” shall be deemed to include “certificate of location and plan”, and (r) “fee simple title” shall be deemed to include “absolute ownership”. For purposes of greater certainty, the reference to the “Loan Agreement” in the deed of hypothec dated November 3, 2017 executed by the Canadian Borrower in favour of the Agent means this Agreement.

## SECTION 2. CREDIT FACILITIES

### 2.1 Revolver Commitments.

#### 2.1.1. Revolver Loans.

(a) **U.S. Revolver Loans to U.S. Borrowers.** Each U.S. Lender agrees, severally and not jointly with the other U.S. Lenders, upon the terms and subject to the conditions set forth herein, to make U.S. Revolver Loans to the U.S. Borrowers on any Business Day during the period from the Closing Date to the U.S. Revolver Commitment Termination Date, not to exceed in aggregate principal amount outstanding at any time such U.S. Lender’s U.S. Revolver Commitment at such time, which U.S. Revolver Loans may be repaid and reborrowed in accordance with the terms and provisions of this Agreement; provided, however, that such U.S. Lenders shall have no obligation to the U.S. Borrowers whatsoever to honor any request for a U.S. Revolver Loan on or after the U.S. Revolver Commitment Termination Date or if the amount of the proposed U.S. Revolver Loan exceeds U.S. Availability on the proposed funding date for such U.S. Revolver Loan. Each Borrowing of U.S. Revolver Loans shall be funded by the U.S. Lenders on a Pro Rata basis. The U.S. Revolver Loans shall bear interest as set forth in **Section 3.1**. Each U.S. Revolver Loan shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of U.S. Base Rate Revolver Loans or LIBOR Revolver Loans. The U.S. Revolver Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all

of the U.S. Facility Collateral. U.S. Borrowers shall be jointly and severally liable to pay all of the U.S. Revolver Loans. Each U.S. Revolver Loan shall be funded and repaid in Dollars.

(b) Canadian Revolver Loans to Canadian Borrower. Each Canadian Lender agrees, severally and not jointly with the other Canadian Lenders, upon the terms and subject to the conditions set forth herein, to make Canadian Revolver Loans to the Canadian Borrower on any Business Day during the period from the Closing Date to the Canadian Revolver Commitment Termination Date, not to exceed in aggregate principal amount outstanding at any time such Canadian Lender's Canadian Revolver Commitment at such time, which Canadian Revolver Loans may be repaid and reborrowed in accordance with the terms and provisions of this Agreement; provided, however, that such Canadian Lenders shall have no obligation to the Canadian Borrower whatsoever to honor any request for a Canadian Revolver Loan on or after the Canadian Revolver Commitment Termination Date or if the amount of the proposed Canadian Revolver Loan exceeds Canadian Availability on the proposed funding date for such Canadian Revolver Loan. Each Borrowing of Canadian Revolver Loans shall be funded by the Canadian Lenders on a Pro Rata basis. The Canadian Revolver Loans shall bear interest as set forth in **Section 3.1**. Each Canadian Revolver Loan shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of Canadian Prime Rate Loans or Canadian BA Rate Loans if denominated in Canadian Dollars, or shall consist entirely of Canadian Base Rate Loans or LIBOR Loans if denominated in Dollars. The Canadian Revolver Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all of the Canadian Facility Collateral. Each Canadian Revolver Loan shall be funded in Canadian Dollars or, at the option of the Borrower Agent, Dollars and repaid in the same currency as such underlying Canadian Revolver Loan was made.

(c) U.K. Revolver Loans to U.K. Borrower. Each U.K. Lender agrees, severally and not jointly with the other U.K. Lenders, upon the terms and subject to the conditions set forth herein, to make U.K. Revolver Loans to the U.K. Borrower on any Business Day during the period from the Closing Date to the U.K. Revolver Commitment Termination Date, not to exceed in aggregate principal amount outstanding at any time such U.K. Lender's U.K. Revolver Commitment at such time, which U.K. Revolver Loans may be repaid and reborrowed in accordance with the terms and provisions of this Agreement; provided, however, that such U.K. Lenders shall have no obligation to the U.K. Borrower whatsoever to honor any request for a U.K. Revolver Loan on or after the U.K. Revolver Commitment Termination Date or if the amount of the proposed U.K. Revolver Loan exceeds U.K. Availability on the proposed funding date for such U.K. Revolver Loan. Each Borrowing of U.K. Revolver Loans shall be funded by the U.K. Lenders on a Pro Rata basis. The U.K. Revolver Loans shall bear interest as set forth in **Section 3.1**. Each U.K. Revolver Loan shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of U.K. Base Rate Loans or LIBOR Loans (provided, that U.K. Base Rate Loans shall only be denominated in Dollars). The U.K. Revolver Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all of the U.K. Facility Collateral. Each U.K. Revolver Loan shall be funded in Dollars, British Pounds and/or Euro (in the case of LIBOR Loans) and Dollars only (in the case of U.K. Base Rate Loans) and shall be repaid in the same currency as such underlying U.K. Revolver Loan was made.

(d) **Maximum Total Revolver Exposure.** Notwithstanding anything to the contrary contained in this **Section 2.1.1**, in no event shall any Borrower be entitled to receive a Revolver Loan if, at the time of the proposed funding of such Loan (and after giving effect thereto and all pending requests for Loans), the Total Revolver Exposure exceeds (or would exceed) the lesser of the Maximum Facility Amount and the Revolver Commitments.

2.1.2. **Revolver Notes.** The Revolver Loans made by each Lender and interest accruing thereon shall be evidenced by the records of Agent and such Lender. At the request of any Lender, the U.S. Borrowers and/or the Canadian Borrower and/or the U.K. Borrower shall execute and deliver a U.S. Revolver Note and/or a Canadian Revolver Note and/or a U.K. Revolver Note, respectively, to such Lender in the amount of such Lender's applicable Revolver Commitment(s).

2.1.3. **Use of Proceeds.** The proceeds of Revolver Loans shall be used by Borrowers solely (a) to satisfy existing Debt on the Original Agreement Closing Date; (b) to pay fees and transaction expenses associated with the closing of this credit facility; (c) to pay Obligations in accordance with this Agreement; and (d) for working capital and other lawful corporate purposes of Borrowers. Borrowers shall not, directly or indirectly, use any Letter of Credit or Loan proceeds, nor use, lend, contribute or otherwise make available any Letter of Credit or Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any country or territory, that, at the time of issuance of the Letter of Credit or funding of the Loan, is the target of a Sanction; or (ii) in any manner that would result in a violation of a Sanction by any Person (including any Secured Party or other individual or entity participating in the transaction) or in violation of Anti-Corruption Laws.

2.1.4. **Voluntary Reduction or Termination of Revolver Commitments.**

(a) The Canadian Revolver Commitments shall terminate on the Canadian Revolver Commitment Termination Date, the U.K. Revolver Commitments shall terminate on the U.K. Revolver Commitment Termination Date, and the U.S. Revolver Commitments shall terminate on the U.S. Revolver Commitment Termination Date, in each case, unless sooner terminated in accordance with this Agreement. Upon at least 10 days' prior written notice to Agent from the Borrower Agent, (i) U.S. Borrowers may, at their option, terminate the U.S. Revolver Commitments and this credit facility and/or (ii) the Canadian Borrower may, at its option, terminate the Canadian Revolver Commitments and/or (iii) the U.K. Borrower may, at its option, terminate the U.K. Revolver Commitments, in each case, without premium or penalty (other than funding losses payable pursuant to **Section 3.9**). If the U.S. Borrowers elect to reduce to zero or terminate the U.S. Revolver Commitments pursuant to the previous sentence, the Canadian Revolver Commitments and U.K. Revolver Commitments shall automatically terminate concurrently with the termination of the U.S. Revolver Commitments. Any notice of termination given by Borrowers pursuant to this **Section 2.1.4** shall be irrevocable but may be conditioned on a refinancing or another material event. On the Canadian Revolver Commitment Termination Date, the Canadian Borrower shall make Full Payment of all Canadian Facility Obligations. On the U.K. Revolver Commitment Termination Date, the U.K. Borrower shall make Full Payment of all U.K. Facility Obligations. On the U.S. Revolver Commitment Termination Date, the U.S. Borrowers shall make Full Payment of all U.S. Facility Obligations.

(b) So long as (i) no Default or Event of Default then exists or would result therefrom, and (ii) no U.S. Overadvance, Canadian Overadvance, or U.K. Overadvance then exists or would result therefrom, the Borrower Agent may permanently and irrevocably reduce the Maximum Facility Amount by giving Agent at least 10 days' prior irrevocable written notice thereof from a Senior Officer of the Borrower Agent, which notice shall (A) specify the date (which shall be a Business Day) and amount of such reduction (which shall be in a minimum amount of \$10,000,000 and increments of \$5,000,000 in excess thereof), (B) specify the allocation of such reduction to, and the corresponding reductions of, each of the Maximum U.S. Facility Amount and/or the Maximum Canadian Facility Amount and/or the Maximum U.K. Facility Amount (and the respective U.S. Revolver Commitments, Canadian Revolver Commitments, and the U.K. Revolver Commitments of the U.S. Lenders, the Canadian Lenders, and the U.K. Lenders, respectively, in respect thereof, each of which shall be allocated to such Lenders on a Pro Rata basis at the time of such reduction) and (C) certify the satisfaction of the foregoing conditions precedent (including calculations thereof in reasonable detail) both as of the date of such certificate and as of the effective date of any such proposed reduction. In addition to and without limiting the generality of the foregoing, (1) each reduction in the Maximum U.S. Facility Amount and the U.S. Revolver Commitments shall in no event exceed U.S. Availability and shall be in a minimum amount of \$5,000,000 and increments of \$1,000,000 in excess thereof, (2) each reduction in the Maximum Canadian Facility Amount and the Canadian Revolver Commitments shall in no event exceed Canadian Availability and shall be in a minimum amount of \$5,000,000 and increments of \$1,000,000 in excess thereof, and (3) each reduction in the Maximum U.K. Facility Amount and the U.K. Revolver Commitments shall in no event exceed U.K. Availability and shall be in a minimum amount of \$5,000,000 and increments of \$1,000,000 in excess thereof.

(c) Intentionally Omitted.

(d) Upon at least 10 days' prior written notice to Agent from the Borrower Agent, U.S. Borrowers may, at their option, permanently remove the U.S. Real Estate Formula Amount from the calculation of the U.S. Borrowing Base, without premium or penalty (other than funding losses payable pursuant to **Section 3.9**). Any notice of removal given by Borrowers pursuant to this **Section 2.1.4(d)** shall be irrevocable. Agent and the Lenders agree that Agent shall release any Liens with respect to the Eligible Real Estate to the extent the U.S. Real Estate Formula Amount is removed from the calculation of the U.S. Borrowing Base in accordance with this **Section 2.1.4(d)** and so long as no Default or Event of Default has occurred and is continuing.

2.1.5. **Overadvances.** If the aggregate U.S. Revolver Loans exceed the U.S. Borrowing Base (a "U.S. Overadvance") at any time, the excess amount shall be payable by U.S. Borrowers **on demand** by Agent, but all such U.S. Revolver Loans shall nevertheless constitute U.S. Facility Obligations secured by the U.S. Facility Collateral. If the aggregate Canadian Revolver Loans exceed the Canadian Borrowing Base (a "Canadian Overadvance") at any time, the excess amount shall be payable by Canadian Borrower **on demand** by Agent, but all such Canadian Revolver Loans shall nevertheless constitute Canadian Facility Obligations secured by the Canadian Facility Collateral. If the aggregate U.K. Revolver Loans exceed the U.K. Borrowing Base (a "U.K. Overadvance") at any time, the excess amount shall be payable by the U.K. Borrower **on demand** by Agent, but all such U.K. Revolver Loans shall nevertheless constitute U.K. Facility Obligations secured by the U.K. Facility Collateral. Agent may require the Applicable Lenders to honor requests for Overadvance Loans and to forbear from requiring the

applicable Borrowers to cure an Overadvance, (a) when no other Event of Default is known to Agent, as long as (i) the Overadvance does not continue for more than 30 consecutive days (and no Overadvance may exist for at least five consecutive days thereafter before further Overadvance Loans are required), and (ii) the Overadvance is not known by Agent to exceed 7.5% of the U.S. Borrowing Base with respect to the U.S. Borrowers, 7.5% of the Canadian Borrowing Base with respect to the Canadian Borrower, or 7.5% of the U.K. Borrowing Base with respect to the U.K. Borrower; and (b) regardless of whether an Event of Default exists, if Agent discovers an Overadvance not previously known by it to exist, as long as from the date of such discovery the Overadvance does not continue for more than 30 consecutive days. In no event shall Overadvance Loans be required that would cause the outstanding U.S. Revolver Exposure to exceed the aggregate U.S. Revolver Commitments, the outstanding Canadian Revolver Exposure to exceed the aggregate Canadian Revolver Commitments, or the outstanding U.K. Revolver Exposure to exceed the aggregate U.K. Revolver Commitments. Any funding of an Overadvance Loan or sufferance of an Overadvance shall not constitute a waiver by Agent or Lenders of the Event of Default caused thereby. In no event shall any Borrower or other Obligor be deemed a beneficiary of this Section nor authorized to enforce any of its terms. Required Lenders may at any time revoke Agent's authority to knowingly make further Overadvance Loans by written notice to Agent

2.1.6. **Protective Advances.** Agent shall be authorized, in its discretion, at any time that any conditions in **Section 6** are not satisfied, and without regard to the aggregate U.S. Revolver Commitments, the Canadian Revolver Commitments, or the U.K. Revolver Commitments, to make U.S. Base Rate Revolver Loans, Canadian Prime Rate Loans, and U.K. Base Rate Loans, as applicable (each a "Protective Advance") (a) up to an aggregate amount of (i) 10% of the aggregate Canadian Revolver Commitments (minus the aggregate amount of any outstanding Canadian Overadvances), with respect to the Canadian Borrower, (ii) 10% of the aggregate U.S. Revolver Commitments (minus the aggregate amount of any outstanding U.S. Overadvances), with respect to the U.S. Borrowers, or (iii) 10% of the aggregate U.K. Revolver Commitments (minus the aggregate amount of any outstanding U.K. Overadvances), with respect to the U.K. Borrower, in each case, outstanding at any time, if Agent deems such Loans necessary or desirable to preserve or protect Collateral, or to enhance the collectibility or repayment of Obligations; or (b) to pay any other amounts chargeable to Obligors under any Loan Documents, including costs, fees and expenses. Each Applicable Lender shall participate in each Protective Advance on a Pro Rata basis. Required Lenders may at any time revoke Agent's authority to make further Protective Advances under clause (a) by written notice to Agent. Absent such revocation, Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. All Protective Advances made by Agent with respect to U.S. Borrowers shall be U.S. Facility Obligations, secured by the U.S. Facility Collateral and shall be treated for all purposes as Extraordinary Expenses. All Protective Advances made by Agent with respect to Canadian Borrower shall be Canadian Facility Obligations, secured by the Canadian Facility Collateral and shall be treated for all purposes as Extraordinary Expenses. All Protective Advances made by Agent with respect to the U.K. Borrower shall be U.K. Facility Obligations, secured by the U.K. Facility Collateral and shall be treated for all purposes as Extraordinary Expenses. In no event shall Protective Advances be made by Agent if it would cause the outstanding U.S. Revolver Exposure to exceed the aggregate U.S. Revolver Commitments, the outstanding Canadian Revolver Exposure to exceed the aggregate Canadian Revolver Commitments, or the outstanding U.K. Revolver Exposure to exceed the aggregate U.K. Revolver Commitments.

2.1.7. **Increase in U.S. Revolver Commitments.** Borrowers may request an increase in the aggregate U.S. Revolver Commitments from time to time upon notice to Agent, as long as (a) the requested increase is in a minimum amount of \$10,000,000 and is offered on the same terms as the existing U.S. Revolver Commitments, except for fees mutually agreed upon by Borrowers and Agent, (b) increases under this Section do not exceed \$150,000,000 in the aggregate and no more than 3 increases are made, (c) no reduction in Revolver Commitments pursuant to **Section 2.1.4** has occurred prior to the requested increase, and (d) no Default or Event of Default shall have occurred and be continuing at the time of such increase or result therefrom. Agent shall promptly notify U.S. Lenders of the requested increase and, within 10 Business Days thereafter, each U.S. Lender shall notify Agent if and to what extent such Lender commits to increase its U.S. Revolver Commitment. Any U.S. Lender not responding within such period shall be deemed to have declined an increase. If U.S. Lenders fail to commit to the full requested increase, Eligible Assignees may issue additional U.S. Revolver Commitments and become U.S. Lenders hereunder. Agent may allocate, in its discretion, the increased U.S. Revolver Commitments among committing U.S. Lenders and, if necessary, Eligible Assignees. Provided the conditions set forth in **Section 6.2** are satisfied, total U.S. Revolver Commitments shall be increased by the requested amount (or such lesser amount committed by U.S. Lenders and Eligible Assignees) on a date agreed upon by Agent and Borrower Agent, but no later than 45 days following Borrowers' increase request. Agent, Borrowers, and new and existing Lenders shall execute and deliver such documents and agreements as Agent deems appropriate to evidence the increase in and allocations of U.S. Revolver Commitments. On the effective date of an increase, all outstanding U.S. Revolver Loans, U.S. LC Obligations and other exposures under the U.S. Revolver Commitments shall be reallocated among U.S. Lenders, and settled by Agent if necessary, in accordance with U.S. Lenders' adjusted shares of such U.S. Revolver Commitments.

## 2.2 **U.K. Letter of Credit Facility.**

2.2.1. **Issuance of U.K. Letters of Credit.** U.K. Issuing Bank shall issue U.K. Letters of Credit from time to time on and after the Closing Date until 30 days prior to the Facility Termination Date (or until the U.K. Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(a) The U.K. Borrower acknowledges that U.K. Issuing Bank's issuance of any U.K. Letter of Credit is conditioned upon U.K. Issuing Bank's receipt of a LC Application with respect to the requested U.K. Letter of Credit, as well as such other instruments and agreements as U.K. Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. U.K. Issuing Bank shall have no obligation to issue any U.K. Letter of Credit unless (i) U.K. Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender that is a U.K. Lender exists, such Lender or the U.K. Borrower has entered into arrangements satisfactory to Agent and U.K. Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, U.K. Issuing Bank receives written notice from U.K. Required Lenders that a LC Condition has not been satisfied, U.K. Issuing Bank shall not issue the requested U.K. Letter of Credit. Prior to receipt of any such notice, U.K. Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(b) U.K. Letters of Credit may be requested by the U.K. Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. The renewal or extension of any U.K. Letter of Credit shall be treated as the issuance of a new U.K. Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of U.K. Issuing Bank.

(c) The U.K. Borrower assumes all risks of the acts, omissions or misuses of any U.K. Letter of Credit by the beneficiary. In connection with issuance of any U.K. Letter of Credit, none of Agent, Issuing Banks or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a U.K. Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and the U.K. Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any U.K. Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Banks, Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of U.K. Issuing Bank under the Loan Documents shall be cumulative. U.K. Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims against the U.K. Borrower are discharged with proceeds of any U.K. Letter of Credit.

(d) In connection with its administration of and enforcement of rights or remedies under any U.K. Letters of Credit or LC Documents, U.K. Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by U.K. Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. U.K. Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. U.K. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to U.K. Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

#### 2.2.2. Reimbursement; Participations.

(a) If U.K. Issuing Bank honors any request for payment under a U.K. Letter of Credit, the U.K. Borrower shall pay to U.K. Issuing Bank, on the same day ("U.K. Reimbursement Date"), the amount paid by U.K. Issuing Bank under such U.K. Letter of Credit in the same currency in which the Letter of Credit was denominated unless otherwise specified by Agent or U.K. Issuing Bank (at their respective option) that it requires payment in Dollars, British Pounds or Euros calculated at the Spot Rate, together with interest at the interest rate for U.K. Base Rate Loans from the U.K. Reimbursement Date until payment by the U.K. Borrower. The

obligation of the U.K. Borrower to reimburse U.K. Issuing Bank for any payment made under a U.K. Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any U.K. Letter of Credit or the existence of any claim, setoff, defense or other right that the U.K. Borrower may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, the U.K. Borrower shall be deemed to have requested a Borrowing of a LIBOR Revolver Loan (the initial Interest Period of which shall be 30 days commencing on the relevant Reimbursement Date) in an amount necessary to pay all amounts due U.K. Issuing Bank on that U.K. Reimbursement Date and each U.K. Lender agrees to fund its Pro Rata share of such Borrowing whether or not the U.K. Revolver Commitments have terminated, a U.K. Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied. In the event that (i) a drawing denominated in a foreign currency (other than Dollars, British Pounds and Euros) (such foreign currency, a “U.K. Reimbursed Foreign Currency”) is to be reimbursed in Dollars, British Pounds or Euros pursuant to the first sentence in this **Section 2.2.2(a)**; and (ii) the Dollars, British Pounds or Euros amount, as applicable, paid by the U.K. Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the U.K. Reimbursed Foreign Currency equal to the drawing, the U.K. Borrower agrees, as a separate and independent obligation, to indemnify U.K. Issuing Bank for the loss resulting from its inability on that date to purchase the U.K. Reimbursed Foreign Currency in the full amount of the drawing.

(b) Upon issuance of a U.K. Letter of Credit, each U.K. Lender shall be deemed to have irrevocably and unconditionally purchased from U.K. Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all U.K. LC Obligations relating to the U.K. Letter of Credit. If U.K. Issuing Bank makes any payment under a U.K. Letter of Credit and the U.K. Borrower does not reimburse such payment on the U.K. Reimbursement Date, Agent shall promptly notify U.K. Lenders and each U.K. Lender shall promptly (within one Business Day) and unconditionally pay to Agent, for the benefit of U.K. Issuing Bank, the U.K. Lender’s Pro Rata share of such payment in the same currency as required of the U.K. Borrower in accordance with **Section 2.2.2(a)**. Upon request by a U.K. Lender, U.K. Issuing Bank shall furnish copies of any U.K. Letters of Credit and LC Documents in its possession at such time.

(c) The obligation of each U.K. Lender to make payments to Agent for the account of U.K. Issuing Bank in connection with U.K. Issuing Bank’s payment under a U.K. Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a U.K. Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Obligor may have with respect to any Obligations. U.K. Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by the U.K. Borrower or other Person of any obligations under any LC Documents. U.K. Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Obligor. U.K. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the

assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct. U.K. Issuing Bank shall not have any liability to any Lender if U.K. Issuing Bank refrains from any action under a Letter of Credit or LC Documents until it receives written instructions from U.K. Required Lenders.

2.2.3. **Cash Collateral**. If any U.K. LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b) that U.K. Availability is less than zero, or (c) within 10 Business Days prior to the U.K. Revolver Commitment Termination Date, then the U.K. Borrower shall, at U.K. Issuing Bank's or Agent's request, Cash Collateralize the stated amount of all outstanding U.K. Letters of Credit and pay to U.K. Issuing Bank the amount of all other U.K. LC Obligations. The U.K. Borrower shall, **on demand** by U.K. Issuing Bank or Agent from time to time, Cash Collateralize the Fronting Exposure of any Defaulting Lender which is a U.K. Lender. If the U.K. Borrower fails to provide any Cash Collateral as required hereunder, U.K. Lenders may (and shall upon direction of Agent) advance, as U.K. Revolver Loans, the amount of the Cash Collateral required (whether or not the U.K. Revolver Commitments have terminated, a U.K. Overadvance exists or the conditions in **Section 6** are satisfied).

2.2.4. **Resignation of U.K. Issuing Bank**. U.K. Issuing Bank may resign at any time upon notice to Agent and the U.K. Borrower. On the effective date of such resignation, U.K. Issuing Bank shall have no further obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and obligations of an Issuing Bank hereunder, including under **Sections 2.2, 12.6 and 14.2**, relating to any Letter of Credit issued prior to such date. Agent shall promptly appoint a replacement U.K. Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to the U.K. Borrower.

### **2.3 U.S. Letter of Credit Facility.**

2.3.1. **Issuance of U.S. Letters of Credit**. U.S. Issuing Bank shall issue U.S. Letters of Credit from time to time until 30 days prior to the Facility Termination Date (or until the U.S. Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(a) Each U.S. Borrower acknowledges that U.S. Issuing Bank's issuance of any U.S. Letter of Credit is conditioned upon U.S. Issuing Bank's receipt of a LC Application with respect to the requested U.S. Letter of Credit, as well as such other instruments and agreements as U.S. Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. U.S. Issuing Bank shall have no obligation to issue any U.S. Letter of Credit unless (i) U.S. Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender that is a U.S. Lender exists, such Lender or U.S. Borrowers have entered into arrangements satisfactory to Agent and U.S. Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, U.S. Issuing Bank receives written notice from U.S.

Required Lenders that a LC Condition has not been satisfied, U.S. Issuing Bank shall not issue the requested U.S. Letter of Credit. Prior to receipt of any such notice, U.S. Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(b) U.S. Letters of Credit may be requested by a U.S. Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. The renewal or extension of any U.S. Letter of Credit shall be treated as the issuance of a new U.S. Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of U.S. Issuing Bank.

(c) U.S. Borrowers assume all risks of the acts, omissions or misuses of any U.S. Letter of Credit by the beneficiary. In connection with issuance of any U.S. Letter of Credit, none of Agent, Issuing Banks or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a U.S. Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and a U.S. Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any U.S. Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Banks, Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of U.S. Issuing Bank under the Loan Documents shall be cumulative. U.S. Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims against U.S. Borrowers are discharged with proceeds of any U.S. Letter of Credit.

(d) In connection with its administration of and enforcement of rights or remedies under any U.S. Letters of Credit or LC Documents, U.S. Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by U.S. Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. U.S. Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. U.S. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to U.S. Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

(e) Obligors, Agent and Lenders hereby acknowledge and agree that all Existing Letters of Credit shall constitute U.S. Letters of Credit under this Agreement on and after the Original Agreement Closing Date with the same effect as if such Existing Letters of Credit were issued by U.S. Issuing Bank at the request of U.S. Borrowers on the Original Agreement Closing Date.

### 2.3.2. Reimbursement; Participations.

(a) If U.S. Issuing Bank honors any request for payment under a U.S. Letter of Credit, U.S. Borrowers shall pay to U.S. Issuing Bank, on the same day ("U.S. Reimbursement Date"), the amount paid by U.S. Issuing Bank under such U.S. Letter of Credit in the same currency in which the Letter of Credit was denominated unless otherwise specified by Agent or U.S. Issuing Bank (at their respective option) that it requires payment in Dollars calculated at the Spot Rate, together with interest at the interest rate for U.S. Base Rate Revolver Loans from the U.S. Reimbursement Date until payment by U.S. Borrowers. The obligation of U.S. Borrowers to reimburse U.S. Issuing Bank for any payment made under a U.S. Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any U.S. Letter of Credit or the existence of any claim, setoff, defense or other right that U.S. Borrowers may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, U.S. Borrowers shall be deemed to have requested a Borrowing of U.S. Base Rate Revolver Loans in an amount necessary to pay all amounts due U.S. Issuing Bank on any U.S. Reimbursement Date and each U.S. Lender agrees to fund its Pro Rata share of such Borrowing whether or not the U.S. Revolver Commitments have terminated, a U.S. Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied. In the event that (i) a drawing denominated in a foreign currency (such foreign currency, a "U.S. Reimbursed Foreign Currency") is to be reimbursed in Dollars pursuant to the first sentence in this **Section 2.3.2(a)**; and (ii) the Dollars amount paid by the U.S. Borrowers shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the U.S. Reimbursed Foreign Currency equal to the drawing, the U.S. Borrowers agree, as a separate and independent obligation, to indemnify U.S. Issuing Bank for the loss resulting from its inability on that date to purchase the U.S. Reimbursed Foreign Currency in the full amount of the drawing.

(b) Upon issuance of a U.S. Letter of Credit, each U.S. Lender shall be deemed to have irrevocably and unconditionally purchased from U.S. Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all U.S. LC Obligations relating to the U.S. Letter of Credit. If U.S. Issuing Bank makes any payment under a U.S. Letter of Credit and U.S. Borrowers do not reimburse such payment on the U.S. Reimbursement Date, Agent shall promptly notify U.S. Lenders and each U.S. Lender shall promptly (within one Business Day) and unconditionally pay to Agent, for the benefit of U.S. Issuing Bank, the U.S. Lender's Pro Rata share of such payment in the same currency as required of the U.S. Borrowers in accordance with **Section 2.3.2(a)**. Upon request by a U.S. Lender, U.S. Issuing Bank shall furnish copies of any U.S. Letters of Credit and LC Documents in its possession at such time.

(c) The obligation of each U.S. Lender to make payments to Agent for the account of U.S. Issuing Bank in connection with U.S. Issuing Bank's payment under a U.S. Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a U.S. Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Obligor may have with respect to any Obligations. U.S. Issuing Bank does not assume any responsibility

for any failure or delay in performance or any breach by any U.S. Borrower or other Person of any obligations under any LC Documents. U.S. Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Obligor. U.S. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct. U.S. Issuing Bank shall not have any liability to any Lender if U.S. Issuing Bank refrains from any action under a Letter of Credit or LC Documents until it receives written instructions from U.S. Required Lenders.

2.3.3. **Cash Collateral**. If any U.S. LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b) that U.S. Availability is less than zero, or (c) within 10 Business Days prior to the U.S. Revolver Commitment Termination Date, then U.S. Borrowers shall, at U.S. Issuing Bank's or Agent's request, Cash Collateralize the stated amount of all outstanding U.S. Letters of Credit and pay to U.S. Issuing Bank the amount of all other U.S. LC Obligations. U.S. Borrowers shall, **on demand** by U.S. Issuing Bank or Agent from time to time, Cash Collateralize the Fronting Exposure of any Defaulting Lender which is a U.S. Lender. If U.S. Borrowers fail to provide any Cash Collateral as required hereunder, U.S. Lenders may (and shall upon direction of Agent) advance, as U.S. Revolver Loans, the amount of the Cash Collateral required (whether or not the U.S. Revolver Commitments have terminated, a U.S. Overadvance exists or the conditions in **Section 6** are satisfied).

2.3.4. **Resignation of U.S. Issuing Bank**. U.S. Issuing Bank may resign at any time upon notice to Agent and U.S. Borrowers. On the effective date of such resignation, U.S. Issuing Bank shall have no further obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and obligations of an Issuing Bank hereunder, including under **Sections 2.3, 12.6 and 14.2**, relating to any Letter of Credit issued prior to such date. Agent shall promptly appoint a replacement U.S. Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to U.S. Borrowers.

## **2.4 Canadian Letter of Credit Facility.**

2.4.1. **Issuance of Canadian Letters of Credit**. Canadian Issuing Bank shall issue Canadian Letters of Credit from time to time until 30 days prior to the Facility Termination Date (or until the Canadian Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(a) Canadian Borrower acknowledges that Canadian Issuing Bank's issuance of any Canadian Letter of Credit is conditioned upon Canadian Issuing Bank's receipt of a LC Application with respect to the requested Canadian Letter of Credit, as well as such other

instruments and agreements as Canadian Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. Canadian Issuing Bank shall have no obligation to issue any Canadian Letter of Credit unless (i) Canadian Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender that is a Canadian Lender exists, such Lender or Canadian Borrower has entered into arrangements satisfactory to Agent and Canadian Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, Canadian Issuing Bank receives written notice from Canadian Required Lenders that a LC Condition has not been satisfied, Canadian Issuing Bank shall not issue the requested Canadian Letter of Credit. Prior to receipt of any such notice, Canadian Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(b) Canadian Letters of Credit may be requested by Canadian Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. The renewal or extension of any Canadian Letter of Credit shall be treated as the issuance of a new Canadian Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of Canadian Issuing Bank.

(c) Canadian Borrower assumes all risks of the acts, omissions or misuses of any Canadian Letter of Credit by the beneficiary. In connection with issuance of any Canadian Letter of Credit, none of Agent, Issuing Banks or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Canadian Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and Canadian Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Canadian Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Banks, Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of Canadian Issuing Bank under the Loan Documents shall be cumulative. Canadian Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims against Canadian Borrower are discharged with proceeds of any Canadian Letter of Credit.

(d) In connection with its administration of and enforcement of rights or remedies under any Canadian Letters of Credit or LC Documents, Canadian Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by Canadian Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Canadian Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. Canadian Issuing

Bank may employ agents and attorneys-in-fact in connection with any matter relating to Canadian Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

#### 2.4.2. Reimbursement; Participations.

(a) If Canadian Issuing Bank honors any request for payment under a Canadian Letter of Credit, Canadian Borrower shall pay to Canadian Issuing Bank, on the same day (“Canadian Reimbursement Date”), the amount paid by Canadian Issuing Bank under such Canadian Letter of Credit in the same currency in which the Letter of Credit was denominated unless otherwise specified by Agent or Canadian Issuing Bank (at their respective option) that it requires payment in Dollars or Canadian Dollars calculated at the Spot Rate, together with interest at the interest rate for Canadian Prime Rate Loans from the Canadian Reimbursement Date until payment by Canadian Borrower. The obligation of Canadian Borrower to reimburse Canadian Issuing Bank for any payment made under a Canadian Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Canadian Letter of Credit or the existence of any claim, setoff, defense or other right that Canadian Borrower may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, Canadian Borrower shall be deemed to have requested a Borrowing of Canadian Prime Rate Loans in an amount necessary to pay all amounts due Canadian Issuing Bank on any Canadian Reimbursement Date and each Canadian Lender agrees to fund its Pro Rata share of such Borrowing whether or not the Canadian Revolver Commitments have terminated, a Canadian Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied. In the event that (i) a drawing denominated in a foreign currency (other than Dollars or Canadian Dollars) (such foreign currency, a “Canadian Reimbursed Foreign Currency”) is to be reimbursed in Dollars or Canadian Dollars pursuant to the first sentence in this **Section 2.4.2(a)**; and (ii) the Dollars or Canadian Dollars amount, as applicable, paid by Canadian Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Canadian Reimbursed Foreign Currency equal to the drawing, Canadian Borrower agrees, as a separate and independent obligation, to indemnify Canadian Issuing Bank for the loss resulting from its inability on that date to purchase the Canadian Reimbursed Foreign Currency in the full amount of the drawing.

(b) Upon issuance of a Canadian Letter of Credit, each Canadian Lender shall be deemed to have irrevocably and unconditionally purchased from Canadian Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all Canadian LC Obligations relating to the Canadian Letter of Credit. If Canadian Issuing Bank makes any payment under a Canadian Letter of Credit and Canadian Borrower does not reimburse such payment on the Canadian Reimbursement Date, Agent shall promptly notify Canadian Lenders and each Canadian Lender shall promptly (within one Business Day) and unconditionally pay to Agent, for the benefit of Canadian Issuing Bank, the Canadian Lender’s Pro Rata share of such payment in the same currency as required of the Canadian Borrower in accordance with **Section 2.4.2(a)**. Upon request by a Canadian Lender, Canadian Issuing Bank shall furnish copies of any Canadian Letters of Credit and LC Documents in its possession at such time.

(c) The obligation of each Canadian Lender to make payments to Agent for the account of Canadian Issuing Bank in connection with Canadian Issuing Bank’s payment under a

Canadian Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Canadian Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Obligor may have with respect to any Obligations. Canadian Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by Canadian Borrower or other Person of any obligations under any LC Documents. Canadian Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Obligor. Canadian Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct. Canadian Issuing Bank shall not have any liability to any Lender if Canadian Issuing Bank refrains from any action under a Letter of Credit or LC Documents until it receives written instructions from Canadian Required Lenders.

2.4.3. Cash Collateral. If any Canadian LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b) that Canadian Availability is less than zero, or (c) within 10 Business Days prior to the Canadian Revolver Commitment Termination Date, then Canadian Borrower shall, at Canadian Issuing Bank's or Agent's request, Cash Collateralize the stated amount of all outstanding Canadian Letters of Credit and pay to Canadian Issuing Bank the amount of all other Canadian LC Obligations. Canadian Borrower shall, **on demand** by Canadian Issuing Bank or Agent from time to time, Cash Collateralize the Fronting Exposure of any Defaulting Lender which is a Canadian Lender. If Canadian Borrower fails to provide any Cash Collateral as required hereunder, Canadian Lenders may (and shall upon direction of Agent) advance, as Canadian Revolver Loans, the amount of the Cash Collateral required (whether or not the Canadian Revolver Commitments have terminated, a Canadian Overadvance exists or the conditions in **Section 6** are satisfied).

2.4.4. Resignation of Canadian Issuing Bank. Canadian Issuing Bank may resign at any time upon notice to Agent and Canadian Borrower. On the effective date of such resignation, Canadian Issuing Bank shall have no further obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and obligations of an Issuing Bank hereunder, including under **Sections 2.4, 12.6 and 14.2**, relating to any Letter of Credit issued prior to such date. Agent shall promptly appoint a replacement Canadian Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to Canadian Borrower.

## **2.5 Term Loans.**

2.5.1. Term Loans to U.S. Borrowers. Each U.S. Lender agrees, severally (and not jointly) on a Pro Rata basis up to its Term Loan Commitment, upon the terms and subject to the conditions set forth herein, to make a one-time Term Loan to the U.S. Borrowers on any Business Day during the period from the Closing Date to the date that is six months after the Closing Date; provided, however, that such U.S. Lenders shall have no obligation to the U.S. Borrowers whatsoever to honor any request for a Term Loan on or after the Term Loan Commitment Termination Date or to the extent the aggregate Term Loans will exceed the Term Loan Cap on the proposed funding date of the Term Loans (in which case such U.S. Lenders shall be obligated to fund the Term Loans in an amount up to the Term Loan Cap). The Term Loans shall bear interest as set forth in **Section 3.1**. The Term Loans shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of Base Rate Term Loans or LIBOR Term Loans. The Term Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all of the U.S. Facility Collateral. U.S. Borrowers shall be jointly and severally liable to pay all of the Term Loans. The Term Loans shall be funded and repaid in Dollars. For clarification, once repaid, the Term Loans may not be reborrowed.

2.5.2. Term Notes. The Term Loans made by each U.S. Lender and interest accruing thereon shall be evidenced by the records of Agent and such Lender. At the request of any U.S. Lender, the U.S. Borrowers shall execute and deliver a promissory note to such Lender, evidencing its Term Loans.

2.5.3. Use of Term Loan Proceeds. The proceeds of the Term Loans shall be used by U.S. Borrowers solely (a) to pay Obligations in accordance with this Agreement; and (b) for working capital and other lawful corporate purposes of U.S. Borrowers.

2.5.4. Termination of Term Loan Commitments. The Term Loan Commitments shall terminate on the Term Loan Commitment Termination Date unless sooner terminated in accordance with this Agreement. Any unused Term Loan Commitment shall terminate on the date of the making of the Term Loans. Upon at least 10 days' prior written notice to Agent from the Borrower Agent, U.S. Borrowers may, at their option, terminate the Term Loan Commitments without premium or penalty. Any notice of termination given by Borrowers pursuant to this **Section 2.5.4** shall be irrevocable but may be conditioned on a refinancing or another material event.

## **SECTION 3. INTEREST, FEES AND CHARGES**

### **3.1 Interest.**

#### **3.1.1. Rates and Payment of Interest.**

(a) The Obligations shall bear interest (i) if a U.S. Base Rate Revolver Loan, at the U.S. Base Rate in effect from time to time, plus the Applicable Margin, (ii) if a LIBOR Revolver Loan, at LIBOR for the applicable Interest Period, plus the Applicable Margin plus with respect to any U.K. Revolver Loan that is a LIBOR Loan, any Mandatory Costs; (iii) if a Canadian Prime Rate Loan, at the Canadian Prime Rate in effect from time to time, plus the Applicable

Margin, (iv) if a Canadian Base Rate Loan, at the Canadian Base Rate in effect from time to time, plus the Applicable Margin, (v) if a Canadian BA Rate Loan, at the Canadian BA Rate for the applicable Interest Period, plus the Applicable Margin, (vi) if a U.K. Base Rate Loan, at the U.K. Base Rate in effect from time to time, plus the Applicable Margin, (vii) if a Base Rate Term Loan, at the U.S. Base Rate in effect from time to time, plus the Applicable Margin, (viii) if a LIBOR Term Loan, at LIBOR for the applicable Interest Period, plus the Applicable Margin, (ix) if any other U.S. Facility Obligation (including, to the extent permitted by law, interest not paid when due), at the U.S. Base Rate in effect from time to time, plus the Applicable Margin for U.S. Base Rate Revolver Loans; (x) if any other Canadian Facility Obligation (including, to the extent permitted by law, interest not paid when due), at the Canadian Prime Rate in effect from time to time, plus the Applicable Margin for Canadian Prime Rate Loans; and (xi) if any other U.K. Facility Obligation (including, to the extent permitted by law, interest not paid when due), at the U.K. Base Rate in effect from time to time, plus the Applicable Margin for U.K. Base Rate Loans. Interest shall accrue from the date the Loan is advanced or the Obligation is incurred or payable, until paid by the applicable Borrower(s). If a Loan is repaid on the same day made, one day's interest shall accrue.

(b) Interest on the Revolver Loans shall be payable in the currency (*i.e.*, Dollars, Canadian Dollars, British Pounds or Euro, as the case may be) of the underlying Revolver Loan (which shall be Dollars only in the case of any U.K. Base Rate Loan).

(c) During an Insolvency Proceeding with respect to any Obligor, or during any other Event of Default if Agent or Required Lenders in their discretion so elect, Obligations shall bear interest at the Default Rate (whether before or after any judgment). Each Obligor acknowledges that the cost and expense to Agent and Lenders due to an Event of Default are difficult to ascertain and that the Default Rate is a fair and reasonable estimate to compensate Agent and Lenders for this.

(d) Interest accrued on the Loans shall be due and payable (i) on the last day of the relevant Interest Period with respect to Interest Period Loans (or in the case of an Interest Period Loan with an Interest Period of more than 90 days' duration, on each quarterly anniversary of the first day of such Interest Period) or, in arrears on the first day of each month with respect to Base Rate Loans, and (ii) on any date of prepayment, with respect to the principal amount of Loans being prepaid. In addition, interest accrued on the Canadian Revolver Loans shall be due and payable in arrears on the Canadian Revolver Commitment Termination Date, interest accrued on the U.S. Revolver Loans shall be due and payable in arrears on the U.S. Revolver Commitment Termination Date, and interest accrued on the U.K. Revolver Loans shall be due and payable in arrears on the U.K. Revolver Commitment Termination Date. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents and, if no payment date is specified, shall be due and payable **on demand**. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable **on demand**.

### 3.1.2. Application of LIBOR to Outstanding Loans.

(a) Borrowers may on any Business Day, subject to delivery of a Notice of Conversion/Continuation, elect to convert any portion of the U.S. Base Rate Loans, the Canadian Base Rate Loans, or the U.K. Base Rate Loans, as applicable, to, or to continue any LIBOR Loan

at the end of its Interest Period as, a LIBOR Loan; provided that, in the case of U.K. Base Rate Loans only, portions of such Loans may be converted to a LIBOR Loan denominated in Dollars only. During any Default or Event of Default, Agent may (and shall at the direction of Required Lenders) declare that no Loan may be made, converted or continued as a LIBOR Loan.

(b) Whenever Borrowers desire to convert or continue Loans as LIBOR Loans, Borrower Agent shall give Agent a Notice of Conversion/Continuation, no later than 11:00 a.m. at least three Business Days (and at least four Business Days in the case of a U.K. Revolver Loan) before the requested conversion or continuation date. Promptly after receiving any such notice, Agent shall notify each Applicable Lender (or Lenders with outstanding Term Loans if related to the Term Loans) thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be 30 days if not specified). If, upon the expiration of any Interest Period in respect of any LIBOR Loans, Borrower Agent shall have failed to deliver a Notice of Conversion/Continuation, Borrowers shall be deemed to have elected to convert such Loans into U.S. Base Rate Loans (if owing by the U.S. Borrowers), Canadian Base Rate Loans (if owing by the Canadian Borrower), or a U.K. Base Rate Loan (if owing by the U.K. Borrower) if that LIBOR Loan was denominated in Dollars, or (as the case may be) a LIBOR Loan (the initial Interest Period of which shall be 30 days commencing on the date of expiration of the Interest Period applicable to that LIBOR Loan) if that LIBOR Loan was denominated in British Pounds or Euro.

### 3.1.3. Application of Canadian BA Rate to Outstanding Loans.

(a) Canadian Borrower may on any Business Day, subject to delivery of a Notice of Conversion/Continuation and the other terms hereof, elect to convert any portion of the Canadian Prime Rate Loans, or to continue any Canadian BA Rate Loan at the end of its Interest Period as, a Canadian BA Rate Loan. During any Default or Event of Default, Agent may (and shall at the direction of Required Lenders) declare that no Loan may be made, converted or continued as a Canadian BA Rate Loan.

(b) Whenever Canadian Borrower desires to convert or continue Loans as Canadian BA Rate Loans, Borrower Agent shall give Agent a Notice of Conversion/Continuation, no later than 11:00 a.m. at least three Business Days before the requested conversion or continuation date. Promptly after receiving any such notice, Agent shall notify each Canadian Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be one month if not specified). If, upon the expiration of any Interest Period in respect of any Canadian BA Rate Loans, Borrower Agent shall have failed to deliver a Notice of Conversion/Continuation with respect thereto as required above, Canadian Borrower shall be deemed to have elected to convert such Loans into Canadian Prime Rate Loans.

3.1.4. Interest Periods. In connection with the making, conversion or continuation of any LIBOR Loans or Canadian BA Rate Loans, Borrower Agent shall select an interest period ("Interest Period") to apply, which interest period shall be 30, 60, 90 or 180 days; provided, however, that:

(a) the Interest Period shall commence on the date the Loan is made or continued as, or converted into, a LIBOR Loan or Canadian BA Rate Loan, and shall expire on the numerically corresponding day in the calendar month at its end;

(b) if any Interest Period commences on a day for which there is no corresponding day in the calendar month at its end or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month; and if any Interest Period would expire on a day that is not a Business Day, the period shall expire on the next Business Day; and

(c) no Interest Period shall extend beyond: (i) the U.S. Revolver Commitment Termination Date in the case of any Revolving Loan owing by the U.S. Borrowers, (ii) the Canadian Revolver Commitment Termination Date in the case of any Loan owing by the Canadian Borrower, (iii) the U.K. Revolver Commitment Termination Date in the case of any Loan owing by the U.K. Borrower, and (iv) the Term Loan Maturity Date in the case of any Term Loan owing by the U.S. Borrowers. No Interest Period for a LIBOR Term Loan may be established that would require repayment before the end of an Interest Period in order to make any scheduled principal payment on Term Loans.

3.1.5. Interest Rate Not Ascertainable. If Agent shall determine that, on any date for determining LIBOR or the Canadian BA Rate, due to any circumstance affecting the London interbank market or the Canadian interbank bankers' acceptances market, respectively, adequate and fair means do not exist for ascertaining such rate on the basis provided herein, then Agent shall immediately notify the Borrower Agent of such determination. Until Agent notifies the Borrower Agent that such circumstance no longer exists, the obligation of the Lenders to make LIBOR Loans or Canadian BA Rate Loans, as applicable, shall be suspended, and no further Loans may be converted into or continued as LIBOR Loans or Canadian BA Rate Loans, as applicable.

### 3.2 Fees.

#### 3.2.1. Unused Line Fee.

(a) U.S. Borrowers shall pay to Agent, for the Pro Rata benefit of U.S. Lenders, a fee equal to the U.S. Unused Line Fee Rate times the amount by which the U.S. Revolver Commitments exceed the average daily balance of U.S. Revolver Loans and stated amount of U.S. Letters of Credit during any month. Such fee shall be payable in arrears, on the first day of each month and on the U.S. Revolver Commitment Termination Date.

(b) Canadian Borrower shall pay to Agent, for the Pro Rata benefit of Canadian Lenders, a fee equal to the Canadian Unused Line Fee Rate times the amount by which the Canadian Revolver Commitments exceed the average daily balance of Canadian Revolver Loans and stated amount of Canadian Letters of Credit during any month. Such fee shall be payable in arrears, on the first day of each month and on the Canadian Revolver Commitment Termination Date.

(c) The U.K. Borrower shall pay to Agent, for the Pro Rata benefit of U.K. Lenders, a fee equal to the U.K. Unused Line Fee Rate times the amount by which the U.K. Revolver Commitments exceed the average daily balance of U.K. Revolver Loans and stated

amount of U.K. Letters of Credit during any month. Such fee shall be payable in arrears, on the first day of each month and on the U.K. Revolver Commitment Termination Date.

3.2.2. **U.S. LC Facility Fees.** The U.S. Borrowers shall pay (a) to Agent, for the Pro Rata benefit of the U.S. Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for LIBOR Revolver Loans times the average daily stated amount of U.S. Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the stated amount of each U.S. Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (c) to the U.S. Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of U.S. Letters of Credit, which charges shall be paid as and when incurred. At the election of Agent or the U.S. Required Lenders, during an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum.

3.2.3. **Canadian LC Facility Fees.** The Canadian Borrower shall pay (a) to Agent, for the Pro Rata benefit of the Canadian Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for Canadian BA Rate Loans times the average daily stated amount of Canadian Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the stated amount of each Canadian Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (c) to the Canadian Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Canadian Letters of Credit, which charges shall be paid as and when incurred. At the election of Agent or the Canadian Required Lenders, during an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum.

3.2.4. **U.K. LC Facility Fees.** The U.K. Borrower shall pay (a) to Agent, for the Pro Rata benefit of the U.K. Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for LIBOR Revolver Loans times the average daily stated amount of U.K. Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the stated amount of each U.K. Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (c) to the U.K. Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of U.K. Letters of Credit, which charges shall be paid as and when incurred. At the election of Agent or the U.K. Required Lenders, during an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum.

3.2.5. **U.S. Term Loan Fees.** U.S. Borrowers shall pay to Agent, for the Pro Rata benefit of U.S. Lenders with Term Loan Commitments, a fee equal to the Term Loan Unused Commitment Fee Rate times the Term Loan Commitments during each month from the Closing to the earlier of (a) date of the making of the Term Loans or (b) Term Loan Commitment Termination Date. Such fee shall be payable in arrears, on the first day of each month and on the earlier of (x) date of the making of the Term Loans or (y) the Term Loan Commitment Termination Date.

3.2.6. **Other Fees.** Borrowers shall pay such other fees as described in the Fee Letters.

**3.3 Computation of Interest, Fees, Yield Protection.** All interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 360 days, or, in the case of (a) interest based on the Canadian Prime Rate or Canadian BA Rate or (b) a Revolver Loan made in British Pounds, on the basis of a 365 day year, as the case may be. Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by any Borrower under **Section 3.4, 3.5, 3.7, 3.9 or 5.9**, submitted to the Borrower Agent by Agent or the affected Lender or Issuing Bank, as applicable, shall be final, conclusive and binding for all purposes, absent manifest error, and the Borrowers shall pay such amounts to the appropriate party within 10 days following receipt of the certificate. For the purposes of the *Interest Act* (Canada), the yearly rate of interest to which any rate calculated on the basis of a period of time different from the actual number of days in the year (360 days, for example) is equivalent is the stated rate multiplied by the actual number of days in the year (365 or 366, as applicable) and divided by the number of days in the shorter period (360 days, in the example), and the parties hereto acknowledge that there is a material distinction between the nominal and effective rates of interest and that they are capable of making the calculations necessary to compare such rates and that the calculations herein are to be made using the nominal rate method and not on any basis that gives effect to the principle of deemed reinvestment of interest. Each Canadian Domiciled Obligor confirms that it fully understands and is able to calculate the rate of interest applicable to Loans and other Obligations based on the methodology for calculating per annum rates provided for in this Agreement and each Canadian Domiciled Obligor hereby irrevocably agrees not to plead or assert, whether by way of defense or otherwise, in any proceeding relating to this Agreement or to any other Loan Documents, that the interest payable under this Agreement and the calculation thereof has not been adequately disclosed to the Canadian Domiciled Obligors as required pursuant to Section 4 of the *Interest Act* (Canada).

**3.4 Reimbursement Obligations.** Borrowers within each Borrower Group shall reimburse Agent and each Lender for all Extraordinary Expenses incurred by Agent or such Lender in reference to such Borrower Group or its related Obligations or Collateral. In addition to such Extraordinary Expenses, such Borrowers shall also reimburse Agent for all legal, accounting, appraisal, consulting, and other fees, costs and expenses incurred by it in connection with (a) negotiation and preparation of any Loan Documents, including any amendment or other modification thereof; (b) administration of and actions relating to any Collateral for its Obligations, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any such Collateral, to maintain any insurance required hereunder or to verify such Collateral; and (c) subject to any limits of **Section 10.1.1(b)**, each inspection, audit or appraisal with respect to any Obligor within such Borrowers' related Obligor Group or Collateral securing such Obligor Group's Obligations, whether prepared by Agent's personnel or a third party. All legal, accounting and consulting fees shall be charged to Borrowers by Agent's professionals at their full hourly rates, regardless of any reduced or alternative fee billing arrangements that Agent, any Lender or any of their Affiliates may have with such

professionals with respect to this or any other transaction. If, for any reason (including inaccurate reporting on financial statements, a Borrowing Base Certificate, or a Compliance Certificate), it is determined that a higher Applicable Margin, U.S. Unused Line Fee Rate, Canadian Unused Line Fee Rate, or U.K. Unused Line Fee Rate should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and the applicable Borrowers shall immediately pay to Agent, for the Pro Rata benefit of Applicable Lenders (or Lenders with outstanding Term Loans in the case of interest related to the Term Loans), an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid. All amounts payable by Borrowers under this Section shall be due **on demand**.

**3.5 Illegality.** If any Lender determines that any Applicable 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 Loans or Canadian BA Rate Loans, or to determine or charge interest rates based upon LIBOR or the Canadian BA Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, the applicable Available Currency in the London interbank market, or Canadian Dollars through bankers' acceptances, then, on notice thereof by such Lender to Agent, any obligation of such Lender to make or continue LIBOR Loans or Canadian BA Rate Loans, as applicable, or to convert U.S. Base Rate Loans or Canadian Base Rate Loans to LIBOR Loans, or Canadian Prime Rate Loans to Canadian BA Rate Loans, or U.K. Base Rate Loans to LIBOR Loans, as applicable, shall be suspended until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist. Upon delivery of such notice, the applicable Borrower(s) with respect to such Loans shall prepay or, if applicable, convert all LIBOR Loans of such Lender to U.S. Base Rate Loans, Canadian Base Rate Loans or U.K. Base Rate Loans (which alternative to prepayment aforesaid shall only be applicable in relation to any LIBOR Loans of such Lenders to the U.K. Borrower in the case of any such LIBOR Loans denominated in Dollars), or all Canadian Prime Rate Loans to Canadian BA Rate Loans, as applicable, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Loans or Canadian BA Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Loans or Canadian BA Rate Loans. Upon any such prepayment or conversion, the applicable Borrower(s) with respect to such Loans shall also pay accrued interest on the amount so prepaid or converted.

**3.6 Inability to Determine Rates.** If the U.S. Required Lenders, with respect to U.S. Revolver Loans, or the U.S. Required Term Lenders, with respect to Term Loans, or the Canadian Required Lenders, with respect to Canadian Revolver Loans, or the U.K. Required Lenders, with respect to U.K. Revolver Loans, notify Agent for any reason in connection with a request for a Borrowing of, or conversion to or continuation of, a LIBOR Loan or a Canadian BA Rate Loan that (a) deposits or bankers' acceptances in the relevant Available Currency are not being offered to, as regards LIBOR, banks in the London interbank eurocurrency market or, as regards Canadian BA Rate, Persons in Canada, for the applicable amount and Interest Period of such Loan, (b) adequate and reasonable means do not exist for determining LIBOR or the Canadian BA Rate for the requested Interest Period, or (c) LIBOR or the Canadian BA Rate for the requested Interest Period does not adequately and fairly reflect the cost to such Lenders of funding such Loan, then Agent will promptly so notify the Borrower Agent and each Applicable Lender (or Lenders with outstanding Term Loans if related to Term Loans). Thereafter, the obligation of the Applicable

Lenders (or Lenders with Term Loan Commitments or outstanding Term Loans if related to the Term Loans) to make or maintain the affected LIBOR Loans or Canadian BA Rate Loans shall be suspended until Agent (upon instruction by the U.S. Required Lenders, U.S. Required Term Lenders, Canadian Required Lenders or U.K. Required Lenders, as applicable) revokes such notice. Upon receipt of such notice, the Borrower Agent may revoke any pending request for a Borrowing of, conversion to or continuation of a LIBOR Loan or a Canadian BA Rate Loan or, failing that, will be deemed to have submitted a request for a U.S. Base Rate Loan, a Canadian Prime Rate Loan or a U.K. Base Rate Loan (but in the case of any such pending request in relation to a LIBOR Loan for the U.K. Borrower, if (a) that LIBOR Loan was denominated in British Pounds or Euro, the Borrower Agent shall be deemed to have revoked any such pending request for a Borrowing of, conversion to or continuation of that LIBOR Loan, and the U.K. Borrower shall repay any such outstanding LIBOR Loan which was the subject of a continuation request, and (b) only if that LIBOR Loan was denominated in Dollars shall the Borrower Agent be deemed to have submitted a request for a U.K. Base Rate Loan).

### **3.7 Increased Costs; Capital Adequacy.**

3.7.1. Change in Law. 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 (except any reserve requirement reflected in LIBOR or the Canadian BA Rate or Mandatory Costs) or any Issuing Bank;

(b) subject any Lender or any Issuing Bank to any Tax with respect to any Loan, Loan Document, Letter of Credit or participation in LC Obligations, or change the basis of taxation of payments to such Lender or such Issuing Bank in respect thereof (except for Indemnified Taxes or Other Taxes covered by **Section 5.9** (or would be covered by **Section 5.9** but for exclusions in **Sections 5.9.2 and 5.9.13**) and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or such Issuing Bank); or

(c) impose on any Lender or any Issuing Bank or the London interbank market or the Canadian bankers' acceptances market any other condition, cost or expense affecting any Loan, Loan Document, Letter of Credit, participation in LC Obligations, or Commitment;

and the result thereof shall be to increase the cost to such Lender of making or maintaining any LIBOR Loan or Canadian BA Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such Issuing Bank 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 such Issuing Bank hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such Issuing Bank, the Borrower(s) of any Borrower Group with respect to such Commitments, Loans, Letters of Credit or participations in LC Obligations) will pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as applicable, for such additional costs incurred or reduction suffered.

**3.7.2. Capital Adequacy.** If any Lender or any Issuing Bank determines that any Change in Law affecting such Lender or such Issuing Bank or any Lending Office of such Lender or such Lender's or such Issuing Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's, such Issuing Bank's or holding company's capital as a consequence of this Agreement, or such Lender's or such Issuing Bank's Commitments, Loans, Letters of Credit or participations in LC Obligations, to a level below that which such Lender, such Issuing Bank or holding company could have achieved but for such Change in Law (taking into consideration such Lender's, such Issuing Bank's and holding company's policies with respect to capital adequacy), then from time to time the Borrowers (or the applicable Borrower(s) of any Borrower Group with respect to such Commitments, Loans, Letters of Credit or participations in LC Obligations) will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate it or its holding company for any such reduction suffered.

**3.7.3. Compensation.** Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but the Borrower(s) of any Borrower Group shall not be required to compensate a Lender or an Issuing Bank for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such Issuing Bank notifies the Borrower Agent of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

**3.8 Mitigation.** If any Lender gives a notice under **Section 3.5** or requests compensation under **Section 3.7**, or if the Borrower(s) of any Borrower Group are required to pay additional amounts with respect to a Lender under **Section 5.9**, then such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or unlawful. The Borrower(s) of each affected Borrower Group shall pay all reasonable costs and expenses incurred by any Lender that has issued a Commitment to such Borrower Group in connection with any such designation or assignment.

**3.9 Funding Losses.** If for any reason (other than default by a Lender) (a) any Borrowing of, or conversion to or continuation of, a LIBOR Loan or a Canadian BA Rate Loan does not occur on the date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn), (b) any repayment or conversion of a LIBOR Loan or a Canadian BA Rate Loan occurs on a day other than the end of its Interest Period, (c) a Lender (other than a Defaulting Lender) is required to assign a LIBOR Loan or Canadian BA Rate Loan prior to the end of its Interest Period pursuant to **Section 13.4**, or (d) the Borrower(s) of any Borrower Group fail(s) to repay a LIBOR Loan or a Canadian BA Rate Loan when required hereunder, then such applicable Borrower(s) shall pay to Agent its customary administrative charge and to each Applicable Lender all losses and expenses that it sustains as a consequence thereof, including loss of anticipated profits and any loss or expense arising from liquidation or

redeployment of funds or from fees payable to terminate deposits of matching funds but excluding the Applicable Margin and Mandatory Costs. The Lenders shall not be required to purchase deposits in the London interbank market or any other offshore market to fund any LIBOR Loan or to transact in bankers' acceptances to make any Canadian BA Rate Loan, but the provisions hereof shall be deemed to apply as if each Applicable Lender had purchased such deposits to fund its LIBOR Loans or Canadian BA Rate Loans, as applicable.

**3.10 Maximum Interest.** 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 ("maximum rate"). If 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 Obligations of the Borrower Group to which such excess interest relates or, if it exceeds such unpaid principal, refunded to such Borrower Group. In determining whether the interest contracted for, charged or received by 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. Without limiting the generality of the foregoing provisions of this **Section 3.10**, if any provision of any of the Loan Documents would obligate any Canadian Domiciled Obligor to make any payment of interest with respect to the Canadian Facility Obligations in an amount or calculated at a rate which would be prohibited by Applicable Law or would result in the receipt of interest with respect to the Canadian Facility Obligations at a criminal rate (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rates shall be 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 law or so result in a receipt by the applicable recipient of interest with respect to the Canadian Facility Obligations at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (i) first, by reducing the amount or rates of interest required to be paid by the Canadian Domiciled Obligors to the applicable recipient under the Loan Documents; and (ii) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid by the Canadian Domiciled Obligors to the applicable recipient which would constitute interest with respect to the Canadian Facility Obligations for purposes of Section 347 of the Criminal Code (Canada). Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if the applicable recipient shall have received an amount in excess of the maximum permitted by that section of the Criminal Code (Canada), then the Canadian Domiciled Obligors shall be entitled, by notice in writing to Agent, to obtain reimbursement from the applicable recipient in an amount equal to such excess, and, pending such reimbursement, such amount shall be deemed to be an amount payable by the applicable recipient to the applicable Canadian Domiciled Obligor. Any amount or rate of interest with respect to the Canadian Facility Obligations referred to in this **Section 3.10** shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that any Loans to the Canadian Borrower remain outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the Criminal Code (Canada)) shall, if they relate to a specific period of time, be pro rated over that period of time and otherwise be pro rated over the period from the Original Agreement Closing Date to the date of Full Payment of the Canadian Facility Obligations, and, in the event of a dispute, a certificate of a Fellow of the Canadian

## SECTION 4. LOAN ADMINISTRATION

### 4.1 **Manner of Borrowing and Funding Revolver Loans.**

#### 4.1.1. Notice of Borrowing.

(a) Whenever Borrowers within a Borrower Group desire funding of a Borrowing of Revolver Loans, Borrower Agent shall give Agent a Notice of Borrowing. Such notice must be received by Agent no later than 11:00 a.m. (i) on the Business Day of the requested funding date, in the case of U.S. Base Rate Loans, Canadian Prime Rate Loans, or Canadian Base Rate Loans, (ii) on the Business Day prior to the requested funding date, in the case of U.K. Base Rate Loans, and (iii) at least three Business Days prior (and at least four Business Days in the case of a U.K. Revolver Loan) to the requested funding date, in the case of LIBOR Loans or Canadian BA Rate Loans. Notices received after 11:00 a.m. shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable and shall specify (A) the amount of the Borrowing, (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a U.S. Base Rate Loan or a LIBOR Loan (in the case of a Borrowing by the U.S. Borrowers), or as a Canadian Base Rate Loan, a Canadian Prime Rate Loan, LIBOR Loan, or a Canadian BA Rate Loan (in the case of a Borrowing by the Canadian Borrower) or as a U.K. Base Rate Loan or a LIBOR Loan (in the case of a Borrowing by the U.K. Borrower), (D) in the case of LIBOR Loans or Canadian BA Rate Loans, the duration of the applicable Interest Period (which shall be deemed to be 30 days if not specified), (E) in the case of a Borrowing by the Canadian Borrower, whether such Loan is to be denominated in Dollars or Canadian Dollars, and (F) in the case of a Borrowing by the U.K. Borrower, in the case of LIBOR Loans only, whether such Loan is to be denominated in Dollars, British Pounds or Euro.

(b) Unless payment is otherwise timely made by Borrowers within a Borrower Group, the becoming due of any amount required to be paid with respect to any of the Obligations of the Obligor Group to which such Borrower Group belongs (whether principal, interest, fees or other charges, including Extraordinary Expenses, LC Obligations, Cash Collateral and Secured Bank Product Obligations) shall be deemed to be a request for Revolver Loans by such Borrower Group on the due date, in the amount of such Obligations and shall bear interest at the per annum rate applicable hereunder to U.S. Base Rate Revolver Loans, in the case of such Obligations owing by any U.S. Facility Obligor, or to Canadian Prime Rate Loans, in the case of such Obligations owing by a Canadian Domiciled Obligor, or to U.K. Base Rate Loans, in the case of such Obligations owing by a U.K. Domiciled Obligor. The proceeds of such Revolver Loans shall be disbursed as direct payment of the relevant Obligation. In addition, Agent may, at its option, charge such Obligations of an Obligor Group against any operating, investment or other account of an Obligor within such Obligor Group maintained with Agent or any of its Affiliates.

(c) If Borrowers within a Borrower Group establish a controlled disbursement account with Agent or any branch or Affiliate of Agent, then the presentation for payment of any check, ACH or electronic debit, or other payment item at a time when there are insufficient funds to cover it shall be deemed to be a request for Revolver Loans by such Borrower Group on the

date of such presentation, in the amount of such payment item, and shall bear interest at the per annum rate applicable hereunder to U.S. Base Rate Revolver Loans, in the case of insufficient funds owing by any U.S. Facility Obligor, or to Canadian Prime Rate Loans, in the case of insufficient funds owing by a Canadian Domiciled Obligor, or to U.K. Base Rate Loans, in the case of insufficient funds owing by a U.K. Domiciled Obligor. The proceeds of such Revolver Loans may be disbursed directly to the controlled disbursement account or other appropriate account.

(d) Whenever U.S. Borrowers desire funding of the Borrowing of the Term Loans, Borrower Agent shall give Agent a Notice of Borrowing. Such notice must be received by Agent no later than 11:00 a.m. (i) at least two (2) Business Days prior to the requested funding date in the case of Base Rate Term Loans and (ii) at least three (3) Business Days prior to the requested funding date in the case of LIBOR Term Loans. Notices received after 11:00 a.m. shall be deemed received on the next Business Day. Any such Notice of Borrowing shall be irrevocable (subject to the last sentence of this Section 4.1.1(d)) and shall specify (A) the amount of the Term Loans to be borrowed (subject to the limits set forth herein), (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a Base Rate Term Loan or a LIBOR Term Loan, and (D) in the case of LIBOR Term Loans, the duration of the applicable Interest Period (which shall be deemed to be 30 days if not specified). Notwithstanding the foregoing, a request for a Base Rate Term Loan (a “Base Rate Term Loan Request”) meeting the foregoing requirements may be conditioned by U.S. Borrowers on a material event occurring, provided, that, Agent must receive notice no later than 11:00 a.m. on the requested funding date on whether such material event has, or shall be deemed to have, occurred (a “Material Event Confirmation”) (it being understood that to the extent Agent does not receive a Material Event Confirmation by such time, the corresponding Base Rate Term Loan Request shall be deemed null and void).

#### 4.1.2. Fundings by Lenders.

(a) Each Applicable Lender shall timely honor its Revolver Commitment by funding its Pro Rata share of each Borrowing of Revolver Loans that is properly requested hereunder. Except for Borrowings to be made as Swingline Loans, Agent shall endeavor to notify the Applicable Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 12:00 noon (Applicable Time Zone) on the proposed funding date (and by 12:00 p.m. (Applicable Time Zone) on the Business Day prior to the proposed funding date, in the case of U.K. Base Rate Loans) for U.S. Base Rate Loans, Canadian Base Rate Loans, Canadian Prime Rate Loans or U.K. Base Rate Loans, or by 3:00 p.m. (Applicable Time Zone) at least two Business Days before any proposed funding of LIBOR Loans or Canadian BA Rate Loans. Each Applicable Lender shall fund to Agent such Lender’s Pro Rata share of the Borrowing to the account specified by Agent in immediately available funds not later than 2:00 p.m. (Applicable Time Zone) on the requested funding date, unless Agent’s notice is received after the times provided above, in which case Lender shall fund its Pro Rata share by 11:00 a.m. (Applicable Time Zone) on the next Business Day. Subject to its receipt of such amounts from the Applicable Lenders, Agent shall disburse the proceeds of the Revolver Loans as directed by Borrower Agent. Unless Agent shall have received (in sufficient time to act) written notice from an Applicable Lender that it does not intend to fund its Pro Rata share of a Borrowing, Agent may assume that such Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to the applicable

Borrower(s). If an Applicable Lender's share of any Borrowing or of any settlement pursuant to **Section 4.1.3(b)** is not received by Agent, then the Borrowers within the applicable Borrower Group agree to repay to Agent **on demand** the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing.

(b) Each U.S. Lender shall timely honor its Term Loan Commitment by funding its Pro Rata share of the Term Loans that are properly requested hereunder. Agent shall endeavor to notify the U.S. Lenders with Term Loan Commitments of any Notice of Borrowing to request the Term Loans by 12:00 noon (Pacific time) at least three (3) Business Days prior to the proposed funding date. Each U.S. Lender with a Term Loan Commitment shall fund to Agent such Lender's Pro Rata share of the Borrowing to the account specified by Agent in immediately available funds not later than 2:00 p.m. (Pacific time) on the requested funding date. Subject to its receipt of such amounts from such U.S. Lenders, Agent shall disburse the proceeds of the Term Loans as directed by Borrower Agent. Unless Agent shall have received (in sufficient time to act) written notice from a U.S. Lender with a Term Loan Commitment that it does not intend to fund its Pro Rata share of such Borrowing, Agent may assume that such U.S. Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to the applicable U.S. Borrower(s). If a U.S. Lender's share of any such Borrowing is not received by Agent, then the U.S. Borrowers agree to repay to Agent **on demand** the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing.

#### 4.1.3. **Swingline Loans; Settlement.**

(a) Agent may, but shall not be obligated to, advance U.S. Swingline Loans to the U.S. Borrowers, up to an aggregate outstanding amount equal to 10% of the aggregate U.S. Revolver Commitments, unless the funding is specifically required to be made by all U.S. Lenders hereunder. Each U.S. Swingline Loan shall constitute a U.S. Base Rate Revolver Loan for all purposes, except that payments thereon shall be made to Agent for its own account. The obligation of the U.S. Borrowers to repay U.S. Swingline Loans shall be evidenced by the records of Agent and need not be evidenced by any promissory note. Agent (acting through its Canada branch) may, but shall not be obligated to, advance Canadian Swingline Loans to the Canadian Borrower, up to an aggregate outstanding amount equal to 10% of the aggregate Canadian Revolver Commitments, unless the funding is specifically required to be made by all Canadian Lenders hereunder. Each Canadian Swingline Loan shall constitute a Canadian Prime Rate Revolver Loan or a Canadian Base Rate Loan, as applicable, for all purposes, except that payments thereon shall be made to Agent (acting through its Canada branch) for its own account. The obligation of the Canadian Borrower to repay Canadian Swingline Loans shall be evidenced by the records of Agent (acting through its Canada branch) and need not be evidenced by any promissory note. Agent may, but shall not be obligated to, advance U.K. Swingline Loans to the U.K. Borrower, up to an aggregate outstanding amount equal to 10% of the aggregate U.K. Revolver Commitments, unless the funding is specifically required to be made by all U.K. Lenders hereunder. Each U.K. Swingline Loan shall be made in and denominated only in Dollars, and shall constitute a U.K. Base Rate Loan for all purposes, except that payments thereon shall be made to Agent for its own account. The obligation of the U.K. Borrower to repay U.K. Swingline Loans shall be evidenced by the records of Agent and need not be evidenced by any promissory note.

(b) Settlement of Swingline Loans and other Revolver Loans among Lenders and Agent shall take place on a date determined from time to time by Agent (but at least weekly), in accordance with the Settlement Report delivered by Agent to Lenders. Between settlement dates, Agent may in its discretion apply payments on Revolver Loans to Swingline Loans, regardless of any designation by any Borrower or any provision herein to the contrary. Each Lender's obligation to make settlements with Agent is absolute and unconditional, without offset, counterclaim or other defense, and whether or not the Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any U.S. Swingline Loan may not be settled among the U.S. Lenders hereunder, then each U.S. Lender shall be deemed to have purchased from Agent a Pro Rata participation in such Loan and shall transfer the amount of such participation to Agent, in immediately available funds, within one Business Day after Agent's request therefor. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any Canadian Swingline Loan may not be settled among the Canadian Lenders hereunder, then each Canadian Lender shall be deemed to have purchased from Agent a Pro Rata participation in such Loan and shall transfer the amount of such participation to Agent, in immediately available funds, within one Business Day after Agent's request therefore. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any U.K. Swingline Loan may not be settled among the U.K. Lenders hereunder, then each U.K. Lender shall be deemed to have purchased from Agent a Pro Rata participation in such Loan and shall transfer the amount of such participation to Agent, in immediately available funds, within one Business Day after Agent's request therefore

4.1.4. Notices. Borrowers may request, convert or continue Loans, select interest rates and transfer funds based on telephonic or e-mailed instructions to Agent. Borrowers shall confirm each such request by prompt delivery to Agent of a Notice of Borrowing or Notice of Conversion/Continuation, if applicable, but if it differs materially from the action taken by Agent or Lenders, the records of Agent and Lenders shall govern. Neither Agent nor any Lender shall have any liability for any loss suffered by a Borrower as a result of Agent or any Lender acting upon its understanding of telephonic or e-mailed instructions from a person believed in good faith by Agent or any Lender to be a person authorized to give such instructions on a Borrower's behalf.

#### 4.2 **Defaulting Lender.**

4.2.1. Reallocation of Pro Rata Share; Amendments. For purposes of determining Lenders' obligations to fund or participate in Loans or Letters of Credit, Agent may exclude the Commitments and Loans of any Defaulting Lender(s) from the calculation of Pro Rata shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 14.1.1(c).**

4.2.2. Payments; Fees. Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to Agent such amounts until all Obligations owing to Agent, non-Defaulting Lenders and other Secured Parties have been paid in full. Agent may apply such amounts to the Defaulting Lender's defaulted obligations, use the funds to Cash Collateralize such Lender's Fronting Exposure, or readvance the amounts, in accordance with this Agreement, to the Borrowers of the Borrower Group to which such defaulted obligations relate. A Lender shall not

be entitled to receive any fees accruing hereunder during the period in which it is a Defaulting Lender, and the unfunded portion of its Commitment shall be disregarded for purposes of calculating the unused line fees under **Section 3.2.1**. If any LC Obligations owing to a Defaulted Lender are reallocated to other Lenders, fees attributable to such LC Obligations under **Section 3.2.2**, **Section 3.2.3**, and **Section 3.2.4**, as applicable, shall be paid to such Lenders. Agent shall be paid all fees attributable to LC Obligations that are not reallocated.

4.2.3. **Cure.** Borrowers, Agent and Issuing Banks may agree in writing that a Lender is no longer a Defaulting Lender. At such time, Pro Rata shares shall be reallocated without exclusion of such Lender's Commitments and Loans, and all outstanding Revolver Loans, LC Obligations and other exposures under the Revolver Commitments shall be reallocated among Lenders and settled by Agent (with appropriate payments by the reinstated Lender) in accordance with the readjusted Pro Rata shares. Unless expressly agreed by Borrowers, Agent and Issuing Banks, or as expressly provided herein with respect to Bail-In Actions and related matters, no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform its obligations hereunder shall not relieve any other Lender of its obligations, and no Lender shall be responsible for default by another Lender.

**4.3 Number and Amount of LIBOR Loans and Canadian BA Rate Loans; Determination of Rate.** With respect to the U.S. Borrowers, (i) no more than 10 Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans to U.S. Borrowers having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose, and (ii) each Borrowing of LIBOR Loans when made, continued or converted shall be in a minimum amount of \$1,000,000 or an increment of \$1,000,000, in excess thereof. With respect to the Canadian Borrower, (x) no more than 5 Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose, (y) no more than 5 Borrowings of Canadian BA Rate Loans may be outstanding at any time, and all Canadian BA Rate Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose, and (z) each Borrowing of such Loans when made, continued or converted shall be in a minimum amount of \$1,000,000 (or, in the case of Canadian BA Rate Loans, Cdn\$1,000,000) or an increment of \$1,000,000 (or, in the case of Canadian BA Rate Loans, Cdn\$1,000,000), in excess thereof. With respect to the U.K. Borrower, (1) no more than 5 Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans having the same length and beginning date of their Interest Periods and in the same Available Currency shall be aggregated together and considered one Borrowing for this purpose, and (2) each Borrowing of such Loans when made, continued or converted shall be in a minimum amount of \$1,000,000 (or, in the case of LIBOR Loans denominated in British Pounds, £1,000,000 or, in the case of LIBOR Loans denominated in Euros, Euros 1,000,000) or an increment of \$1,000,000 (or, in the case of LIBOR Loans denominated in British Pounds, £1,000,000 or, in the case of LIBOR Loans denominated in Euros, Euros 1,000,000), in excess thereof. Upon determining LIBOR or the Canadian BA Rate for any Interest Period requested by the Borrower Agent on behalf of a Borrower Group, Agent shall promptly notify the Borrower Agent thereof by telephone or electronically and, if requested by the Borrower Agent, shall confirm any telephonic notice in writing.

**4.4 Borrower Agent.** Each Borrower and other Obligor hereby designates Callaway Golf Company, a Delaware corporation (“Borrower Agent”) as its representative and agent for all purposes under the Loan Documents, including requests for Loans and Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent, any Issuing Bank or any Lender. Borrower Agent hereby accepts such appointment. Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower. Agent and Lenders may give any notice or communication with a Borrower or other Obligor hereunder to Borrower Agent on behalf of such Borrower or other Obligor. Each of Agent, Issuing Banks and Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Borrower and other Obligor agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it.

**4.5 One Obligation.** The Loans, LC Obligations and other Obligations of the applicable Borrower(s) of each Borrower Group and their respective Guarantors shall constitute one general obligation of such Borrower(s) of such Borrower Group and their respective Guarantors and (unless otherwise expressly provided in any Loan Document) shall be secured by Agent’s Lien upon all Collateral of such Borrower(s) of such Borrower Group and their respective Guarantors; provided, however, that each Credit Party shall be deemed to be a creditor of, and the holder of a separate claim against, each Borrower or other Obligor to the extent of any Obligations jointly or severally owed by such Borrower or other Obligor to such Credit Party.

**4.6 Effect of Termination.** On the effective date of any termination of any of the Revolver Commitments, all Obligations with respect thereto shall be immediately due and payable, and any Lender may terminate its and its Affiliates’ Bank Products. All undertakings of Borrowers contained in the Loan Documents shall survive any termination, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents until Full Payment of the Obligations. Notwithstanding Full Payment of the Obligations, Agent shall not be required to terminate its Liens in any Collateral unless, with respect to any damages Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, Agent receives (a) a written agreement satisfactory to Agent, executed by Borrowers and any Person whose advances are used in whole or in part to satisfy the Obligations, indemnifying Agent and Lenders from such damages; and (b) such Cash Collateral as Agent, in its discretion, deems appropriate to protect against such damages. **Sections 2.2, 2.3, 2.4, 3.4, 3.6, 3.7, 3.9, 5.5, 5.9, 5.10, 12, 14.2** and this Section, and the obligation of each Obligor and Lender with respect to each indemnity given by it in any Loan Document, shall survive Full Payment of the Obligations and any release relating to this credit facility.

## SECTION 5. PAYMENTS

**5.1 General Payment Provisions.** All payments of Obligations shall be made without offset, counterclaim or defense of any kind, free of (and without deduction for) any Taxes, and in immediately available funds, not later than 12:00 noon (Applicable Time Zone) on the due date.

Any payment after such time shall be deemed made on the next Business Day. Any payment of a LIBOR Loan or a Canadian BA Rate Loan prior to the end of its Interest Period shall be accompanied by all amounts due under **Section 3.9**. Any prepayment of Loans by a Borrower Group shall be applied first to U.S. Base Rate Loans, Canadian Base Rate Loans, Canadian Prime Rate Loans or U.K. Base Rate Loans, as applicable, of such Borrower Group and then to LIBOR Loans or Canadian BA Rate Loans, as applicable, of such Borrower Group. All payments with respect to any U.S. Facility Obligations shall be made in Dollars and all payments with respect to any Canadian Facility Obligations shall be made in Canadian Dollars or, if any portion of such Canadian Facility Obligations is denominated in Dollars, then in Dollars and all payments with respect to any U.K. Facility Obligations shall be made in British Pounds or, if any portion of such U.K. Facility Obligations is denominated in Euro, then in Euro or, if any portion of such U.K. Facility Obligations is denominated in Dollars, then in Dollars.

**5.2 Repayment of Revolver Loans.** All U.S. Revolver Loans shall be due and payable in full on the U.S. Revolver Commitment Termination Date, all Canadian Revolver Loans shall be due and payable in full on the Canadian Revolver Commitment Termination Date, and all U.K. Revolver Loans shall be due and payable in full on the U.K. Revolver Commitment Termination Date, in each case unless payment is sooner required hereunder. Revolver Loans may be prepaid from time to time, without penalty or premium, subject to, in the case of LIBOR Loans and Canadian BA Rate Loans, **Section 3.9**. If any Asset Disposition includes the disposition of Accounts or Inventory of an Obligor, then Net Proceeds equal to the greater of (a) the net book value of such Accounts and Inventory, or (b) the reduction in the applicable Borrowing Base (*i.e.*, the U.S. Borrowing Base in the case of an Asset Disposition with respect to Accounts or Inventory of the U.S. Borrowers, the Canadian Borrowing Base in the case of an Asset Disposition with respect to Accounts or Inventory of the Canadian Borrower, and the U.K. Borrowing Base in the case of an Asset Disposition with respect to Accounts or Inventory of the U.K. Borrower) upon giving effect to such disposition, shall be applied to the applicable Revolver Loans (*i.e.*, the U.S. Revolver Loans in the case of an Asset Disposition of Accounts or Inventory of the U.S. Borrowers, the Canadian Revolver Loans in the case of an Asset Disposition with respect to the Accounts or Inventory of the Canadian Borrower, and the U.K. Revolver Loans in the case of an Asset Disposition with respect to the Accounts or Inventory of the U.K. Borrower). Notwithstanding anything herein to the contrary, if an Overadvance exists (including as a result of any Asset Disposition), the applicable Borrower(s) (*i.e.*, the U.S. Borrowers in the case of a U.S. Overadvance, the Canadian Borrower in the case of a Canadian Overadvance, and the U.K. Borrower in the case of a U.K. Overadvance) shall, on the sooner of Agent's demand or the first Business Day after any such Borrower has knowledge thereof, repay the outstanding applicable Revolver Loans (*i.e.*, the U.S. Revolver Loans in the case of a U.S. Overadvance, the Canadian Revolver Loans in the case of a Canadian Overadvance, and the U.K. Revolver Loans in the case of a U.K. Overadvance) in an amount sufficient to reduce the principal balance of such Revolver Loans to the applicable Borrowing Base (*i.e.*, the U.S. Borrowing Base in the case of a U.S. Revolver Loans, the Canadian Borrowing Base in the case of Canadian Revolver Loans, and the U.K. Borrowing Base in the case of U.K. Revolver Loans).

### **5.3 Repayment of Term Loans.**

5.3.1. **Payment of Principal.** Commencing on the first day of the month immediately following the date that is fifteen (15) months after the date the Term Loans are made

(such month, the “First Term Loan Repayment Month”), and on the first day of each third month ending after the First Term Loan Repayment Month, the principal amount of the Term Loans shall be repaid by an amount equal to 1/12th of the original principal aggregate amount of the Term Loans. In addition to the foregoing, on the earlier of the Term Loan Maturity Date and the U.S. Revolver Commitment Termination Date, all principal, interest and other amounts owing with respect to the Term Loans shall be due and payable in full. Each installment shall be paid to Agent for the Pro Rata benefit of Lenders. Once repaid, whether such repayment is voluntary or required, Term Loans may not be reborrowed. Any prepayment of Term Loans shall be accompanied by all interest accrued thereon and any amounts payable under **Section 3.9**.

### 5.3.2. Mandatory Prepayments.

(a) Within sixty days after delivery to Agent of Borrowers’ audited annual financial statements (and accompanying Compliance Certificate) for the Fiscal Year ending on December 31, 2018, U.S. Borrowers shall (a) deliver to Agent a written calculation of Excess Cash Flow for such Fiscal Year, certified by a Senior Officer of Borrower Agent, and (b) prepay Term Loans in an amount equal to the least of: (i) 50% of such Excess Cash Flow; (ii) \$10,000,000; and (iii) the greatest amount available such that after giving effect to the payment of such amount, the sum of Net Excess Availability plus unrestricted cash and cash equivalents of the Obligors is not less than an amount equal to 15% of the Maximum Facility Amount. Any such prepayment of the Term Loans shall be applied to principal in inverse order of maturity.

(b) Concurrently with any Asset Disposition by any U.S. Facility Obligor of any Real Estate, Intellectual Property, or Equity Interests of Top Golf, U.S. Borrowers shall prepay Term Loans in an amount equal to the Net Proceeds of such disposition. Any such prepayment of the Term Loans shall be applied to principal in inverse order of maturity.

5.3.3. Optional Prepayments. U.S. Borrowers may, at their option from time to time, prepay Term Loans, which prepayment must be at least \$5,000,000, plus any increment of \$1,000,000 in excess thereof. Borrower Agent shall give written notice to Agent of an intended prepayment of Term Loans, which notice shall specify the amount of the prepayment and the date of such prepayment (which must be a Business Day), shall be irrevocable once given, and shall be given at least 3 Business Days prior to the date of such prepayment. Any such voluntary prepayment of the Term Loans shall be applied to principal in inverse order of maturity.

**5.4 Payment of Other Obligations.** Obligations other than Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, **on demand**.

**5.5 Marshaling; Payments Set Aside.** None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrowers or any other Obligor is made to Agent, any Issuing Bank or any Lender, or Agent, any Issuing Bank or any Lender exercises a 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 Agent, such Issuing Bank or such Lender in its discretion) to be repaid to a Creditor Representative or any other Person, then to the extent of such recovery, the Obligation originally intended to be satisfied,

and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

## **5.6 Post-Default Allocation of Payments.**

5.6.1. Allocation. Notwithstanding anything herein to the contrary, during an Event of Default, monies to be applied to the Obligations, whether arising from payments by or on behalf of any Obligor, realization on Collateral, setoff or otherwise, shall be allocated as follows:

- (a) with respect to monies, payments, Property or Collateral of or from any U.S. Domiciled Obligor:
  - (i) first, to all costs and expenses, including Extraordinary Expenses, owing to Agent;
  - (ii) second, to all Extraordinary Expenses owing to any U.S. Lender;
  - (iii) third, to all amounts owing to Agent on U.S. Swingline Loans;
  - (iv) fourth, to all amounts owing to U.S. Issuing Bank on account of U.S. LC Obligations;
  - (v) fifth, to all Obligations constituting fees (other than Secured Bank Product Obligations) owing by any U.S. Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the U.S. Domiciled Obligors);
  - (vi) sixth, to all U.S. Facility Obligations constituting interest (other than Secured Bank Product Obligations and other than on account of the Term Loans) owing by any U.S. Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the U.S. Domiciled Obligors);
  - (vii) seventh, to Cash Collateralize the U.S. LC Obligations;
  - (viii) eighth, to all U.S. Revolver Loans and Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the U.S. Borrowing Base immediately prior to the time of such allocation) of any U.S. Domiciled Obligor, including Cash Collateralization of Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the U.S. Borrowing Base immediately prior to the time of such allocation) of any U.S. Domiciled Obligor;
  - (ix) ninth, to all other U.S. Facility Obligations (exclusive of any such amounts owing by the Canadian Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the U.S. Domiciled Obligors);

(x) tenth, ratably: (i) to be applied in accordance with clause (b) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any Canadian Domiciled Obligor, and (ii) to be applied in accordance with clause (c) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any U.K. Domiciled Obligor;

- (xi) eleventh, to all interest owing by any U.S. Domiciled Obligor on account of the Term Loans; and
- (xii) twelfth, to all Term Loans.

(b) with respect to monies, payments, Property or Collateral of or from any Canadian Domiciled Obligor, together with any allocations pursuant to subclause (x) of clause (a) above and subclause (x) of clause (c) below:

- (i) first, to all costs and expenses, including Extraordinary Expenses, owing to Agent, to the extent owing by any Canadian Domiciled Obligor;
- (ii) second, to all Extraordinary Expenses owing to any Canadian Lender;
- (iii) third, to all amounts owing to Agent (acting through its Canada branch) on Canadian Swingline Loans;
- (iv) fourth, to all amounts owing to the Canadian Issuing Bank on account of Canadian LC Obligations;
- (v) fifth, to all Canadian Facility Obligations constituting fees (other than Secured Bank Product Obligations) owing by any Canadian Domiciled Obligor (exclusive of any such amounts owing by the U.K. Domiciled Obligors which are guaranteed by the Canadian Domiciled Obligors);
- (vi) sixth, to all Canadian Facility Obligations constituting interest (other than Secured Bank Product Obligations) owing by any Canadian Domiciled Obligor (exclusive of any such amounts owing by the U.K. Domiciled Obligors which are guaranteed by the Canadian Domiciled Obligors);
- (vii) seventh, to Cash Collateralize the Canadian LC Obligations;
- (viii) eighth, to all Canadian Revolver Loans and Noticed Hedges of any Canadian Domiciled Obligor (solely to the extent such Noticed Hedges were reserved for by Agent under the Canadian Borrowing Base immediately prior to the time of such allocation), including Cash Collateralization of Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the Canadian Borrowing Base immediately prior to the time of such allocation) of any Canadian Domiciled Obligor;

(ix) ninth, to all other Canadian Facility Obligations (exclusive of any such amounts owing by the U.K. Domiciled Obligors which are guaranteed by the Canadian Domiciled Obligors); and

(x) tenth, to be applied in accordance with clause (c) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any U.K. Domiciled Obligor.

(c) with respect to monies, payments, Property or Collateral of or from any U.K. Domiciled Obligor, together with any allocations pursuant to subclause (x) of clause (a) above and subclause (x) of clause (b) above:

(i) first, to all costs and expenses, including Extraordinary Expenses, owing to Agent, to the extent owing by any U.K. Domiciled Obligor;

(ii) second, to all Extraordinary Expenses owing to any U.K. Lender;

(iii) third, to all amounts owing to Agent on U.K. Swingline Loans;

(iv) fourth, to all amounts owing to the U.K. Issuing Bank on account of U.K. LC Obligations;

(v) fifth, to all U.K. Facility Obligations constituting fees (other than Secured Bank Product Obligations) owing by any U.K. Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligors which are guaranteed by the U.K. Domiciled Obligors);

(vi) sixth, to all U.K. Facility Obligations constituting interest (other than Secured Bank Product Obligations) owing by any U.K. Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligors which are guaranteed by the U.K. Domiciled Obligors);

(vii) seventh, to Cash Collateralize the U.K. LC Obligations;

(viii) eighth, to all U.K. Revolver Loans and Noticed Hedges of any U.K. Domiciled Obligor (solely to the extent such Noticed Hedges were reserved for by Agent under the U.K. Borrowing Base immediately prior to the time of such allocation), including Cash Collateralization of Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the U.K. Borrowing Base immediately prior to the time of such allocation) of any U.K. Domiciled Obligor;

(ix) ninth, to all other U.K. Facility Obligations (exclusive of any such amounts owing by the Canadian Domiciled Obligors which are guaranteed by the U.K. Domiciled Obligors); and

(x) tenth, to be applied in accordance with clause (b) above, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any Canadian Domiciled Obligor.

Amounts shall be applied to each category of Obligations set forth above until Full Payment thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. Amounts distributed with respect to any Secured Bank Product Obligations shall be the lesser of the maximum Secured Bank Product Obligations last reported to Agent or the actual Secured Bank Product Obligations as calculated by the methodology reported to Agent for determining the amount due. Monies and proceeds obtained from an Obligor shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Obligors to preserve the allocations in any applicable category. Agent shall have no obligation to calculate the amount to be distributed with respect to any Secured Bank Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Party. If a Secured Party fails to deliver such calculation within five days following request by Agent, Agent may assume the amount to be distributed is the last reported amount. The allocations set forth in this Section are solely to determine the rights and priorities of Agent and Secured Parties as among themselves, and may be changed by agreement among them without the consent of any Obligor. This Section is not for the benefit of or enforceable by any Borrower.

5.6.2. Erroneous Application. Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been made shall be to recover the amount from the Person that actually received it (and, if such amount was received by any Lender, such Lender hereby agrees to return it).

## 5.7 Application of Payments.

5.7.1. Dominion Account(s) of U.S. Borrowers. The ledger balance in the main Dominion Account of the U.S. Borrowers as of the end of a Business Day shall be applied to the Obligations of the U.S. Borrowers at the beginning of the next Business Day, during any Dominion Trigger Period. If, at the end of a Business Day, after giving effect to such application, if any, a credit balance exists, the balance shall not accrue interest in favor of the U.S. Borrowers and shall be made available to the U.S. Borrowers as long as the Obligations have not been accelerated on account of an Event of Default. During any Dominion Trigger Period, each U.S. Borrower and other Obligor irrevocably waive the right to direct the application of any payments or Collateral proceeds, and agree that Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Agent deems advisable.

5.7.2. Dominion Account(s) of Canadian Borrower. The ledger balance in the main Dominion Account of the Canadian Borrower as of the end of a Business Day shall be applied to the Obligations of the Canadian Borrower at the beginning of the next Business Day, during any Dominion Trigger Period. If, at the end of a Business Day, after giving effect to such application, if any, a credit balance exists, the balance shall not accrue interest in favor of the Canadian Borrower and shall be made available to the Canadian Borrower as long as the Obligations have not been accelerated on account of an Event of Default. During any Dominion Trigger Period, the Canadian Borrower and each other Obligor irrevocably waive the right to direct the application of any payments or Collateral proceeds, and agree that Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Agent deems advisable.

5.7.3. **Dominion Account(s) of U.K. Borrower.** The ledger balance in the main Dominion Account of the U.K. Borrower as of the end of a Business Day occurring on and after the Closing Date shall be applied to the Obligations of the U.K. Borrower at the beginning of the next Business Day. If, at the end of a Business Day occurring after the Closing Date, after giving effect to such application, if any, a credit balance exists, the balance shall not accrue interest in favor of the U.K. Borrower and shall be made available to the U.K. Borrower as long as the Obligations have not been accelerated on account of an Event of Default and in any event subject to the terms of the U.K. Security Agreements. The U.K. Borrower and each other Obligor irrevocably waive the right to direct the application of any payments or Collateral proceeds, and agree that Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Agent deems advisable.

## **5.8 Loan Account; Account Stated.**

5.8.1. **Loan Account.** Agent shall maintain, in accordance with its usual and customary practices, an account or accounts ("**Loan Account**") evidencing the Debt of each of the Borrower(s) within each Borrower Group resulting from each Loan made to such Borrower Group or issuance of a Letter of Credit for the account of such Borrower(s) from time to time. Any failure of Agent to record anything in any Loan Account, or any error in doing so, shall not limit or otherwise affect the obligations of the applicable Borrower(s) to pay any amount owing hereunder. Agent may maintain a single Loan Account in the name of the Borrower Agent, and each Borrower and other Obligor confirms that such arrangement shall have no effect on the joint and several character of its liability for the Obligations as and to the extent provided herein or in the other Loan Documents.

5.8.2. **Entries Binding.** Entries made in any Loan Account shall constitute presumptive evidence of the information contained therein. If any information contained in the Loan Account is provided to or inspected by any Person, then such information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute.

## **5.9 Taxes.**

5.9.1. **Payments Free of Taxes.** All payments by or on behalf of any Obligor hereunder shall be free and clear of and without withholding or deduction for any Taxes. If Applicable Law requires any Obligor or Agent to withhold or deduct any Tax (including backup withholding or withholding Tax), the withholding or deduction shall be based on information provided pursuant to **Section 5.10** and Agent shall pay the amount withheld or deducted to the relevant Governmental Authority. If the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the applicable Borrowers or other Obligors shall be increased so that Agent, each Lender and each Issuing Bank, as applicable, receives an amount equal to the sum it would have received if no such withholding or deduction (including withholdings or deductions applicable to additional sums payable under this Section) had been made. In addition, Borrowers and the other Obligors shall timely pay all Other Taxes to the relevant Governmental Authorities.

5.9.2. Payments Free of Tax by the U.K. Borrower. A payment by the U.K. Borrower under this Agreement shall not be increased under **Section 5.9.1** above by reason of a withholding or deduction on account of Tax imposed by the United Kingdom ("Tax Deduction"), if on the date on which the payment falls due:

- (a) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a U.K. Qualified Lender, but on that date that Lender is not or has ceased to be a U.K. Qualified Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
- (b) the relevant Lender is a U.K. Qualified Lender solely by virtue of paragraph (i)(B) of the definition of U.K. Qualified Lender; and:
- (i) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "Direction") under section 931 of ITA which relates to the payment and that Lender has received from the U.K. Borrower making the payment a certified copy of that Direction; and
  - (ii) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
- (c) the Lender is a U.K. Qualified Lender solely by virtue of paragraph (i)(B) of the definition of U.K. Qualified Lender and:
- (i) the Lender has not given a U.K. Tax Confirmation to the U.K. Borrower; and
  - (ii) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a U.K. Tax Confirmation to the U.K. Borrower, on the basis that the U.K. Tax Confirmation would have enabled the U.K. Borrower to have formed a reasonable belief that the payment was an "**excepted payment**" for the purposes of Section 930 of ITA; or
- (d) the relevant Lender is a Treaty Lender and the U.K. Borrower making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under **Section 5.9.5** below.

5.9.3. Timing and Amount. If the U.K. Borrower is required to make a Tax Deduction, the U.K. Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

5.9.4. Evidence of Payment. Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the U.K. Borrower shall deliver to the Agent for the Lender or the Agent entitled to the payment a statement under Section 975 of

ITA or other evidence reasonably satisfactory to that Lender or the Agent that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

5.9.5. Co-operation between a Treaty Lender and the U.K. Borrower. A Treaty Lender and the U.K. Borrower making a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for U.K. Borrower to obtain authorization to make that payment without a Tax Deduction.

5.9.6. Exceptions. Nothing in **Section 5.9.5** above shall require a Treaty Lender to: (a) register under the HMRC DT Treaty Passport scheme; (b) apply the HMRC DT Treaty Passport scheme to any Loan if it has so registered; or (c) file Treaty forms if it has included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with **Section 5.9.9** below or **Section 5.9.16** below and the Obligor making that payment has complied with its obligations under **Section 5.9.10** below or **Section 5.9.17** below.

5.9.7. Existing Lenders. A U.K. Non-Bank Lender which becomes a Lender on the day on which this Agreement is entered into gives a U.K. Tax Confirmation to the U.K. Borrower by entering into this Agreement.

5.9.8. Notice. A U.K. Non-Bank Lender shall promptly notify the U.K. Borrower and the Agent if there is any change in the position from that set out in the U.K. Tax Confirmation.

5.9.9. HMRC DT Treaty Passport schemes. A Treaty Lender which becomes a party to this Agreement on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which then wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) by including its scheme reference number and its jurisdiction of tax residence opposite its name in **Schedule 5.9.9**.

5.9.10. Form DTTP2. Where a Lender includes the indication described in **Section 5.9.9** above in **Schedule 5.9.9**, the U.K. Borrower shall, to the extent that such Lender is a Lender under the facilities made available to the U.K. Borrower pursuant to **Section 2.1** or **Section 2.2**, file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of the date of this Agreement and shall promptly provide such Lender with a copy of that filing.

5.9.11. No Filings. If a Lender has not included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with **Section 5.9.9** above or **Section 5.9.16** below, no Obligor shall file a form DTTP2 or any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's commitment(s) or its participation in any facility made available under this Agreement.

5.9.12. Payment. Obligors shall indemnify, hold harmless and reimburse (within 10 days after demand therefor) Agent, Lenders and Issuing Banks for any Indemnified Taxes or Other Taxes (including those attributable to amounts payable under this Section) paid by Agent, any Lender or any Issuing Bank, with respect to any Obligations of such Borrower's Borrower

Group, Letters of Credit of such Borrower's Borrower Group or Loan Documents, whether or not such Taxes were properly asserted by the relevant Governmental Authority, and including all penalties, interest and reasonable expenses relating thereto, as well as any amount that a Lender or an Issuing Bank fails to pay indefeasibly to Agent under **Section 5.10**. A certificate as to the amount of any such payment or liability delivered to Borrower Agent by Agent, or by a Lender or an Issuing Bank (with a copy to Agent), shall be conclusive, absent manifest error. As soon as practicable after any payment of Taxes by any Obligor, Borrower Agent shall deliver to Agent a receipt from the Governmental Authority or other evidence of payment satisfactory to Agent.

5.9.13. Payment by the U.K. Borrower. **Section 5.9.12** shall not apply:

- (a) with respect to any Tax assessed on a Lender or the Agent:
  - (i) under the law of the jurisdiction in which that Lender or the Agent is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Lender or the Agent is treated as resident for tax purposes; or
  - (ii) under the law of the jurisdiction in which that Lender's or the Agent's lending office is located in respect of amounts received or receivable in that jurisdiction,  
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender or the Agent; or
- (b) to the extent a loss, liability or cost:
  - (i) is compensated for by an increased payment under **Section 5.9.1**; or
  - (ii) would have been compensated for by an increased payment under **Section 5.9.1** but was not so compensated solely because one of the exclusions in **Section 5.9.2** applied.

5.9.14. Tax Credit. If the U.K. Borrower makes a payment under **Section 5.9.1** or **Section 5.9.12** (a "U.K. Tax Payment") and either a Lender or the Agent determines that:

- (a) a Tax Credit is attributable either to an increased payment of which that U.K. Tax Payment forms part, or to that U.K. Tax Payment;
- (b) that Lender or the Agent has obtained, utilized and retained that Tax Credit,

that Lender or the Agent shall pay an amount to the U.K. Borrower which that Lender or the Agent determines will leave it (after that payment) in the same after-Tax position as it would have been in had the U.K. Tax Payment not been required to be made by the U.K. Borrower.

5.9.15. New Lenders. Each Lender which becomes a party to this Agreement in the capacity of a U.K. Lender after the date of this Agreement ("New Lender") shall indicate, at

the time it becomes a New Lender, on and for the benefit of the Agent and without liability to the U.K. Borrower, which of the following categories it falls in:

- (a) not a U.K. Qualified Lender;
- (b) a U.K. Qualified Lender (other than a Treaty Lender); or
- (c) a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this **Section 5.9.15** then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a U.K. Qualified Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the U.K. Borrower). For the avoidance of doubt, an assignment in accordance with **Section 13.3** shall not be invalidated by any failure of a New Lender to comply with this **Section 5.9.15**.

5.9.16. HMRC DT Treaty Passport schemes – New Lenders. A New Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which then wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) in the assignment notice which it executes pursuant to, or in connection with, **Section 13.3** below by including its scheme reference number and its jurisdiction of tax residence in that assignment notice.

5.9.17. Form DTTP2 – New Lenders. Where a New Lender includes the indication described in **Section 5.9.16** above in the relevant assignment notice the U.K. Borrower shall, to the extent that that New Lender becomes a Lender under a facility which is made available to the U.K. Borrower pursuant to pursuant to Section 2.1 or Section 2.2, file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of the date of that assignment and shall promptly provide the Lender with a copy of that filing.

5.9.18. FATCA Grandfathering. 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).

## 5.10 Lender Tax Information.

5.10.1. Status of Lenders. Each Lender shall deliver documentation and information to Agent and Borrower Agent, at the times and in form required by Applicable Law or reasonably requested by Agent or Borrower Agent, sufficient to permit Agent or Borrowers to determine (a) whether or not payments made with respect to Obligations are subject to Taxes, (b) if applicable, the required rate of withholding or deduction, and (c) such Lender’s entitlement to any available exemption from, or reduction of, applicable Taxes for such payments or otherwise to establish such Lender’s status for withholding tax purposes in the applicable jurisdiction.

5.10.2. Documentation. If a Borrower is resident for tax purposes in the United States, any Lender that is a “United States person” within the meaning of section 7701(a)(30) of

the Code shall deliver to Agent and Borrower Agent IRS Form W-9 or such other documentation or information prescribed by Applicable Law or reasonably requested by Agent or Borrower Agent to determine whether such Lender is subject to backup withholding or information reporting requirements. If any Foreign Lender is entitled to any exemption from or reduction of withholding tax for payments with respect to the U.S. Facility Obligations, it shall deliver to Agent and Borrower Agent, on or prior to the date on which it becomes a Lender hereunder (and from time to time thereafter upon request by Agent or Borrower Agent, but only if such Foreign Lender is legally entitled to do so), (a) IRS Form W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States is a party; (b) IRS Form W-8ECI; (c) IRS Form W-8IMY and all required supporting documentation; (d) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, IRS Form W-8BEN-E and a certificate showing such Foreign Lender is not (i) a "bank" within the meaning of section 881(c)(3)(A) of the Code, or (ii) a "10 percent shareholder" of any Obligor within the meaning of section 881(c)(3)(B) of the Code, or (iii) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code; or (e) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in withholding tax, together with such supplementary documentation necessary to allow Agent and Borrowers to determine the withholding or deduction required to be made.

5.10.3. **Lender Obligations.** Each Lender and each Issuing Bank shall promptly notify Borrower Agent and Agent of any change in circumstances that would change any claimed Tax exemption or reduction. Each Lender and each Issuing Bank, in each case severally and not jointly with the other Lenders and/or applicable Issuing Bank, shall indemnify, hold harmless and reimburse (within 10 days after demand therefor) the affected Borrower to which such Lender or such Issuing Bank (as applicable) has issued a Commitment and Agent for any Taxes, losses, claims, liabilities, penalties, interest and expenses (including reasonable attorneys' fees) incurred by or asserted against such affected Borrower or Agent by any Governmental Authority due to such Lender's or such Issuing Bank's failure to deliver, or inaccuracy or deficiency in, any documentation required to be delivered by it pursuant to this Section. Each Lender and each Issuing Bank authorizes Agent to set off any amounts due to Agent under this Section against any amounts payable to such Lender or such Issuing Bank under any Loan Document.

## 5.11 **Guarantee by Obligors.**

### 5.11.1. **Guarantee by U.S. Domiciled Obligors.**

(a) **Joint and Several Liability.** Each U.S. Domiciled Obligor agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to the Secured Parties the prompt payment and performance of, all Obligations and all agreements of each other Obligor under the Loan Documents, except its Excluded Swap Obligations, and that it is a U.S. Facility Guarantor, a Canadian Facility Guarantor, and a U.K. Facility Guarantor hereunder. Each U.S. Domiciled Obligor agrees that its guaranty or guarantee of obligations as a U.S. Facility Guarantor, a Canadian Facility Guarantor, and a U.K. Facility Guarantor hereunder, as applicable, constitute a continuing guaranty or guarantee of payment and not of collection, that such obligations shall not be discharged until Full Payment of all Obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan

Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by any Secured Party with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty or guarantee for the Obligations or any action, or the absence of any action, by any Secured Party in respect thereof (including the release of any security or guaranty or guarantee); (d) the insolvency of any Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the U.S. Bankruptcy Code or similar provision of other Applicable Law; (f) any borrowing or grant of a Lien by any other Obligor, as debtor-in-possession under Section 364 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (g) the disallowance of any claims of any Secured Party against any Obligor for the repayment of any Obligations under Section 502 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (h) any other insolvency, debtor relief or debt adjustment law (whether state, provincial, federal or foreign, including the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), and the Insolvency Act 1986 of the United Kingdom and the Enterprise Act 2002 of the United Kingdom); (i) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of any Obligor or any other person; (j) any merger, amalgamation or consolidation of any Obligor with any person or persons; (k) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of any governmental body or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Obligations under the Loan Documents; (l) the existence of any claim, set-off, compensation or other rights which any Obligor may have at any time against any other Obligor or any other person, or which any Obligor may have at any time against the Secured Parties, whether in connection with the Loan Documents or otherwise; or (m) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of all Obligations.

(b) Waivers.

(i) Each U.S. Domiciled Obligor expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Obligor. Each U.S. Domiciled Obligor waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of all Obligations. It is agreed among each U.S. Domiciled Obligor, Agent and Lenders that the provisions of this **Section 5.11** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and Lenders would decline to make Loans and issue Letters of Credit. Each U.S. Domiciled Obligor acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(ii) Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral (including any Real Estate owned by any Obligor) by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this **Section 5.11**. If, in

taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any U.S. Domiciled Obligor or other Person, whether because of any Applicable Laws pertaining to "election of remedies" or otherwise, each U.S. Domiciled Obligor consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any U.S. Domiciled Obligor might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any U.S. Domiciled Obligor shall not impair any other U.S. Domiciled Obligor's obligation to pay the full amount of the Obligations. Each U.S. Domiciled Obligor waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such U.S. Domiciled Obligor's rights of subrogation against any other Person. Agent may bid all or a portion of the Obligations at any foreclosure or trustee's sale or at any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this **Section 5.11**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each U.S. Domiciled Obligor's liability under this **Section 5.11** shall be limited to the greater of (i) all amounts for which such U.S. Domiciled Obligor is primarily liable, as described below, and (ii) such U.S. Domiciled Obligor's Allocable Amount.

(ii) If any U.S. Domiciled Obligor makes a payment under this **Section 5.11** of any Obligations (other than amounts for which such U.S. Domiciled Obligor is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other U.S. Domiciled Obligor, exceeds the amount that such U.S. Domiciled Obligor would otherwise have paid if each U.S. Domiciled Obligor had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such U.S. Domiciled Obligor's Allocable Amount bore to the total Allocable Amounts of all U.S. Domiciled Obligors, then such U.S. Domiciled Obligor shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other U.S. Domiciled Obligor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any U.S. Domiciled Obligor shall be the maximum amount that could then be recovered from such U.S. Domiciled Obligor under this **Section 5.11** without rendering such payment voidable under Section 548 of the U.S. Bankruptcy Code or under any similar applicable fraudulent transfer or conveyance Applicable Law, or the Applicable Law in Canada or any province or territory thereof, or in England.

(iii) Each U.S. Domiciled Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each other U.S. Domiciled Obligor that is a Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor 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's obligations and undertakings under this **Section 5.11** voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each U.S. Domiciled Obligor intends this Section to constitute, and this Section shall be deemed to constitute, a guaranteee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Obligor for all purposes of the Commodity Exchange Act.

**5.11.2. Guarantee by Canadian Domiciled Obligors and U.K. Domiciled Obligors.**

(a) **Joint and Several Liability.** Each Canadian Domiciled Obligor and U.K. Domiciled Obligor agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to the Secured Parties the prompt payment and performance of, all Canadian Facility Obligations, U.K. Facility Obligations, and all agreements of each other Canadian Domiciled Obligor and U.K. Domiciled Obligor under the Loan Documents, except its Excluded Swap Obligations, and that it is a Canadian Facility Guarantor and a U.K. Facility Guarantor hereunder. Each Canadian Domiciled Obligor and U.K. Domiciled Obligor agrees that its guaranty or guarantee of obligations as a Canadian Facility Guarantor and a U.K. Facility Guarantor hereunder, as applicable, constitute a continuing guaranty or guarantee of payment and not of collection, that such obligations shall not be discharged until Full Payment of all Obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by any Secured Party with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty or guarantee for the Obligations or any action, or the absence of any action, by any Secured Party in respect thereof (including the release of any security or guaranty or guarantee); (d) the insolvency of any Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the U.S. Bankruptcy Code or similar provision of other Applicable Law; (f) any borrowing or grant of a Lien by any other Obligor, as debtor-in-possession under Section 364 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (g) the disallowance of any claims of any Secured Party against any Obligor for the repayment of any Obligations under Section 502 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (h) any other insolvency, debtor relief or debt adjustment law (whether state, provincial, federal or foreign, including the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), and the Insolvency Act 1986 of England and the Enterprise

Act 2002 of England); (i) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of any Obligor or any other person; (j) any merger, amalgamation or consolidation of any Obligor with any person or persons; (k) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of any governmental body or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Obligations under the Loan Documents; (l) the existence of any claim, set-off, compensation or other rights which any Obligor may have at any time against any other Obligor or any other person, or which any Obligor may have at any time against the Secured Parties, whether in connection with the Loan Documents or otherwise; or (m) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of all Obligations.

(b) Waivers.

(i) Each Canadian Domiciled Obligor and U.K. Domiciled Obligor expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Obligor. Each Canadian Domiciled Obligor and U.K. Domiciled Obligor waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of all Obligations. It is agreed among each Canadian Domiciled Obligor and U.K. Domiciled Obligor, Agent and Lenders that the provisions of this **Section 5.11** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and Lenders would decline to make Loans and issue Letters of Credit. Each Canadian Domiciled Obligor and U.K. Domiciled Obligor acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(ii) Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral (including any Real Estate owned by any Obligor) by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this **Section 5.11**. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Canadian Domiciled Obligor or U.K. Domiciled Obligor or other Person, whether because of any Applicable Laws pertaining to "election of remedies" or otherwise, each Canadian Domiciled Obligor and U.K. Domiciled Obligor consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Canadian Domiciled Obligor or U.K. Domiciled Obligor might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any Canadian Domiciled Obligor or U.K. Domiciled Obligor shall not impair any other Canadian Domiciled Obligor's or U.K. Domiciled Obligor's obligation to pay the full amount of the Obligations it is jointly and severally liable for and has guaranteed under the Loan Documents. Each Canadian Domiciled Obligor and U.K. Domiciled Obligor waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure

with respect to any security for the Obligations, even though that election of remedies destroys such Canadian Domiciled Obligor's or U.K. Domiciled Obligor's rights of subrogation against any other Person. Agent may bid all or a portion of the Obligations at any foreclosure or trustee's sale or at any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this **Section 5.11**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each Canadian Domiciled Obligor's and U.K. Domiciled Obligor's liability under this **Section 5.11** shall be limited to the greater of (i) all amounts for which such Canadian Domiciled Obligor or U.K. Domiciled Obligor is primarily liable, as described below, and (ii) such Canadian Domiciled Obligor's and U.K. Domiciled Obligor's U.K./Canadian Allocable Amount.

(ii) If any Canadian Domiciled Obligor or U.K. Domiciled Obligor makes a payment under this **Section 5.11** of any Obligations (other than amounts for which such Canadian Domiciled Obligor or U.K. Domiciled Obligor is primarily liable) (a "U.K./Canadian Guarantor Payment") that, taking into account all other U.K./Canadian Guarantor Payments previously or concurrently made by any other Canadian Domiciled Obligor or U.K. Domiciled Obligor, exceeds the amount that such Canadian Domiciled Obligor or U.K. Domiciled Obligor would otherwise have paid if each Canadian Domiciled Obligor and U.K. Domiciled Obligor had paid the aggregate Obligations satisfied by such U.K./Canadian Guarantor Payments in the same proportion that such Canadian Domiciled Obligor's or U.K. Domiciled Obligor's U.K./Canadian Allocable Amount bore to the total U.K./Canadian Allocable Amounts of all Canadian Domiciled Obligors and U.K. Domiciled Obligors, then such Canadian Domiciled Obligor or U.K. Domiciled Obligor shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Canadian Domiciled Obligor and U.K. Domiciled Obligor for the amount of such excess, pro rata based upon their respective U.K./Canadian Allocable Amounts in effect immediately prior to such U.K./Canadian Guarantor Payment. The "U.K./Canadian Allocable Amount" for any Canadian Domiciled Obligor or U.K. Domiciled Obligor shall be the maximum amount that could then be recovered from such Canadian Domiciled Obligor or U.K. Domiciled Obligor under this **Section 5.11** without rendering such payment voidable under Section 548 of the U.S. Bankruptcy Code or under any similar applicable fraudulent transfer or conveyance Applicable Law, or the Applicable Law in Canada or any province or territory thereof, or in England.

(iii) Each Canadian Domiciled Obligor and each U.K. Domiciled Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and

irrevocably undertakes to provide funds or other support to each Canadian Domiciled Obligor and U.K. Domiciled Obligor that is a Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor 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's obligations and undertakings under this **Section 5.11** voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each Canadian Domiciled Obligor and each U.K. Domiciled Obligor intends this Section to constitute, and this Section shall be deemed to constitute, a guaranteee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Obligor for all purposes of the Commodity Exchange Act.

5.11.3. **No Limitation.** Nothing contained in this **Section 5.11** shall limit the liability of any Obligor to pay Loans made directly or indirectly to that Obligor (including Loans advanced to any other Obligor and then re-loaned or otherwise transferred to, or for the benefit of, such Obligor), LC Obligations relating to Letters of Credit issued to support such Obligor's business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Obligor shall be primarily liable for all purposes hereunder. Agent and Lenders shall have the right, at any time in their discretion, to condition Loans and Letters of Credit upon a separate calculation of borrowing availability for each Borrower and to restrict the disbursement and use of such Loans and Letters of Credit to such Borrower.

5.11.4. **Joint Enterprise.** Each Obligor has requested that Agent and Lenders make the credit facilities available to the applicable Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. Obligors' business is a mutual and collective enterprise, and the successful operation of each Obligor is dependent upon the successful performance of the integrated group. The Obligors believe that the credit facilities provided to the applicable Borrowers under this Agreement will enhance the borrowing power of each Borrower and ease administration of such credit facilities, all to their mutual advantage. Obligors acknowledge that Agent's and Lenders' willingness to extend credit and to administer the Collateral as provided under the Loan Documents is done solely as an accommodation to Obligors and at Obligors' request.

5.11.5. **California Waivers.**

(a) Notwithstanding anything to the contrary set forth in this Agreement or any of the Loan Documents, each of the Obligors hereby understands and acknowledges that if Agent forecloses judicially or nonjudicially against any Collateral consisting of Real Estate located in California for the Obligations, that foreclosure could impair or destroy any ability that the Obligors may have to seek reimbursement, contribution, or indemnification from one another based on any right any Obligor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by the Obligors under this Agreement. Each of the Obligors further understands and acknowledges that in the absence of this paragraph, such potential impairment or destruction of the Obligors' rights, if any, may entitle the Obligors to assert a defense to this Agreement based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing this Agreement, each Obligor freely,

irrevocably, and unconditionally: (i) waives and relinquishes that defense and agrees that the Obligors will be fully liable under this Agreement even though Agent may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agrees that the Obligors will not assert that defense in any action or proceeding which Agent may commence to enforce this Agreement or any other Loan Document; (iii) acknowledges and agrees that the rights and defenses waived by the Obligors in this Agreement include any right or defense that the Obligors may have or be entitled to assert based upon or arising out of any one or more of Sections 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or Section 2848 of the California Civil Code; and (iv) acknowledges and agrees that Agent and the Lenders are relying on this waiver in creating the Obligations, and that this waiver is a material part of the consideration which Agent and the Lenders are receiving for creating the Obligations.

(b) Each of the Obligors waives all rights and defenses that each Obligor may have because of any of the Obligations is secured by Real Estate. This means, among other things: (i) Agent may collect from the Obligors without first foreclosing on any real or personal property collateral pledged by the Obligors; and (ii) if Agent forecloses on any Collateral consisting of Real Estate pledged by the Obligors: (A) the amount of the Obligations may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the Collateral is worth more than the sale price, and (B) Agent may collect from the Obligors even if Agent, by foreclosing on the Collateral consisting of Real Estate, has destroyed any right the Obligors may have to collect from one another. This is an unconditional and irrevocable waiver of any rights and defenses the Obligors may have because any of the Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(c) Each of the Obligors waives any right or defense it may have at law or equity, including California Code of Civil Procedure Section 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

5.11.6. Subordination. Each Obligor hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to the Full Payment of all Obligations.

**5.12 Currency Matters.** Dollars are the currency of account and payment for each and every sum at any time due from Borrowers hereunder unless otherwise specifically provided in this Agreement, any other Loan Document or otherwise agreed to by Agent. The parties hereto hereby agree as follows:

- (a) Each repayment of a Loan or LC Obligation or a part thereof shall be made in the currency in which such Loan or LC Obligation is denominated at the time of that repayment;
- (b) Each payment of interest shall be made in the currency in which the principal or other sum in respect of which such interest is denominated;
- (c) Each payment of fees by a U.S. Borrower pursuant to **Section 3.2** shall be in Dollars;

- (d) Each payment of fees by Canadian Borrower pursuant to **Section 3.2** shall be in Dollars;
- (e) Each payment of fees by U.K. Borrower pursuant to **Section 3.2** shall be in Dollars;
- (f) Each payment in respect of Extraordinary Expenses and any other costs, expenses and indemnities shall be made in the currency in which the same were incurred by the party to whom payment is to be made;
- (g) Any amount expressed to be payable in Canadian Dollars shall be paid in Canadian Dollars;
- (h) Any amount expressed to be payable in British Pounds shall be paid in British Pounds; and
- (i) Any amount expressed to be payable in Euro shall be paid in Euro.

No payment to any Credit Party (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Obligor in respect of which it was made unless and until such Credit Party shall have received Full Payment in the currency in which such obligation or liability is payable pursuant to the above provisions of this **Section 5.12**. To the extent that the amount of any such payment shall, on actual conversion into such currency, be less than the full amount of such obligation or liability (actual or contingent) expressed in that currency, such Obligor (together with the other Obligors who are liable thereunder or obligated therefor) agrees to indemnify and hold harmless such Credit Party with respect to the amount of such deficiency, with such indemnity surviving the termination of this Agreement and any legal proceeding, judgment or court order pursuant to which the original payment was made which resulted in such deficiency. To the extent that the amount of any such payment to a Credit Party shall, upon an actual conversion into such currency, exceed such obligation or liability, actual or contingent, expressed in that currency, such Credit Party shall return such excess to the Borrower Agent.

**5.13 Currency Fluctuations**. On each Business Day or such other date determined by Agent (the “Calculation Date”), Agent shall determine the Exchange Rate as of such date. The Exchange Rate so determined shall become effective on the first Business Day immediately following such determination (a “Reset Date”) and shall remain effective until the next succeeding Reset Date. On each Reset Date, Agent shall determine the Dollar Equivalent of the Canadian Revolver Exposure and the U.K. Revolver Exposure. If, on any Reset Date: (a) the Total Revolver Exposure exceeds the total amount of the Revolver Commitments on such date, (b) the Canadian Revolver Exposure on such date exceeds the lesser of the Canadian Borrowing Base or the Canadian Revolver Commitments on such date, or (c) the U.K. Revolver Exposure on such date exceeds the lesser of the U.K. Borrowing Base or the U.K. Revolver Commitments on such date (in any case, the amount of any such excess referred to herein as the “Excess Amount”) then (i) Agent shall give notice thereof to Borrower Agent and Lenders and (ii) within one (1) Business Day thereafter, Borrowers shall cause such excess to be eliminated, either by repayment of Revolver Loans or depositing of Cash Collateral with Agent with respect to LC Obligations and

until such Excess Amount is repaid, Lenders shall not have any obligation to make any Loans and the Issuing Banks shall not have any obligation to issue any Letters of Credit.

## SECTION 6. CONDITIONS PRECEDENT

**6.1 Conditions Precedent to Effectiveness and Loans.** In addition to the conditions set forth in **Section 6.2**, this Agreement shall not become effective and Agent, the Issuing Banks and the Lenders shall not be required to fund any requested Loans, issue any Letter of Credit for the benefit of the Borrowers or otherwise extend credit to the Borrowers hereunder, until the date (“Closing Date”) that each of the following conditions has been satisfied:

(a) Notes shall have been executed by each Borrower and delivered to each Applicable Lender that requests issuance of a Note. Each other Loan Document to which any Obligor is a party shall have been duly executed and delivered to Agent by each of the signatories thereto, and each such Obligor shall be in compliance with all terms thereof.

(b) U.S. Borrowers shall have paid all fees and expenses to be paid to Agent and Lenders on the Closing Date.

(c) Agent shall have received certificates, in form and substance satisfactory to it, from a knowledgeable Senior Officer of each Obligor certifying that, after giving effect to the initial Loans and transactions hereunder, (i) such Obligor is Solvent; (ii) no Default or Event of Default exists; (iii) the representations and warranties set forth in **Section 9** are true and correct; and (iv) such Obligor has complied with all agreements and conditions to be satisfied by it under the Loan Documents to which such Obligor is a party.

(d) Agent shall have received a certificate of a duly authorized officer of each Obligor certifying (i) that attached copies of such Obligor’s Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents to which such Obligor is a party is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents to which such Obligor is a party. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.

(e) Agent shall have received a written opinion of Gibson, Dunn & Crutcher LLP, Durham Jones & Pinegar, P.C., McMillan LLP, and CMS Cameron McKenna Nabarro Olswang LLP, in form and substance satisfactory to Agent.

(f) Agent shall have received good standing certificates for each Obligor (other than the U.K. Borrower and the U.K. Subsidiaries), issued by the Secretary of State or other appropriate official of such Obligor’s jurisdiction of organization.

(g) There shall exist no action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental instrumentality that in Agent’s judgment (i) could reasonably be expected to have a material adverse effect on any Obligor’s business, assets, properties, liabilities, operations, condition or prospects, or could

impair any Obligor's ability to perform satisfactorily under this Agreement and the other Loan Documents; or (ii) could reasonably be expected to materially and adversely affect this Agreement or the transactions contemplated hereby.

(h) (i) Each Canadian Security Agreement (amended as required) shall have been duly executed and delivered to Agent by each of the signatories thereto, and each signatory thereto shall be in compliance with all terms thereof, (ii) all PPSA and other Lien filings or recordations necessary to perfect Agent's Liens on the Collateral of each signatory to the Canadian Security Agreement shall have been filed, and (iii) Agent shall have received PPSA and Lien searches and other evidence satisfactory to Agent that such Liens are the only Liens upon the Collateral of each signatory to the Canadian Security Agreement (including estoppel letters), except Permitted Liens.

(i) Each document listed in paragraph (a) of the definition of U.K. Security Agreement shall have been duly executed and delivered to the Agent by each of the signatories thereto, and each U.K. Domiciled Obligor shall be in compliance with all terms thereof.

**6.2 Conditions Precedent to All Credit Extensions.** Agent, Issuing Banks and Lenders shall not be required to fund any Loans, arrange for issuance of any Letters of Credit or grant any other accommodation to or for the benefit of Borrowers, unless the following conditions are satisfied:

- (a) No Default or Event of Default shall exist at the time of, or result from, such funding, issuance or grant;
- (b) The representations and warranties of each Obligor in the Loan Documents shall be true and correct on the date of, and upon giving effect to, such funding, issuance or grant (except for representations and warranties that expressly relate to an earlier date);
- (c) All conditions precedent in any other Loan Document shall be satisfied; and
- (d) With respect to issuance of a Letter of Credit, the LC Conditions shall be satisfied.

Each request (or deemed request) by Borrower Agent or any Borrower for funding of a Loan, issuance of a Letter of Credit or grant of an accommodation shall constitute a representation by Borrowers that the foregoing conditions are satisfied on the date of such request and on the date of such funding, issuance or grant. As an additional condition to any funding, issuance or grant, Agent shall have received such other information, documents, instruments and agreements as it deems appropriate in connection therewith.

## **SECTION 7. COLLATERAL**

### **7.1 Grant of Security Interest.**

7.1.1. (a) To secure the prompt payment and performance of all Obligations (including, without limitation, all Obligations of the Guarantors), each U.S. Domiciled Obligor hereby grants to Agent, for the benefit of the Secured Parties, a continuing security interest in and

Lien upon all Property of such Obligor, in which such Obligor has rights, or the power to transfer rights, including all of the following Property of such Obligor, whether now or in the future, and wherever located:

- (i) all Accounts;
- (ii) all Goods, including Inventory, Equipment and fixtures;
- (iii) all Deposit Accounts (including all cash, cash equivalents, financial assets, negotiable instruments and other evidence of payment, and other funds on deposit therein or credited thereto);
- (iv) all securities accounts (including any and all Investment Property held therein or credited thereto);
- (v) all General Intangibles, including Intellectual Property (including the right to sue and recover for any and all past, present or future infringements of, violations of, dilution of or other damages or injuries to any Intellectual Property);
- (vi) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender, and any Cash Collateral;
- (vii) all Supporting Obligations;
- (viii) all Instruments, Documents and Chattel Paper;
- (ix) all Investment Property
- (x) all Letters of Credit (as defined in the UCC) and Letter-of-Credit Rights;
- (xi) all Commercial Tort Claims, including those shown on **Schedule 9.1.24**;
- (xii) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any of the Property described in this **Section 7.1.1(a)** (the “Proceeds”); and
- (xiii) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to any of the Property described in this **Section 7.1.1(a)**.

Notwithstanding anything to the contrary contained in clauses (i) through (xiii) above, the security interest granted by the U.S. Domiciled Obligors pursuant to this Agreement shall not extend to, and the “Collateral” of the U.S. Domiciled Obligors shall not include, any Excluded Property.

(b) To secure the prompt payment and performance of: (i) all Canadian Facility Obligations (including, without limitation, all Canadian Facility Obligations of each Canadian Facility Guarantor), each Canadian Domiciled Obligor hereby grants to Agent, for the benefit of the Canadian Facility Secured Parties and the U.K. Facility Secured Parties and (ii) all U.K. Facility Obligations (including, without limitation, all U.K. Facility Obligations of each U.K. Facility Guarantor) each U.K. Domiciled Obligor hereby grants to Agent, for the benefit of the U.K. Facility Secured Parties and the Canadian Facility Secured Parties, in each case of clause (i) and (ii), a continuing security interest in and Lien upon all of the following Property of such Obligor, in which such Obligor has rights, or the power to transfer rights, whether now or in the future, and wherever located:

- (i) all Accounts;
- (ii) all Inventory;
- (iii) all Deposit Accounts (including all cash, cash equivalents, financial assets, negotiable instruments and other evidence of payment, and other funds on deposit therein or credited thereto);
- (iv) all securities accounts (including any and all Investment Property held therein or credited thereto);
- (v) all Intellectual Property (including the right to sue and recover for any and all past, present or future infringements of, violations of, dilution of or other damages or injuries to any Intellectual Property);
- (vi) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender that were derived from or consist of any of the Property described in this **Section 7.1.1(b)**, and any Cash Collateral;
- (vii) all Supporting Obligations of any of the Property described in this **Section 7.1.1(b)**;
- (viii) all Instruments, Documents and Chattel Paper, in each case only to the extent evidencing or governing any of the Property described in this **Section 7.1.1(b)**;
- (ix) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any of the Property described in this **Section 7.1.1(b)** (the "Proceeds"); and
- (x) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to any of the Property described in this **Section 7.1.1(b)**, and any General Intangibles to the extent evidencing or governing any of the Property described in this **Section 7.1.1(b)**.

In the case of each U.K. Domiciled Obligor, the continuing security interest in and Lien upon all of the above Property of such U.K. Domiciled Obligor granted above is limited to the Property of that U.K. Domiciled Obligor which is expressed to be subject to a security interest under the U.K. Security Agreements to which that U.K. Obligor is expressed to be a party.

## **7.2 Lien on Deposit Accounts; Cash Collateral.**

7.2.1. Deposit Accounts. To further secure the prompt payment and performance of: (a) all Obligations (including, without limitation, all Obligations of the Guarantors), each U.S. Domiciled Obligor hereby grants to Agent, for the benefit of the Secured Parties, (b) all Canadian Facility Obligations (including, without limitation, all Canadian Facility Obligations of each Canadian Facility Guarantor), each Canadian Domiciled Obligor hereby grants to Agent, for the benefit of the Canadian Facility Secured Parties and the U.K. Facility Secured Parties, and (c) all U.K. Facility Obligations (including, without limitation, all U.K. Facility Obligations of each U.K. Facility Guarantor), each U.K. Domiciled Obligor hereby grants to Agent, for the benefit of the U.K. Facility Secured Parties and the Canadian Facility Secured Parties, in each case of clause (a), (b), and (c), a continuing security interest in and Lien on all amounts credited to any Deposit Account of such Obligor, including any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept. Each Obligor hereby authorizes and directs each bank or other depository to deliver to Agent, upon request, all balances in any Deposit Account maintained by such Obligor, without inquiry into the authority or right of Agent to make such request. In the case of each U.K. Domiciled Obligor, the continuing security interest in and Lien upon all amounts credited to any Deposit Accounts of such U.K. Domiciled Obligor, and any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept, granted above is limited to the sums in the Deposit Accounts of that U.K. Domiciled Obligor, and any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept, which are expressed to be subject to a security interest under the U.K. Security Agreements to which that U.K. Obligor is expressed to be a party.

7.2.2. Cash Collateral. Any Cash Collateral may be invested, at Agent's discretion (and with the consent of Borrowers, as long as no Event of Default exists), but Agent shall have no duty to do so, regardless of any agreement or course of dealing with any Obligor, and shall have no responsibility for any investment or loss. To further secure the prompt payment and performance of all: (a) Obligations (including, without limitation, all Obligations of the Guarantors), each U.S. Domiciled Obligor hereby grants to Agent, for the benefit of the Secured Parties, (b) Canadian Facility Obligations (including, without limitation, all Canadian Facility Obligations of each Canadian Facility Guarantor), each Canadian Domiciled Obligor hereby grants to Agent, for the benefit of the Canadian Facility Secured Parties and the U.K. Facility Secured Parties, and (c) U.K. Facility Obligations (including, without limitation, all U.K. Facility Obligations of each U.K. Facility Guarantor), each U.K. Domiciled Obligor hereby grants to Agent, for the benefit of the U.K. Facility Secured Parties and the Canadian Facility Secured Parties, in each case of clause (a), (b), and (c), a continuing security interest in and Lien on all Cash Collateral held from time to time and all proceeds thereof, whether such Cash Collateral is held in a Cash Collateral Account or elsewhere. Agent may apply Cash Collateral of a U.S. Domiciled Obligor to the payment of any Obligations, may apply Cash Collateral of a Canadian Domiciled Obligor to the payment of any Canadian Facility Obligations, and may apply Cash Collateral of a U.K. Domiciled Obligor to the payment of any U.K. Facility Obligations, in each

case, in such order as Agent may elect, as they become due and payable. Each Cash Collateral Account and all Cash Collateral shall be under the sole dominion and control of Agent. No U.S. Domiciled Obligor or other Person claiming through or on behalf of any U.S. Domiciled Obligor shall have any right to any Cash Collateral, until Full Payment of all Obligations. No Canadian Domiciled Obligor or other Person claiming through or on behalf of any Canadian Domiciled Obligor shall have any right to any Cash Collateral, until Full Payment of all Canadian Facility Obligations. No U.K. Domiciled Obligor or other Person claiming through or on behalf of any U.K. Domiciled Obligor shall have any right to any Cash Collateral, until Full Payment of all U.K. Facility Obligations

**7.3 Real Estate Collateral.** If any U.S. Domiciled Obligor owns any Material Real Property as of the Second Amendment to Third Amended and Restated Effective Date, Borrowers shall, within 120 days of the Second Amendment to Third Amended and Restated Effective Date, execute, deliver and record a first priority (subject to the terms of the Intercreditor Agreement) Mortgage, in form and substance satisfactory to Agent, together with all Related Real Estate Documents. If any U.S. Domiciled Obligor acquires Material Real Property after the Second Amendment to Third Amended and Restated Effective Date, Borrowers shall promptly notify Agent and, within 120 days, execute, deliver and record a first priority (subject to the terms of the Intercreditor Agreement) Mortgage, in form and substance satisfactory to Agent, together with all Related Real Estate Documents. Notwithstanding anything contained in this Agreement to the contrary, no Mortgage shall be executed and delivered with respect to any real property unless and until each Lender has received, at least twenty Business Days prior to such execution and delivery, a life of loan flood zone determination and such other documents as it may reasonably request to complete its flood insurance due diligence and has confirmed to the Agent that flood insurance due diligence and flood insurance compliance has been completed to its satisfaction.

#### **7.4 Other Collateral**

7.4.1. **Commercial Tort Claims.** U.S. Borrowers shall promptly notify Agent in writing if any U.S. Domiciled Obligor has a Commercial Tort Claim (other than a Commercial Tort Claim for less than \$1,000,000), shall promptly amend **Schedule 9.1.24** to include such claim, and shall take such actions as Agent deems appropriate to subject such claim to a duly perfected, first priority (subject to the terms of the Intercreditor Agreement) Lien in favor of Agent.

7.4.2. **Certain After-Acquired Collateral.** Borrowers shall promptly notify Agent in writing if, after the Original Agreement Closing Date, any Obligor obtains any interest in any Collateral consisting of Deposit Accounts, Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights and, upon Agent's request, shall promptly take such actions as Agent deems appropriate to effect Agent's duly perfected, first priority Lien upon such Collateral, including obtaining any appropriate possession, control agreement or Lien Waiver. If any Collateral is in the possession of a third party, at Agent's request, Borrowers shall obtain an acknowledgment that such third party holds the Collateral for the benefit of Agent.

**7.5 No Assumption of Liability.** The Liens on the Collateral granted hereunder are given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of any Obligor relating to any Collateral. In no event shall the grant of any Lien under any Loan Document secure an Excluded Swap Obligation of the granting Obligor.

**7.6 Further Assurances.** Promptly upon request, Obligors shall deliver such instruments, assignments, title certificates, or other documents or agreements, and shall take such

actions, as Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Obligor authorizes Agent to file any financing statement that Agent deems desirable to preserve and perfect Agent's security interest in the Collateral of such Obligor, and ratifies any action taken by Agent before the Closing Date to effect or perfect its Lien on any Collateral.

## **SECTION 8. COLLATERAL ADMINISTRATION**

**8.1 Borrowing Base Certificates.** By the 20th day of each month, Borrower Agent shall deliver to Agent (and Agent shall promptly deliver same to Lenders) a U.S. Borrowing Base Certificate, Canadian Borrowing Base Certificate, and a U.K. Borrowing Base Certificate, in each case, prepared as of the close of business of the previous month, and at such other times as Agent may request; provided that during any Reporting Trigger Period, Borrower Agent shall also be required to deliver to Agent weekly U.S. Borrowing Base Certificates, Canadian Borrowing Base Certificates, and U.K. Borrowing Base Certificates by the 3rd Business Day of each week which begins during such Reporting Trigger Period, in each case, prepared as of the close of business on the last Business Day of the previous week (in the case of matters other than those related to Inventory) or of the close of business of the previous month (in the case of matters relating to Inventory). All calculations of U.S. Availability, Canadian Availability, or U.K. Availability in any Borrowing Base Certificate shall originally be made by Borrower Agent and certified by a Senior Officer of Borrower Agent; provided, that Agent may from time to time review and adjust any such calculation (a) to reflect its reasonable estimate of declines in value of any Collateral, due to collections received in any Dominion Account or otherwise; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Collateral; and (c) to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the U.S. Availability Reserve and/or the Canadian Availability Reserve and/or the U.K. Availability Reserve. The U.S. Borrowing Base Certificate shall set forth the calculation of the U.S. Borrowing Base in Dollars. The Canadian Borrowing Base shall set forth the calculation of the Canadian Borrowing Base in both Canadian Dollars and the Dollar Equivalent thereof along with the Exchange Rate used to determine such Dollar Equivalent. The U.K. Borrowing Base shall set forth the calculation of the U.K. Borrowing Base in each of British Pounds, Dollars and Euros and the Dollar Equivalent thereof along with the Exchange Rate used to determine such Dollar Equivalent.

**8.2 Administration of Accounts.**

8.2.1. Records and Schedules of Accounts. Each Obligor shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to Agent sales, collection, reconciliation and other reports in form satisfactory to Agent, on such periodic basis as Agent may request. Borrower Agent shall also provide to Agent, on or before the 20th day of each month, a detailed aged trial balance of all Accounts of each Borrower as of the end of the preceding month, specifying each Account's Account Debtor name and address, amount, invoice date and due date, showing any discount, allowance, credit, authorized return or dispute, and including such proof of delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as Agent may reasonably request. If Accounts of any Borrower Group in an aggregate face amount of \$2,500,000 or more cease to be Eligible Accounts, Borrower Agent shall notify Agent of such

occurrence promptly (and in any event within one Business Day) after any Obligor has knowledge thereof.

8.2.2. Taxes. If an Account of any Obligor includes a charge for any Taxes, Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Obligor and to charge the Borrowers of the applicable Borrower Group therefor; provided, however, that neither Agent nor Lenders shall be liable for any Taxes that may be due from any Obligor or with respect to any Collateral.

8.2.3. Account Verification. Whether or not a Default or Event of Default exists, Agent shall have the right at any time, in the name of Agent, any designee of Agent or any Obligor, to verify the validity, amount or any other matter relating to any Accounts of Obligors by mail, telephone or otherwise. Obligors shall cooperate fully with Agent in an effort to facilitate and promptly conclude any such verification process.

8.2.4. Maintenance of Dominion Accounts.

(a) U.S. Domiciled Obligors and Canadian Domiciled Obligors shall maintain Dominion Accounts pursuant to lockbox or other arrangements acceptable to Agent. U.S. Domiciled Obligors and Canadian Domiciled Obligors shall obtain an agreement (in form and substance satisfactory to Agent) from each lockbox servicer and Dominion Account bank, establishing Agent's control over and Lien in the lockbox or Dominion Account, which may be exercised by Agent during any Dominion Trigger Period, requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges. If a Dominion Account of a U.S. Domiciled Obligor or Canadian Domiciled Obligor is not maintained with Bank of America or Bank of America (Canada), as applicable, Agent may, during any Dominion Trigger Period, require immediate transfer of all funds in such account to a Dominion Account maintained with Bank of America or Bank of America (Canada), as applicable.

(b) U.K. Domiciled Obligors shall maintain Dominion Accounts at all times pursuant to lockbox or other arrangements acceptable to Agent. U.K. Domiciled Obligors shall obtain an agreement (in form and substance satisfactory to Agent) from each lockbox servicer and Dominion Account bank, establishing Agent's control over and Lien in the lockbox or Dominion Account at all times, requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges. If a Dominion Account of a U.K. Domiciled Obligor is not maintained with Bank of America, N.A., London Branch, Agent may require immediate transfer of all funds in such account to a Dominion Account maintained with Bank of America, N.A., London Branch.

(c) Agent and Lenders assume no responsibility to any Obligor for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

8.2.5. Proceeds of Collateral. Obligors (other than U.K. Domiciled Obligors) shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Dominion Account (or a

lockbox relating to a Dominion Account). U.K. Domiciled Obligors shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Dominion Account (or a lockbox relating to a Dominion Account). If any Obligor receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for Agent and promptly (not later than the next Business Day) deposit same into a Dominion Account.

### **8.3 Administration of Inventory.**

8.3.1. Records and Reports of Inventory. Each Obligor shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to Agent inventory and reconciliation reports in form satisfactory to Agent, on such periodic basis as Agent may request. Each Obligor shall conduct periodic cycle counts consistent with historical practices, and shall provide to Agent a report based on each such count promptly upon completion thereof, together with such supporting information as Agent may request.

8.3.2. Returns of Inventory. No Obligor shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default, Event of Default or Overadvance exists or would result therefrom; (c) Agent is promptly notified if the aggregate Value of all Inventory returned in any month exceeds \$5,000,000; and (d) any payment received by an Obligor for a return during any Dominion Trigger Period is promptly remitted to Agent for application to the Obligations.

8.3.3. Acquisition, Sale and Maintenance. No Obligor shall acquire or accept any Inventory on consignment or approval, and each Obligor shall take all steps to assure that all Inventory is produced in accordance with Applicable Law, including the FLSA. Except to the extent permitted by **Section 10.2.5(b)** in the case of consignments, no Obligor shall sell any Inventory on consignment or approval or any other basis under which the customer may return or require an Obligor to repurchase such Inventory. Each Obligor shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all Applicable Law, and, except in cases of good faith disputes, shall make current rent payments (within applicable grace and cure periods provided for in leases) at all locations where any Collateral is located.

### **8.4 Intentionally Omitted.**

8.5 Administration of Deposit Accounts. Each Obligor shall take all actions necessary to establish Agent's control of all Deposit Accounts (including Dominion Accounts) and securities accounts maintained by such Obligor; provided, however, that such control shall not be required for the following (collectively, the "Excluded Deposit Accounts"):

(a) an account exclusively used for payroll, payroll taxes or employee benefits, and (b) at any time during which an Event of Default does not exist, an account containing not more than \$250,000, provided, that the aggregate amounts contained in all such accounts referred to in this clause (b) for which Agent does not have control at any time shall not exceed \$1,000,000. The applicable Obligor shall be the sole account holder of each Deposit Account or securities account and shall not allow any other Person (other than Agent) to have control over a Deposit Account, securities account or any Property deposited therein. Each of the Obligors shall promptly notify Agent in writing of any

opening or closing of a Deposit Account or securities account and, concurrently with the opening thereof, shall ensure that such account (except an Excluded Deposit Account) is subject to a fully executed Deposit Account Control Agreement or, in the case of a securities account, similar control agreement in favor of Agent and acceptable to Agent.

## **8.6 General Provisions.**

8.6.1. Location of Collateral. All tangible items of Collateral, other than Inventory in transit (including in transit to or from a manufacturing facility), shall at all times be kept by Obligors at the business locations for such Obligors set forth in **Schedule 8.6.1**, except that Obligors may (a) make sales or other dispositions of Collateral in accordance with **Section 10.2.5**; and (b) move Collateral to another location in the United States or, in the case of: (i) a Canadian Domiciled Obligor, in Canada, or (ii) a U.K. Domiciled Obligor, in England, Wales, Scotland or Northern Ireland (subject, in each case, to Agent being granted a first priority Lien (subject to Permitted Liens) if none has been previously granted in such province or territory), in each case, upon 15 Business Days' prior written notice to Agent.

### 8.6.2. Insurance of Collateral; Condemnation Proceeds.

(a) Each Obligor shall maintain insurance with respect to the Collateral, covering casualty, hazard, theft, malicious mischief, flood and other risks, in amounts, with endorsements and with insurers (with a Best's Financial Strength Rating of at least A\_ VII, unless otherwise approved by Agent) satisfactory to Agent; provided, that if Real Estate secures any Obligations, flood hazard diligence, documentation and insurance for such Real Estate shall comply with all Flood Laws or shall otherwise be satisfactory to all Lenders. From time to time upon request, Borrower Agent shall deliver to Agent the originals or certified copies of its insurance policies and updated flood plain searches. Unless Agent shall agree otherwise, each policy shall include satisfactory endorsements (i) showing Agent as lender first loss payee (with respect to property policies only); (ii) requiring at least 30 days prior written notice to Agent in the event of cancellation of the policy for any reason whatsoever; and (iii) specifying that the interest of Agent shall not be impaired or invalidated by any act or neglect of any Obligor or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. If any Obligor fails to provide and pay for any insurance, Agent may, at its option, but shall not be required to, procure the insurance and charge Borrowers therefor. Each Obligor agrees to deliver to Agent, promptly as rendered, copies of all reports made to insurance companies. While no Event of Default exists, Obligors may settle, adjust or compromise any insurance claim, as long as the proceeds are delivered to Agent in accordance with **Section 8.6.2(b)**. If an Event of Default exists, only Agent shall be authorized to settle, adjust and compromise any claims involving any Collateral.

(b) Any proceeds of insurance relating to the Collateral and any awards arising from condemnation of any Collateral shall be paid to Agent for application to the Obligations in accordance with the terms hereof.

8.6.3. Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to

any Person to realize upon any Collateral, shall be borne and paid by Borrowers. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Obligors' sole risk.

8.6.4. **Defense of Title to Collateral.** Each Obligor shall at all times defend its title to Collateral and Agent's Liens therein against all Persons, claims and demands whatsoever, except Permitted Liens.

**8.7 Power of Attorney.** Each Obligor hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Obligor's true and lawful attorney (and agent-in-fact), coupled with an interest, for the purposes provided in this Section. Agent, or Agent's designee, may, without notice and in either its or a an Obligor's name, but at the cost and expense of the Borrowers:

(a) Endorse an Obligor's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control; and

(b) During an Event of Default, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts, by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Agent deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or securities accounts, and take control, in any manner, of any proceeds of Collateral; (v) prepare, file and sign an Obligor's name to a proof of claim or other document in a bankruptcy or other Insolvency Proceeding of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to an Obligor where the addressee is any Account Debtor or where the addressee is not identifiable with certainty, and notify postal authorities to deliver any such mail to an address designated by Agent; (vii) endorse any Chattel Paper, Document, Instrument, invoice, freight bill, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use an Obligor's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use the information recorded on or contained in any data processing, electronic or information systems relating to any Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which an Obligor is a beneficiary; (xii) exercise any voting or other rights under or with respect to any Investment Property; and (xiii) take all other actions as Agent deems appropriate to fulfill any Obligor's obligations under the Loan Documents.

## SECTION 9. REPRESENTATIONS AND WARRANTIES

9.1 **General Representations and Warranties.** To induce Agent and Lenders to enter into this Agreement and to make available the Commitments, Loans and Letters of Credit, each Obligor represents and warrants that:

9.1.1. **Existence, Qualification and Power; Compliance with Applicable Laws.** Each Obligor and each Subsidiary (a) is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and is licensed and 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, and (d) is in compliance with all Applicable Laws; except in each case referred to in clause (b)(i), (c) or (d), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. No Obligor is an EEA Financial Institution.

9.1.2. **Authorization; No Contravention.** The execution, delivery and performance by each Obligor of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organic Documents; (b) conflict with or result in any breach of or contravention under (i) any Contractual Obligation to which such Person is a party or by which it is bound, the termination or adverse modification of which could reasonably be expected to have a Material Adverse Effect, 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; (c) result in the creation of any Lien (other than Permitted Liens), or (d) violate any Applicable Law.

9.1.3. **Governmental Authorization; Other Consents.** No 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 Obligor of this Agreement or any other Loan Document except for such approvals, consents, exemptions, authorizations, actions, notices and filings which have been obtained, taken, given or made and are in full force and effect. All necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Obligors and Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect.

9.1.4. **Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Obligor 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 Obligor, enforceable against each Obligor that is party thereto in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

9.1.5. **Financial Statements; No Material Adverse Effect.**

(a) The consolidated and consolidating balance sheets, and related statements of income, cash flow and shareholder's equity, of Parent and its Subsidiaries that have been and are hereafter delivered to Agent and Lenders (i) are prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted

therein; (ii) fairly present the financial positions and results of operations of Parent and Subsidiaries at the dates and for the periods indicated, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of Parent and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Debt, to the extent required by GAAP to be shown on such financial statements.

(b) Since December 31, 2010, there has been no change in the condition, financial or otherwise, of any Borrower or any Subsidiary that could reasonably be expected to have a Material Adverse Effect.

(c) Each Borrower is Solvent and Parent and the Subsidiaries on a consolidated basis are Solvent.

9.1.6. Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Obligor, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Borrower or any Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

9.1.7. No Default. No Borrower or Subsidiary is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

9.1.8. Ownership of Property; Liens. Each Borrower and each Subsidiary 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 (other than minor defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect), and all personal Property, including all Property reflected in any financial statements delivered to Agent or Lenders, in each case free of Liens except Permitted Liens. Except disclosed on the survey delivered to Agent as part of the Related Real Estate Documents, no Real Estate is located in a special flood hazard zone, except as disclosed on **Schedule 9.1.8**. Each Borrower and each Subsidiary has paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, other than Permitted Liens. All Liens of Agent in the Collateral are duly perfected, first priority Liens, subject only to Permitted Liens that are expressly allowed to have priority over Agent's Liens.

9.1.9. Environmental Compliance. Borrowers and Subsidiaries conduct in the Ordinary Course of Business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties (including Real Estate), and as a result thereof the Obligors have reasonably concluded that, except as specifically disclosed on **Schedule 9.1.9**, such Environmental Laws and claims could not, individually or in the aggregate reasonably be expected to have a Material Adverse Effect. No Borrower or Subsidiary has any contingent liability with

respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now or previously owned, leased or operated by it.

9.1.10. Insurance. The properties of Borrowers and Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of any Obligor, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Borrower or the applicable Subsidiary operates.

9.1.11. Taxes. Each Borrower and each Subsidiary has filed all federal, state and material local tax returns and other material reports that it is required by law to file, and has paid, or made proper provision in accordance with relevant accounting standards for the payment of, all Taxes upon it, its income and its Properties that are due and payable, except to the extent being Properly Contested.

9.1.12. ERISA; Canadian Pension Plan Compliance. Except as disclosed on **Schedule 9.1.12**:

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of Obligors, nothing has occurred which would prevent, or cause the loss of, such qualification. Parent and each ERISA Affiliate has made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of Obligors, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could be 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 that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) No Canadian Borrower or any Canadian Subsidiary provides benefits to retired Canadian Employees or to beneficiaries or dependents of retired Canadian Employees. Except as would not reasonably be expected to result in a Material Adverse Effect, Canadian Borrower and each Canadian Subsidiary is in compliance with all Requirements of Law and all Canadian Employee Benefits Legislation and health and safety, workers compensation, employment standards, labor relations, health insurance, employment insurance, protection of personal information, human rights laws and any Canadian federal, provincial or local counterparts or equivalents in each case, as applicable to the Canadian Employees and as amended from time to time.

(d) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither Parent nor any ERISA Affiliate

has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither Parent nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither Parent nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

(e) Canadian Borrower and Canadian Subsidiaries are in compliance with the requirements of the PBA and other federal, provincial or state laws with respect to each Canadian Pension Plan, except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect. No fact or situation that may reasonably be expected to result in a Material Adverse Effect exists in connection with any Canadian Pension Plan. Neither Canadian Borrower nor any of Canadian Subsidiary has any material withdrawal liability in connection with a Plan. No Termination Event has occurred. Each Canadian Pension Plan has no solvency deficiency and is fully funded as required under the most recent actuarial valuation filed with the applicable Governmental Authority pursuant to generally accepted actuarial practices and principles. No fact or circumstance exists that could adversely affect the tax-exempt status of a Canadian Pension Plan. No Lien has arisen, choate or inchoate, in respect of Canadian Borrower or Canadian Subsidiaries or their property in connection with any Canadian Pension Plan (save for contribution amounts not yet due). No Canadian Pension Plan provides benefits on a defined benefit basis.

(f) With respect to any Foreign Plan, except as could not reasonably be expected to have a Material Adverse Effect, (i) all employer and employee contributions required by law or by the terms of the Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices; (ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance, or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and (iii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.

(g) No U.K. Domiciled Obligor nor any of its U.K. subsidiaries is nor has at any time been: (i) an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004 of the United Kingdom) of an occupational pension scheme which is not a money purchase scheme (as those terms are defined in the Pension Schemes Act 1993 of the United Kingdom); or (ii) “connected” with or an “associate” of the Parent or any of its Subsidiaries which is such an employer (as those terms are used in Sections 38 and 43 of the Pensions Act 2004 of the United Kingdom) in relation to an occupational pension scheme in the United Kingdom which is not a money purchase scheme.

9.1.13. Subsidiaries. **Schedule 9.1.13** shows, for each Borrower and each Subsidiary, its name and its jurisdiction of organization. **Schedule 9.1.13** shows, for each Subsidiary of Parent, its authorized and issued Equity Interests, the holders of its Equity Interests,

and all agreements binding on such holders with respect to their Equity Interests. Except as disclosed on **Schedule 9.1.13**, in the five years preceding the Closing Date, no Borrower or Subsidiary has acquired any substantial assets from any other Person nor been the surviving entity in a merger, amalgamation or combination. Each Borrower has good title to its Equity Interests in its Subsidiaries, and all such Equity Interests are duly issued, fully paid and non-assessable. There are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Subsidiary of Parent.

**9.1.14. Margin Regulations; Investment Company Act.**

(a) No Borrower or Subsidiary is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Loan proceeds or Letters of Credit will be used by Borrowers to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose, in each case, in violation of Regulations T, U or X of the Board of Governors.

(b) None of the Borrowers is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

**9.1.15. Disclosure.** No written report, financial statement, certificate or other written information furnished by or on behalf of any Obligor to Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) taken as a whole 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 misleading; provided that, with respect to projected financial information, the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that projections are subject to significant uncertainties and contingencies, many of which are beyond the Borrowers’ control, and that no assurance can be given the projections will be realized).

**9.1.16. Compliance with Laws.** Each Borrower and each Subsidiary is in compliance in all material respects with the requirements of all Applicable 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 Applicable 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. Except as would not reasonably be expected to have a Material Adverse Effect, no Inventory has been produced in violation of the FLSA.

**9.1.17. Intellectual Property; Licenses, Etc.** To the best knowledge of Obligors, or as could not reasonably be expected to have a Material Adverse Effect, Borrowers and Subsidiaries own, or possess the lawful right to use, all Intellectual Property necessary for the conduct of its business, without conflict with the rights of any other Person. To the best knowledge of Obligors, no slogan or other advertising device, product, process, method, substance, part or other material now employed by any Borrower or any Subsidiary infringes upon any valid,

proprietary rights held by any other Person that could result in a claim, that, if successful, could reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Obligors, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Borrower Agent has disclosed on **Schedule 9.1.17** (i) all Royalties or other compensation paid by any Borrower or Subsidiary to any Person with respect to any Intellectual Property and (ii) all Intellectual Property registrations, filings and applications for registration owned by any Obligor.

9.1.18. Accounts. Agent may rely, in determining which Accounts are Eligible Accounts, on all statements and representations made by Borrowers with respect thereto. Borrowers warrant, with respect to each Account at the time it is shown as an Eligible Account in a Borrowing Base Certificate, that:

- (a) it is genuine and in all respects what it purports to be, and is not evidenced by a judgment;
- (b) it arises out of a completed, bona fide sale and delivery of goods or rendition of services in the Ordinary Course of Business, and substantially in accordance with any purchase order, contract or other document relating thereto;
- (c) it is for a sum certain, maturing as stated in the invoice covering such sale or rendition of services, a copy of which has been furnished or is available to Agent on request;
- (d) it is not subject to any offset, Lien (other than Agent's Lien), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the Ordinary Course of Business and disclosed to Agent; and it is absolutely owing by the Account Debtor, without contingency in any respect;
- (e) no purchase order, agreement, document or Applicable Law restricts assignment of the Account to Agent (regardless of whether, under the UCC or PPSA, the restriction is ineffective), and the applicable Borrower is the sole payee or remittance party shown on the invoice;
- (f) no extension, compromise, settlement, modification, credit, deduction or return has been authorized with respect to the Account, except discounts or allowances granted in the Ordinary Course of Business for prompt payment that are reflected on the face of the invoice related thereto and in the reports submitted to Agent hereunder; and
- (g) to the best of Borrowers' knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectibility of such Account; (ii) the Account Debtor had the capacity to contract when the Account arose, continues to meet the applicable Borrower's customary credit standards, is Solvent, is not contemplating or subject to an Insolvency Proceeding, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

9.1.19. Brokers. There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Loan Documents.

9.1.20. Trade Relations. Except as would not reasonably be expected to have a Material Adverse Effect, there exists no actual or threatened termination, limitation or modification of any business relationship between any Borrower or Subsidiary and any customer or supplier, or any group of customers or suppliers, who individually or in the aggregate are material to the business of such Borrower or Subsidiary.

9.1.21. Labor Relations. Except as described on **Schedule 9.1.21**, no Obligor is party to or bound by any collective bargaining agreement. Except as would not reasonably be expected to have a Material Adverse Effect, there are no material grievances, disputes or controversies with any union or other organization of any Borrower's or Subsidiary's employees, or, to any Obligor's knowledge, any asserted or threatened strikes, work stoppages or demands for collective bargaining.

9.1.22. OFAC. No Obligor (i) or (to the knowledge of any Obligor) any director, officer, employee, agent, affiliate or representative thereof, is or is owned or controlled by any individual or entity that is currently the target of any Sanction or is located, organized or resident in a Designated Jurisdiction, (ii) is a person whose property or interest in property is blocked or subject to blocking pursuant to (A) Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (B) the United Nations Act (Canada), the Special Economic Measures Act (Canada), the Export and Import Permits Act (Canada), the Freezing Assets of Corrupt Foreign Officials Act (Canada), the Criminal Code (Canada), the Defence Production Act (Canada), the Proceeds of Crime Act, the Anti-terrorism Act (Canada) or the Foreign Extraterritorial Measures Act (Canada) (together with and all regulations and orders made thereunder, collectively, "Canadian Sanctions Laws"), or (C) the Proceeds of Crime Act 2002, the Counter-Terrorism Act 2008 and Export Control Order 2008, the Export Control Act 2002, the Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011, the Terrorist Asset-Freezing etc. Act 2010 and the Consolidated List of Financial Sanctions Targets administered by HM Treasury through the Office of Financial Sanctions Implementations, EU Council Regulation 2580/2001 and all supplementary instruments thereto including Implementing Resolution 1169/2012 and EU (EC) Regulation 881/2002, (EU) 753/2011, (EU) 754/2011 and (EU) 2017/1411 (collectively, the "U.K. Sanctions Laws"), (iii) engages in any dealings or transactions prohibited by (A) Section 2 of such executive order, (B) Canadian Sanctions Laws or (C) U.K. Sanctions Laws, or is otherwise associated with any such person in any manner violative of Section 2 of such executive order or by Canadian Sanctions Laws or U.K. Sanctions Laws, or (iv) is a person (A) on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order, (B) on the list of names subject to the Regulations Establishing a List of Entities made under subsection 83.05(1) of the *Criminal Code*, and/or the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* (RIUNRST) and/or *United Nations Al-Qaida and Taliban Regulations* (UNAQTR), or (C) is a person included on the UK's Consolidated List of Financial Sanctions Targets.

9.1.23. **Anti-Corruption Laws.** Each Obligor has implemented and maintains in effect policies and procedures designed to ensure compliance by such Obligor, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws of Canada, United Kingdom, United States, and any of the member states of the European Union and applicable Sanctions, and such Obligor, its Subsidiaries and their respective officers and directors and, to the knowledge of such Loan Party, its employees and agents, are in compliance with Anti-Corruption Laws of Canada, United Kingdom, United States, and any of the member states of the European Union and applicable Sanctions in all material respects.

9.1.24. **Commercial Tort Claims.** Except as shown on **Schedule 9.1.24**, no U.S. Domiciled Obligor has a Commercial Tort Claim (other than a Commercial Tort Claim for less than \$1,000,000).

## **SECTION 10. COVENANTS AND CONTINUING AGREEMENTS**

**10.1 Affirmative Covenants.** As long as any Commitments or Obligations are outstanding, each Obligor shall, and shall cause each Subsidiary to:

10.1.1. **Financial Statements.** Deliver to Agent (with sufficient copies for each Lender), in form and detail satisfactory to Agent and the Required Lenders:

(a) as soon as available, but in any event within 90 days after the end of each Fiscal Year of Parent, balance sheets as at the end of such Fiscal Year, and the related statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, on a consolidated and consolidating basis for Parent and its Subsidiaries, 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, which consolidated statements shall be audited and accompanied by a report and opinion of an independent certified public accountant or chartered accountant, as applicable, of nationally recognized standing, 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;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each Fiscal Year of Parent, unaudited balance sheets as at the end of such fiscal quarter, and the related statements of income or operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of Parent's fiscal year then ended, on a consolidated and consolidating basis for Parent and its Subsidiaries, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief financial officer of Borrower Agent as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Parent and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, and in any event within 30 days after the end of each month other than the last month of each fiscal quarter of Parent, unaudited balance sheets as at the

end of such month, and the related statements of income or operations for such month and for the portion of Parent's fiscal year then ended, on a consolidated basis for Parent and its Subsidiaries, setting forth in each case in comparative form the figures for the corresponding month of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief financial officer of Borrower Agent as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Parent and its Subsidiaries in accordance with historical practices.

10.1.2. Certificates; Other Information. Deliver to Agent, for delivery to each Lender, in form and detail satisfactory to Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in **Sections 10.1.1(a), (b) and (c)**, or more frequently if requested by Agent when a Default or Event of Default exists, a duly completed Compliance Certificate signed by the chief financial officer of the Borrower Agent;

(b) concurrently with the delivery of financial statements under **Section 10.1.1(a)**, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of Parent by independent accountants in connection with the accounts or books of Borrowers or any Subsidiary, or any audit of any of them;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Parent, and copies of all annual, regular, periodic and special reports and registration statements which any Obligor may file or be required to file with the Securities and Exchange Commission or any provincial securities commission or regulator, and not otherwise required to be delivered to Agent pursuant hereto;

(d) promptly following the Agent's request therefor, all documentation and other information that the Agent reasonably requests on its behalf or on behalf of any Lender 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 Proceeds of Crime Act;

(e) promptly following the Agent's request therefor, copies of (i) any documents described in Section 101(k)(1) of ERISA that any Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l)(1) of ERISA that any Borrower or any of its ERISA Affiliates may request with respect to any Plan or Multiemployer Plan; provided that if any Borrower or any of its ERISA Affiliates have not requested such documents or notices from the administrator or sponsor of the applicable Plan or Multiemployer Plan prior to the Agent's request therefor, a Borrower or one of its ERISA Affiliates shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof and promptly after the sending or filing thereof, copies of any annual report to be filed in connection with any Canadian Pension Plan or any Foreign Plan of any Obligor incorporated in the U.K.;

(f) promptly after Borrower Agent has notified Agent of any intention by Borrowers to treat the Loans and/or Letters of Credit and related transactions as being a “reportable transaction” (within the meaning of Treasury Regulation Section 1.6011-4), a duly completed copy of IRS Form 8886 or any successor form;

(g) not later than 30 days after the end of each Fiscal Year, projections of Parent’s consolidated balance sheets, results of operations, cash flow, U.S. Availability, U.K. Availability and Canadian Availability for the next Fiscal Year, month by month;

(h) at Agent’s request, a listing of each Obligor’s trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging, all in form satisfactory to Agent;

(i) within 45 days of the end of each fiscal quarter of Parent, or more frequently if requested by Agent when a Default or Event of Default exists: (i) all Royalties or other compensation (to the extent not previously disclosed to Agent in writing) paid by any Borrower or Subsidiary to any Person with respect to any Intellectual Property, and (ii) all Intellectual Property (to the extent not previously disclosed to Agent in writing) owned, used or licensed by, or otherwise subject to any interests of, any Borrower or Subsidiary; and

(j) promptly, such additional information regarding the Collateral or the business, financial or corporate affairs of Borrowers or any Subsidiary, or compliance with the terms of the Loan Documents, as Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to **Section 10.1.1(a) or (b) or Section 10.1.2(c)** (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower Agent posts such documents, or provides a link thereto on Borrower Agent’s website; or (ii) on which such documents are posted on Borrower Agent’s behalf on IntraLinks/IntraAgency or another relevant website, if any, to which Agent and each Lender have access (whether a commercial, third-party website or whether sponsored by Agent); provided that: (i) if any Lender so requests, the Borrower Agent shall deliver paper copies or electronic copies via electronic mail of such documents to Agent or any Lender that requests Borrower Agent to deliver such paper or electronic copies until a written request to cease delivering paper or electronic copies is given by Agent or such Lender and (ii) Borrower Agent shall notify (which may be by facsimile or electronic mail) Agent and each Lender of the posting of any such documents. Notwithstanding anything contained herein, in every instance Borrower Agent shall be required to provide paper copies of the Compliance Certificates required by **Section 10.1.2(a)** to Agent and each of the Lenders. Except for such Compliance Certificates, 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 Borrower Agent 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.

10.1.3. Notices. Notify Agent and each Lender:

- (a) Within five (5) Business Days after the occurrence of a Default or Event of Default under **Section 11.1(f)** and promptly after the occurrence of any other Default or Event of Default;
- (b) Promptly of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including, if applicable (i) breach or non-performance of, or any default under, a Contractual Obligation of any Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between any Borrower or any Subsidiary and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws; or (iv) the assertion of any Intellectual Property Claim;
- (c) Promptly of the occurrence of any ERISA Event or Termination Event;
- (d) Promptly of any material change in accounting policies or financial reporting practices by any Borrower or any Subsidiary;
- (e) Promptly after obtaining knowledge of any pending or threatened labor dispute, strike or walkout, or the expiration of any material labor contract that, in each case, materially and adversely affects any Obligor or any Subsidiary;
- (f) Promptly of any judgment affecting any Obligor in an amount exceeding the Dollar Equivalent of \$5,000,000;
- (g) Promptly after the discharge or any withdrawal or resignation by Borrowers' accountants; and
- (h) At least 30 days prior to any opening of a new office or place of business where Collateral will be located.

Each notice pursuant to this Section shall be accompanied by a statement of a Senior Officer of Borrower Agent setting forth details of the occurrence referred to therein and stating what action Borrowers have taken and proposes to take with respect thereto. Each notice pursuant to **Section 10.1.3** shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

10.1.4. Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities in an aggregate amount in excess of \$10,000,000, including (a) all Taxes and tax liabilities, assessments and governmental charges or levies upon it or its Properties, unless such Taxes are being Properly Contested; provided, that all such Taxes, tax liabilities, assessments, governmental charges and levies shall be paid and discharged prior to the date on which a Lien on any Collateral shall attach in an aggregate amount in excess of \$250,000 for all federal tax liens and \$2,500,000 for all other liens which is senior to Agent's Lien; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Debt, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Debt.

10.1.5. Preservation of Existence, Etc. (a) Preserve, renew and maintain in full

force and effect its legal existence and good standing under the laws of the jurisdiction of its organization except in a transaction permitted by **Section 10.2.4 or 10.2.5**; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

10.1.6. Maintenance of Properties. (a) Except for any downsizing, restructuring, closure or partial closure of the golf ball manufacturing operations of Borrowers in existence on the Original Agreement Closing Date, maintain, preserve and protect all of its material properties and material 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 except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

10.1.7. Maintenance of Insurance. In addition to the insurance required hereunder with respect to Collateral, maintain insurance with insurers (with a Best Rating of at least A7, unless otherwise approved by Agent) satisfactory to Agent, with respect to the Properties and business of Borrowers and Subsidiaries of such type (including product liability, workers' compensation, larceny, embezzlement, or other criminal misappropriation insurance), in such amounts, and with such coverages and deductibles as are customary for companies similarly situated.

10.1.8. Compliance with Laws. Comply in all material respects with the requirements of all Applicable 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 Applicable Law or order, write, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Materially comply with all Anti-Terrorism Laws.

10.1.9. Books and Records. Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of each Borrower and each 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 each Borrower and each Subsidiary, as the case may be.

10.1.10. Inspections; Appraisals.

(a) Permit Agent from time to time, subject (except when a Default or Event of Default exists) to reasonable notice and normal business hours, to visit and inspect the Properties of any Borrower or Subsidiary, inspect, audit and make extracts from any Borrower's or Subsidiary's books and records, and discuss with its officers, employees, agents, advisors and independent accountants such Borrower's or Subsidiary's business, financial condition, assets, prospects and results of operations. For each calendar year, at least one examination will be held by Agent during such calendar year and at least two examinations will be held by Agent during

such calendar year if Availability on any day during such year is less than \$35,000,000. Lenders may participate in any such visit or inspection, at their own expense. Neither Agent nor any Lender shall have any duty to any Borrower to make any inspection, nor to share any results of any inspection, appraisal or report with any Borrower. Borrowers acknowledge that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Borrowers shall not be entitled to rely upon them.

(b) Reimburse Agent for all charges, costs and expenses of Agent in connection with (i) examinations of any Obligor's books and records or any other financial or Collateral matters as Agent deems appropriate, up to two times per calendar year; (ii) appraisals of Inventory, up to two times per calendar year and (iii) appraisals of Intellectual Property (other than Excluded Intellectual Property), up to one time per calendar year; provided, however, that: (A) Borrowers shall reimburse Agent for all charges, costs and expenses in connection with a third appraisal of Inventory or second appraisal of Intellectual Property (other than Excluded Intellectual Property) in any calendar year if such appraisal is commenced during any Reporting Trigger Period; (B) Borrowers shall reimburse Agent for all charges, costs and expenses in connection with a third examination in any calendar year if such examination is commenced during any Reporting Trigger Period; and (C) if an examination or appraisal is initiated during a Default or Event of Default, all charges, costs and expenses therefor shall be reimbursed by Borrowers without regard to such limits. Borrowers agree to pay Agent's then standard charges for examination activities, including the standard charges of Agent's internal examination and appraisal groups, as well as the charges of any third party used for such purposes.

10.1.11. Use of Proceeds. Use the proceeds of the Loans or other extensions of credit (a) to refinance existing indebtedness, (b) to issue standby or commercial letters of credit and (c) to finance ongoing working capital needs and for general corporate purposes (including Permitted Acquisitions) not in contravention of any Applicable Law or of any Loan Document.

10.1.12. Additional Guarantors. Promptly notify Agent upon any Person becoming a Subsidiary and (a) cause (i)(A) each U.S. Subsidiary and (B) any Foreign Subsidiary that loses its status as a "controlled foreign corporation" under Section 957 of the Code promptly to execute and deliver to Agent a Guarantee (including, if requested by Agent, a joinder to this Agreement in form and substance satisfactory to Agent) in favor of Agent for the benefit of the Secured Parties, and (ii) each Canadian Subsidiary and U.K. Subsidiary to execute and deliver to Agent a Canadian Facility Guarantee and U.K. Facility Guarantee (including, if requested by Agent, a joinder to this Agreement in form and substance satisfactory to Agent) in favor of Agent for the benefit of the Canadian Secured Parties and U.K. Secured Parties, (b) cause such Guarantor to deliver to the Agent such certificates of resolutions or other action, incumbency certificates and/or other certificates of Senior Officers or other authorized Persons of such Subsidiary as Agent may require evidencing the identity, authority and capacity of each Senior Officer or other authorized Person thereof in connection with the Guarantee, Canadian Facility Guarantee, or U.K. Facility Guarantee, as applicable, to which such Subsidiary is a party and such additional and other documents and certifications as Agent may reasonably require to evidence that such Subsidiary is duly organized or formed and is validly existing, in good standing and qualified to engage in business, in each case to the extent applicable, in jurisdictions reasonably identified by Agent, and (c) cause such Guarantor to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall require to evidence and perfect a Lien in favor of Agent (for the benefit

of Secured Parties (in the case of a Subsidiary described in clause (a)(i) above) and the Canadian Secured Parties and U.K. Secured Parties (in the case of a Subsidiary described in clause (a)(ii) above)) on all assets of such Person which are the same type as the Collateral, including delivery of legal opinions, in form and substance satisfactory to Agent, as it shall deem appropriate.

10.1.13. Landlord and Storage Agreements. Upon request, provide Agent with copies of all existing agreements, and promptly after execution thereof provide Agent with copies of all future agreements, between an Obligor and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral may be kept or that otherwise may possess or handle any Collateral.

10.1.14. Licenses. (a) Keep each License affecting any Collateral (including the manufacture, distribution or disposition of Inventory) or any other material Property of Borrowers and Subsidiaries in full force and effect except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) pay all Royalties when due except as would not materially adversely affect the value of the Collateral; and (d) notify Agent of any default or breach asserted by any Person to have occurred under any License which breach would materially adversely affect the value of the Collateral.

10.1.15. U.K. Pension Plans. Each U.K. Domiciled Obligor shall ensure that it is not and will not be and none of its U.K. subsidiaries will be at any time: (i) an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004 of the United Kingdom) of an occupational pension scheme which is not a money purchase scheme (as those terms are defined in the Pension Schemes Act 1993 of the United Kingdom); or (ii) “connected” with or an “associate” of the Parent or any of its Subsidiaries which is an employer (as those terms are used in Sections 38 or 43 of the Pensions Act 2004 of the United Kingdom) in relation to an occupational pension scheme in the United Kingdom which is not a money purchase scheme.

10.1.16. Anti-Corruption Laws. Each Obligor will maintain in effect and enforce policies and procedures designed to ensure compliance by such Obligor, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws of Canada, United Kingdom, United States, and any of the member states of the European Union and applicable Sanctions.

10.1.17. Post-Closing.

(a) In order to include the U.S. Real Estate Formula Amount in the calculation of the U.S. Borrowing Base, deliver to Agent the Related Real Estate Documents and Mortgage for the Real Estate located at 2180 Rutherford Road, Carlsbad, CA 92008.

(b) Within 60 days of the date of this Agreement, Ogio shall close all Deposit Accounts and securities accounts maintained at Wells Fargo and each Obligor shall take all other necessary steps to be in compliance of **Sections 8.2.4, 8.2.5, and 8.5** of this Agreement.

**10.2 Negative Covenants.** As long as any Commitments or Obligations are outstanding, each Obligor shall not, and shall cause each Subsidiary not to:

10.2.1. Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, other than the following (collectively, “Permitted Liens”):

- (a) Liens in favor of Agent;
- (b) Liens existing on the Closing Date that are listed on **Schedule 10.2.1**;
- (c) Liens for taxes, fees, assessments or other governmental charges not yet delinquent or being Properly Contested;
- (d) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other like Liens arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested;
- (e) pledges or deposits in the Ordinary Course of Business in connection with workers’ compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;
- (f) deposits or other Liens to secure the performance of bids, trade contracts and leases (other than Debt), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the Ordinary Course of Business;
- (g) easements, rights-of-way, restrictions and other similar encumbrances affecting Real Estate which, are (i) shown in any lender’s policy of title insurance insuring any Mortgage, or (ii) in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;
- (h) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution;
- (i) Liens securing judgments for the payment of money not constituting an Event of Default under **Section 11.1(g)** or securing appeal or other surety bonds related to such judgments (so long as such judgments do not constitute an Event of Default under **Section 11.1(g)**);
- (j) Liens securing Debt permitted under **Section 10.2.3(e)**; provided that (i) such Liens do not at any time encumber any property other than the property financed by such Debt and (ii) the Debt secured thereby does not exceed, on the date of acquisition, the cost or fair market value, whichever is lower, of the property being acquired;
- (k) any Lien existing on any property or asset (other than Accounts, Inventory, Dominion Accounts, Restricted Assets, the Company Trademark, and Eligible Real Estate) prior to the acquisition thereof by any Obligor or any Subsidiary or existing on any property or asset (other than Accounts, Inventory, Dominion Accounts, Restricted Assets, the Company Trademark, and Eligible Real Estate) of any Person that becomes an Obligor or Subsidiary after the date hereof

prior to the time such Person becomes an Obligor or Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming an Obligor or Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Obligor or Subsidiary, (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes an Obligor or Subsidiary, as the case may be, (iv) all obligations secured by a Lien permitted under this clause (k) shall not exceed an aggregate amount of \$25,000,000 at any one time outstanding, and (v) if requested by Agent, such Liens will be subject to an intercreditor agreement, in form and substance satisfactory to Agent;

(l) extensions, renewals and replacements of Liens referred to in clauses (a) through (k) above, provided that the property covered thereby is not increased and any renewal or extension of the obligations secured or benefited thereby is permitted by **Section 10.2.3**;

(m) Liens (other than on: (i) Accounts, Inventory, Dominion Accounts, and Restricted Assets of a Borrower or Guarantor; and (ii) the Company Trademark and Eligible Real Estate) arising under leases, subleases, licenses and rights to use granted to others and permitted under **Section 10.2.5(f)**;

(n) Liens (other than on: (i) Accounts, Inventory, Dominion Accounts, and Restricted Assets of a Borrower or Guarantor; and (ii) the Company Trademark and Eligible Real Estate) not expressly permitted by clauses (a) through (m) above and as to which the aggregate amount of obligations secured thereby does not exceed \$50,000,000 at any one time;

(o) Liens securing Debt permitted under **Section 10.2.3(q)** or **(s)** so long: (i) such Liens will be subject to an intercreditor agreement, in form and substance satisfactory to Agent; (ii) to the extent any such Liens are on any Collateral (as defined on the First Amendment to Third Amended and Restated Effective Date), such Liens are subordinated to the Liens of Agent pursuant to such intercreditor agreement (provided that, in the case of any Liens securing Debt permitted under **Section 10.2.3(s)**, any such Liens on Term Loan Priority Intellectual Property (as defined in the Project Max Commitment Letter as in effect on the First Amendment to Third Amended and Restated Effective Date) shall be senior to the Liens of Agent hereunder and shall not be subordinated to the Liens of Agent); and (iii) to the extent such Liens extend to Property which does not (or would not) constitute Collateral (as defined on the First Amendment to Third Amended and Restated Effective Date) (“Additional Collateral”), at the request of the Required Lenders, the Obligors and their Subsidiaries shall execute and deliver such documents, instruments and agreements and take such other actions as Agent shall require to evidence and perfect a Lien in favor of Agent (for the benefit of Secured Parties) on all Additional Collateral (it being understood that any such Liens held by Agent on Additional Collateral shall be junior to the Liens permitted under this **Section 10.2.1(o)** as set forth in an intercreditor agreement in form and substance satisfactory to Agent); and

(p) Liens securing Debt permitted under **Section 10.2.3.(r)**; provided that such Liens do not at any time encumber any property other than the property financed or leased by such Debt.

10.2.2. Investments. Make any Investments, except:

- (a) advances to officers, directors and employees of the Obligors and Subsidiaries for travel, entertainment, relocation and analogous ordinary business purposes;
- (b) Investments in Subsidiaries to the extent existing on the Closing Date and other Investments in existence on the Closing Date and set forth on **Schedule 10.2.2**;
- (c) Investments by: (i) a U.S. Borrower in another U.S. Borrower; (ii) a U.S. Domiciled Obligor (other than a U.S. Borrower) in another U.S. Domiciled Obligor; (iii) a U.S. Domiciled Obligor in the Canadian Borrower so long as: (A) the aggregate amount of such Investments shall not exceed \$10,000,000 at any time outstanding, and (B) no Event of Default has occurred and is continuing at the time of such Investment, or would result therefrom; (iv) a U.S. Domiciled Obligor in Callaway de México, S.A. de C.V. so long as such Investments are in the Ordinary Course of Business and consistent with historical practices; (v) any Canadian Domiciled Obligor or U.K. Domiciled Obligor in a Borrower; (vi) a Borrower in a Guarantor or Subsidiary that is not a Borrower or Guarantor so long as: (A) the aggregate amount of such Investments shall not exceed: (I) \$3,000,000 in any calendar year, and (II) \$10,000,000 at any time outstanding, and (B) no Event of Default has occurred and is continuing at the time of such Investment, or would result therefrom; and (vii) a Subsidiary that is not a Borrower or Guarantor in any other Subsidiary;
- (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) Investments consisting of Permitted Acquisitions;
- (f) Investments pursuant to Hedging Agreements otherwise permitted hereunder;
- (g) Investments in Cash Equivalents;
- (h) so long as no Event of Default has occurred and is continuing or would result therefrom, any other Investments (other than an Acquisition) made after the Third Amendment to Second Amended and Restated Effective Date in an aggregate amount not to exceed \$30,000,000 (such limitation, the “Investment Cap”); provided, however, that no such Investment shall count against the Investment Cap if either: (i) (A) on a pro forma basis after giving effect to such Investment, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the consummation of such Investment, (B) Net Excess Availability is greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount after giving effect to such Investment, and (C) the Fixed Charge Coverage Ratio, on a pro forma basis after giving effect to such Investment (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a pro forma basis after giving effect to such Investment, has been greater than an amount equal to 20% of the Maximum Facility Amount

for the ninety (90) day period immediately prior to the consummation of such Investment, (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Investment, and (C) no Term Loans are outstanding at the time such Investment is consummated and after giving effect to the payment of any consideration in connection with such Investment;

(i) Investments by a U.S. Domiciled Obligor in any Subsidiary that is not a Borrower or Guarantor to the extent such Investments are in the form of a transfer of assets (other than any Collateral) of such U.S. Domiciled Obligor so long as: (A) such assets are in existence as of the First Amendment to Second Amended and Restated Effective Date, and (B) such assets are predominantly used in connection with the golf ball manufacturing operations of Parent;

(j) [Reserved];

(k) Investments, so long as: (i) no Default or Event of Default has occurred and is continuing or would result therefrom; (ii) the amount expended in connection with any such Investment either (at the written election of Parent in accordance with the definition of Top Golf Proceeds): (A) is made solely using Top Golf Proceeds contained in the Top Golf Blocked Account, (B) does not exceed the U.S. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, (C)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the Canadian Borrower to Parent, or (II) repayment by the Canadian Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the Canadian Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, or (D)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the U.K. Borrower to Parent, or (II) repayment by the U.K. Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the U.K. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures; (iii) the aggregate amount expended in connection with all such Investments consummated under this clause (k) and transactions consummated under clause 10.2.6(g) does not exceed \$150,000,000 in the aggregate; (iv) Parent provides Agent with at least 7 days prior written notice of any such Investment (which notice shall contain the amount to be expended in such transaction and evidence of the source of funds for such expenditure); (v) Parent provides Agent with evidence of the making of any Investment under this clause (k), and (vi) no Term Loans are outstanding at the time such Investment is made; and

(l) additional Investments in Top Golf in an amount not to exceed \$30,000,000 in the aggregate at any time so long as at the time of any such Investment, no Default or Event of Default has occurred and is continuing or would result therefrom.

10.2.3. Debt. Create, incur, guarantee or suffer to exist any Debt, except:

(a) the Obligations;

(b) Debt outstanding on the Closing Date and listed on **Schedule 10.2.3**;

(c) Debt consisting of unsecured intercompany loans among Parent and any Subsidiary or unsecured guarantees of Parent or any Subsidiary in respect of Debt of Parent or any Subsidiary so long as, in each case, the corresponding Investment is permitted under **Section 10.2.2**;

- (d) Debt of Parent or any Subsidiary existing or arising under any Hedging Agreement, provided that such Hedging Agreement was entered into by such Person to hedge risks arising in the Ordinary Course of Business and not for speculative purposes;
- (e) Debt in respect of Capital Leases, Off-Balance Sheet Liabilities and purchase money obligations for fixed or capital assets (other than Eligible Real Estate); provided, however, that the aggregate amount of all such Debt at any one time outstanding shall not exceed \$25,000,000;
- (f) Debt that is in existence when a Person becomes a Subsidiary or that is secured by an asset when acquired by a Borrower or Subsidiary, as long as such Debt was not incurred in contemplation of such Person becoming a Subsidiary or such acquisition, and does not exceed \$25,000,000 in the aggregate at any time;
- (g) Debt of any wholly owned Subsidiary to Parent or another wholly owned Subsidiary constituting the purchase price in respect of intercompany transfers of goods and services made in the Ordinary Course of Business to the extent otherwise permitted by **Section 10.2.8** and not constituting Debt for borrowed money;
- (h) Debt of Parent or any Subsidiary in connection with guaranties resulting from endorsement of negotiable instruments in the Ordinary Course of Business;
- (i) Debt on account of surety bonds and appeal bonds in connection with the enforcement of rights or claims of Parent or its Subsidiaries or in connection with judgments not resulting in an Event of Default under **Section 11.1(g)**;
- (j) any refinancings, refundings, renewals or extensions of Debt permitted pursuant to **Sections 10.2.3(b)** and **(e)**; provided that (i) the amount of such Debt is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, and (ii) Debt subordinated to the Obligations is not refinanced except on subordination terms at least as favorable to Agent and the Lenders and no more restrictive on Parent and its Subsidiaries than the subordinated Debt being refinanced;
- (k) Bank Product Debt (other than Debt arising under Hedging Agreements);
- (l) [Reserved];
- (m) [Reserved];
- (n) Debt that is not included in any of the preceding clauses of this Section, is not secured by a Lien, or is secured by a lien permitted by **Section 10.2.1(n)**, and does not exceed \$50,000,000 in the aggregate at any time;
- (o) other Debt that is not included in any of the preceding clauses of this Section so long as such Debt: (i) is not secured by a Lien, (ii) has a maturity date that is at least 6 months

after the Facility Termination Date, and (iii) does not have scheduled amortization in excess of 10% per year;

(p) Debt to the Person, or the beneficial holders of Equity Interests in the Person, whose assets or Equity Interests are acquired in a Permitted Acquisition where such Debt (i) is payable in full no sooner than three years from the date of such Acquisition, (ii) is repayable in installments of no more than one-third of the initial amount in any year after the date of such Permitted Acquisition, (iii) bears interest and fees that are consistent with then available market rates for such Debt, (iv) is not secured by a Lien and (v) does not exceed (together with all other Debt incurred under this clause (p)) \$25,000,000 in the aggregate at any time;

(q) other Debt that is not included in any of the preceding clauses of this Section so long as: (i) such Debt does not exceed \$250,000,000 in the aggregate at any one time outstanding, (ii) such Debt is not secured by a Lien, or is secured by a lien permitted by **Section 10.2.1(o)**, (iii) such Debt has a maturity date that is at least 6 months after the Facility Termination Date, (iv) such Debt does not have scheduled amortization in excess of 15% per year, and (v) immediately upon and after giving effect to such Debt, the Leverage Ratio is not greater than 4.5 to 1.0;

(r) Debt pursuant to equipment financing and/or leases entered into among one or more Obligors and Banc of America Leasing & Capital, LLC, in an aggregate amount not to exceed \$50,000,000 at any time outstanding; and

(s) Debt (i) as described in the Project Max Commitment Letter, as may be modified by the market flex conditions referenced in the Fee Letter (as defined in the Project Max Commitment Letter), as disclosed to Agent prior to the First Amendment to Third Amended and Restated Effective Date, so long as: (A) the aggregate outstanding principal amount of such Debt at any one time does not exceed the amount incurred in connection with the consummation of the Acquisition (as defined in the Project Max Commitment Letter) in accordance with the terms of the Project Max Commitment Letter, less any principal payments made on account of such Debt, (B) any Liens securing such Debt are permitted by **Section 10.2.1(o)**, (C) such Debt has a maturity date that is at least 6 months after the Facility Termination Date; and (D) such Debt is incurred in accordance with the terms of the Project Max Commitment Letter as in effect on the First Amendment to Third Amended and Restated Effective Date, or as amended from time to time thereafter so long as such amendments are not materially adverse to the interest of the Lenders and (ii) any refinancings, refundings, renewals or extensions of such Debt permitted in clause (i) hereto, so long as (A) the amount of such Debt is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, (B) such Debt has a maturity date that is at least 6 months after the Facility Termination Date, (C) such Debt does not have scheduled amortization in excess of 15% per year, (D) any Liens securing such Debt are permitted by **Section 10.2.1(o)**, and (E) upon giving effect to it, no Default or Event of Default exists.

#### 10.2.4. Fundamental Changes.

(a) Merge, amalgamate, dissolve, liquidate, consolidate with or into another Person, or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(i) Travis Mathew Retail may be dissolved, so long as (A) such dissolution is completed within 30 days of the Second Amendment to Third Amended and Restated Effective Date, and (B) all assets of Travis Mathew Retail are distributed to travisMathew in connection with such dissolution;

(ii) any Subsidiary may merge or amalgamate with Parent or any other Subsidiary, provided that (A) in such a merger in which a U.S. Borrower is involved, such U.S. Borrower is the continuing or surviving Person, (B) in such a merger or amalgamation in which the Canadian Borrower is involved (other than with a U.S. Borrower or the U.K. Borrower), the Canadian Borrower is the continuing or surviving Person, (C) in such a merger or amalgamation in which the U.K. Borrower is involved (other than with a U.S. Borrower or the Canadian Borrower), the U.K. Borrower is the continuing or surviving Person, (D) in such a merger in which a U.S. Domiciled Obligor (other than a U.S. Borrower) is involved (other than with a Borrower), the U.S. Domiciled Obligor is the continuing or surviving Person, (E) in such a merger or amalgamation in which a U.K. Domiciled Obligor (other than the U.K. Borrower) is involved (other than with a U.S. Domiciled Obligor, a Canadian Domiciled Obligor, or the U.K. Borrower), the U.K. Domiciled Obligor is the continuing or surviving Person, and (F) in such a merger or amalgamation in which a Canadian Domiciled Obligor (other than the Canadian Borrower) is involved (other than with a U.S. Domiciled Obligor, a U.K. Domiciled Obligor, or the Canadian Borrower), the Canadian Domiciled Obligor is the continuing or surviving Person;

(iii) any Subsidiary which is not an Obligor may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to its immediate parent or another Obligor;

(iv) any Immaterial Subsidiary may be wound up, liquidated or dissolved; and

(v) Parent and its Subsidiaries may make those Asset Dispositions permitted by **Section 10.2.5**; or

(b) Change its name; change its tax, charter or other organizational identification number; or change its form or state of organization without 10 Business Days' prior written notice to Agent.

10.2.5. Disposition of Assets. Make any Asset Disposition or enter into any agreement to make any Asset Disposition, except:

(a) Asset Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the Ordinary Course of Business;

(b) sales of Inventory in the Ordinary Course of Business, and consignments of Inventory in the Ordinary Course of Business so long as the aggregate Value of all such consigned Inventory at any one time does not exceed \$15,000,000;

(c) Asset Dispositions of Equipment or Real Estate (other than Eligible Real Estate unless the U.S. Real Estate Formula Amount has been removed from the U.S. Borrowing Base in accordance with **Sections 2.1.4(d)**) to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Asset Dispositions by (i) any U.S. Borrower to any other U.S. Borrower, (ii) any U.S. Domiciled Obligor (other than a U.S. Borrower) to any other U.S. Domiciled Obligor, (iii) any Canadian Domiciled Obligor or U.K. Domiciled Obligor to any U.S. Borrower, and (iv) any Subsidiary that is not a Borrower or Guarantor to any other Subsidiary;

(e) (i) Asset Dispositions permitted by **Section 10.2.4**, (ii) Investments permitted by **Section 10.2.2**, and (iii) Distributions permitted by **Section 10.2.6**;

(f) leases, subleases, licenses and rights to use granted to others in the Ordinary Course of Business and not otherwise prohibited by this Agreement so long as such leases, subleases, licenses and rights to use do not materially adversely affect the conduct by Parent and its Subsidiaries of their core golf products business or the value of the Collateral;

(g) Asset Dispositions made in connection with the closure, downsizing, restructuring, closure or partial closure of the golf ball manufacturing operations of Parent;

(h) (i) Asset Dispositions of excess Real Estate (other than Eligible Real Estate) and related assets made in connection with the consolidation of business activities in other locations and (ii) sale and leaseback transactions involving Real Estate (other than Eligible Real Estate unless the U.S. Real Estate Formula Amount has been removed from the U.S. Borrowing Base in accordance with **Sections 2.1.4(d)**) and related assets;

(i) Asset Dispositions consisting of Intellectual Property (other than the Company Trademark), manufacturing assets, inventory, accounts, contracts, domain names, marketing materials and marketing related assets related to the brands disclosed to the Agent and the Lenders on the Business Day prior to the Second Amended Original Closing Date; provided, in each case, that (i) at the time of such Asset Disposition, no Event of Default has occurred or is continuing or would result therefrom, (ii) the Borrowers shall have provided Agent with three (3) Business Days prior written notice of any such Asset Disposition, (iii) if any such Asset Disposition includes the disposition of Accounts or Inventory of an Obligor, the Borrowers shall have complied with **Section 5.2**, and (iv) if any such Asset Disposition includes the disposition of any Eligible Accounts or Eligible Inventory, the Borrowers shall have delivered pro forma Borrowing Base Certificates on or prior to the consummation of such Asset Disposition which give effect to such Asset Disposition; and

(j) other Asset Dispositions (other than with respect to Accounts, Inventory, the Company Trademark (unless the U.S. Trademark Formula Amount has been removed from the U.S. Borrowing Base in accordance with **Sections 2.1.4(c)**) and Eligible Real Estate (unless the

U.S. Real Estate Formula Amount has been removed from the U.S. Borrowing Base in accordance with **Sections 2.1.4(d))** in an aggregate amount in any fiscal year not to exceed 5% of the Consolidated Tangible Assets of Parent and its Subsidiaries as of the end of the most recently ended fiscal year of Parent;

provided, however, that any Asset Disposition pursuant to clauses (a) through (i) shall be for fair market value; provided, further, that Parent or any of its Subsidiaries may enter into an agreement to make an Asset Disposition otherwise prohibited by this **Section 10.2.5** if failure to consummate such Asset Disposition would not result in a liability or Debt otherwise prohibited by this Agreement and the consummation of the Asset Disposition contemplated by such agreement is conditioned upon either the termination of this Agreement or receipt of the prior written consent of the Agent and the Required Lenders.

10.2.6. **Distributions.** Declare or make, directly or indirectly, any Distribution, or incur any obligation (contingent or otherwise) to do so, except that:

(a) (i) a U.S. Borrower may make Distributions to another U.S. Borrower; (ii) a U.S. Domiciled Obligor (other than a U.S. Borrower) may make Distributions to another U.S. Domiciled Obligor; (iii) a Canadian Domiciled Obligor may make Distributions to a U.S. Borrower, the Canadian Borrower, and the U.K. Borrower; (iv) a U.K. Domiciled Obligor may make Distributions to a Borrower; and (v) a Subsidiary that is not a Borrower or Guarantor may make Distributions to Parent or any Subsidiary;

(b) Parent and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other Equity Interests of such Person;

(c) so long as no Event of Default has occurred and is continuing or would result therefrom, Parent and each Subsidiary may purchase, redeem or otherwise acquire shares of its common stock or other Equity Interests or warrants or options to acquire any such Equity Interests with the proceeds received from the substantially concurrent issue of new shares of its common stock or other Equity Interests;

(d) Parent may purchase Equity Interests in any Obligor or options with respect to Equity Interests in any Obligor held by employees or management of any Obligor in connection with the termination of employment of such employees or management so long as: (i) the aggregate amount of such purchases do not exceed \$5,000,000 in any fiscal year of Parent, and (ii) no Event of Default has occurred and is continuing at the time of any such purchase or would result therefrom; and

(e) so long as no Event of Default has occurred and is continuing or would result therefrom, Parent and its Subsidiaries may make other Distributions in an aggregate amount not to exceed \$20,000,000 during each year (the “**Distributions Cap**”); provided, however, that no such Distribution shall count against the Distributions Cap if at the time such Distribution is declared (subject to the last sentence of this clause (e)) either: (i) (A) on a pro forma basis after giving effect to such Distribution, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the making of such Distribution, (B) Net Excess Availability is

greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount after giving effect to such Distribution, and (C) the Fixed Charge Coverage Ratio, on a pro forma basis after giving effect to such Distribution (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a pro forma basis after giving effect to such Distribution, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the making of such Distribution, (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Distribution, and (C) no Term Loans are outstanding at the time such Distribution is consummated.

(f) so long as no Event of Default has occurred and is continuing or would result therefrom, Parent may make cash payments in lieu of issuance of fractional shares in connection with the conversion of any convertible stock or debt securities of Parent, in an aggregate amount not to exceed \$5,000,000 for all such payments; and

(g) Parent may make Common Stock Repurchases and pay dividends on Parent's common stock so long as: (i) no Default or Event of Default has occurred and is continuing or would result therefrom; (ii) the amount expended in connection with any such transaction either (at the written election of Parent in accordance with the definition of Top Golf Proceeds): (A) is made solely using Top Golf Proceeds contained in the Top Golf Blocked Account, (B) does not exceed the U.S. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, (C)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the Canadian Borrower to Parent, or (II) repayment by the Canadian Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the Canadian Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, or (D)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the U.K. Borrower to Parent, or (II) repayment by the U.K. Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the U.K. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures; (iii) the aggregate amount expended in connection with all such transactions consummated under this clause (g) and Investments made under clause 10.2.2(k) does not exceed \$150,000,000 in the aggregate; (iv) Parent provides Agent with at least 7 days prior written notice of any such transaction (which notice shall contain the amount to be expended in such transaction and evidence of the source of funds for such expenditure); (v) Parent provides Agent with evidence of the completion of any such transaction under this clause (g), and (vi) no Term Loans are outstanding at the time any such transaction is consummated.

10.2.7. Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by Parent and its Subsidiaries on the date hereof, one or more of the leisure goods, products and services businesses generally or, in each case, any business substantially related or incidental thereto.

10.2.8. Affiliate Transactions. Enter into any transaction of any kind with any Affiliate of Parent, except (a) transactions between or among: (i) the U.S. Borrowers, (ii) the U.S. Domiciled Obligors (other than any U.S. Borrower), (iii) the Canadian Domiciled Obligors, (iv) the U.K. Domiciled Obligors, and (v) Subsidiaries that are not Borrowers or Guarantors; (b)

transactions constituting Investments in Subsidiaries as permitted by **Section 10.2.2**, (c) transactions constituting Debt among Parent or any of its Subsidiaries, in each case as permitted by **Section 10.2.3**; (d) transactions among Parent or any of its Subsidiaries, in each case as permitted by **Section 10.2.4** or **Section 10.2.5**, (e) transactions constituting Distributions permitted by **Section 10.2.6**, (f) transactions constituting reasonable fees and compensation paid to (including issuance and grants of securities and stock options, employment agreements and stock option and ownership plans for the benefit of, and indemnities provided on behalf of) officers, directors, employees and consultants of Parent or any Subsidiary, (g) constituting loans or advances to employees and officers of Parent and its Subsidiaries to the extent permitted by **Section 10.2.2(a)**, and (h) transactions with Affiliates in the Ordinary Course of Business, upon fair and reasonable terms fully disclosed to Agent and no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate.

10.2.9. **Burdensome Agreements.** Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability (a) of any Subsidiary to make Distributions to any Borrower or any Guarantor or to otherwise transfer property to any Borrower or any Guarantor, (b) of Parent or any Subsidiary to incur or repay the Obligations, (c) of Parent or any Subsidiary to grant Liens on any Collateral in favor of the Agent for the benefit of the Lenders, or (d) of any U.S. Subsidiary, U.K. Subsidiary, or Canadian Subsidiary to guarantee the Obligations; provided, that the restrictions set forth herein shall not apply to (i) customary restrictions on transfers of property subject to a capital lease as set forth in such capital lease; (ii) customary restrictions with respect to a Subsidiary (other than a Borrower) pursuant to an agreement that has been entered into for the sale or disposition (not otherwise prohibited by this Agreement or any other Loan Document) of all or substantially all of the capital stock or assets of such Subsidiary; (iii) customary prohibitions on assignment in any contract or lease; (iv) customary net worth provisions contained in leases and other agreements entered into by a Subsidiary in the Ordinary Course of Business; and (v) customary restrictions with respect to Debt permitted under **Section 10.2.3(s)**.

10.2.10. **Restrictions on Payment of Certain Debt.** Make any (a) payments (whether voluntary or mandatory, or a prepayment, redemption, retirement, defeasance or acquisition) with respect to any Debt which is subordinated to the Obligations (which, for the avoidance of doubt, does not include any Debt permitted under **Section 10.2.3(s)**), except regularly scheduled payments of principal, interest and fees, but only to the extent permitted under any subordination agreement relating to such Debt (and a Senior Officer of Borrower Agent shall certify to Agent, not less than five Business Days prior to the date of payment, that all conditions under such agreement have been satisfied); (b) any voluntary payments with respect to any Borrowed Money (other than the Obligations and any intercompany obligations) prior to its due date; provided, however, that the restriction set forth in clause (b) shall not apply to: (x) any voluntary payments made to consummate a refinancing in full of the Debt permitted under **Section 10.2.3(s)** to the extent such refinancing is permitted under the terms of **Section 10.2.3(s)**; and (y) any payment if either: (A) (1) on a pro forma basis after giving effect to such payment, Net Excess Availability has been greater than an amount equal to 15% of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the making of such payment, (2) Net Excess Availability is greater than an amount equal to 15% of the Maximum Facility Amount after giving effect to such payment, and (3) the Fixed Charge Coverage Ratio, on a pro forma basis after giving effect to such payment (calculated on a trailing twelve month basis recomputed for the

most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (B) (1) average daily Net Excess Availability, on a pro forma basis after giving effect to such payment, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the making of such payment, (2) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such payment, and (3) no Term Loans are outstanding at the time such payment is made.

10.2.11. Organic Documents. Amend, modify or otherwise change any of its Organic Documents as in effect on the Original Agreement Closing Date where such amendment, modification or other change would have a Material Adverse Effect.

10.2.12. Tax Consolidation. File or consent to the filing of any consolidated income tax return with any Person other than Borrowers and Subsidiaries.

10.2.13. Accounting Changes. Make any material change in accounting treatment or reporting practices, except as required by GAAP and in accordance with **Section 1.2**; or change its Fiscal Year.

10.2.14. Activities of uPlay. Unless Borrowers cause uPlay to become a Guarantor hereunder in accordance with **Section 10.1.12**, uPlay will not (a) engage in any business or activity or (b) own any assets or have any liabilities (other than liabilities reasonably incurred in connection with its maintenance of its existence).

10.2.15. Canadian Pension Plans. Without the prior written consent of Agent, no Obligor shall establish, or otherwise incur any obligations or liabilities under or in connection with any Canadian Pension Plan that provides benefits on a defined benefit basis.

**10.3 Financial Covenants.** As long as any Commitments or Obligations are outstanding, Borrowers shall:

(a) At any time the Term Loans or Term Loan Commitments are outstanding as of the last day of any Fiscal Quarter:

(i) Fixed Charge Coverage Ratio. Maintain a Fixed Charge Coverage Ratio, measured at the end of each such Fiscal Quarter, of at least 1.25 to 1.0; and

(ii) Leverage Ratio. Maintain a Leverage Ratio, measured at the end of each such Fiscal Quarter, of not greater than 4.0 to 1.0.

(b) At any time there are no Term Loans or Term Loan Commitment outstanding, maintain a Fixed Charge Coverage Ratio, measured on a Fiscal Quarter-end basis, of at least 1.0 to 1.0 as of (a) the end of the last Fiscal Quarter immediately preceding the occurrence of any Covenant Trigger Period for which financial statements have most recently been delivered pursuant to **Section 10.1.1**, and (b) the end of each Fiscal Quarter for which financial statements are delivered pursuant to **Section 10.1.1** during any Covenant Trigger Period.

**10.4 Company Trademark.** The Obligors shall maintain, defend and preserve the Company Trademark and its value, usefulness, merchantability and marketability in a manner

consistent with past practices, and shall not sell, assign, transfer, encumber or license the Company Trademark to any Person (other than Liens created pursuant to the Loan Documents) to the extent that doing so would cause (i) the amount specified in clause (a) of the definition of "U.S. Trademark Formula Amount" to be less than the amount specified in clause (b) of the definition of "U.S. Trademark Formula Amount" or (ii) the amount of outstanding Term Loans to exceed the Term Loan Cap, in each case without the prior written consent of the U.S. Required Lenders.

## **SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT**

**11.1 Events of Default.** Each of the following shall be an "Event of Default" hereunder, if the same shall occur for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

- (a) An Obligor fails to pay (i) when due (whether at stated maturity, on demand, upon acceleration or otherwise) any amount of principal of any Loan or any reimbursement obligation in respect of any LC Obligation, or (ii) any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a)(i) above), when and as the same shall become due and payable hereunder or under any other Loan Document (whether at stated maturity, on demand, upon acceleration or otherwise), and such failure shall continue unremedied for a period of three Business Days;
- (b) Any representation, warranty or other written statement of an Obligor made in connection with any Loan Documents or transactions contemplated thereby is incorrect or misleading in any material respect when given;
- (c) An Obligor breaches or fail to perform any covenant contained in **Section 7.2, 7.4, 7.6, 8.1, 8.2.4, 8.2.5, 8.6.2, 10.1.1, 10.1.2, 10.1.10, 10.2 or 10.3**;
- (d) An Obligor breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 30 days after a Senior Officer of such Obligor has knowledge thereof or receives notice thereof from Agent, whichever is sooner; provided, however, that such notice and opportunity to cure shall not apply if the breach or failure to perform is not capable of being cured within such period;
- (e) A Guarantor repudiates, revokes or attempts to revoke its Guarantee; an Obligor or third party denies or contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien granted to Agent; or any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Agent and Lenders);
- (f) Any breach or default of an Obligor occurs under any Hedging Agreement, or any document, instrument or agreement to which it is a party or by which it or any of its Properties is bound, relating to any Debt (other than the Obligations) in excess of the Dollar Equivalent of \$10,000,000, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach;
- (g) Any judgment or order for the payment of money is entered against an Obligor and is unsatisfied for a period of more than 30 days in an amount that exceeds, individually

or cumulatively with all other unsatisfied judgments or orders against all Obligors, the Dollar Equivalent of \$5,000,000 (net of any insurance coverage therefor acknowledged in writing by the insurer), unless a stay of enforcement of such judgment or order is in effect, by reason of a pending appeal or otherwise;

(h) A loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance (either individually or in the aggregate) exceeds the Dollar Equivalent of \$2,500,000;

(i) An Obligor is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of its business and such injunction, restraint or prevention could reasonably be expected to have a Material Adverse Effect; an Obligor suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to its business and such loss, revocation or termination could reasonably be expected to have a Material Adverse Effect; there is a cessation of any material part of an Obligor's business for a material period of time and such cessation could reasonably be expected to have a Material Adverse Effect; any material Collateral or Property of an Obligor is taken or impaired through condemnation and such taking or impairment could reasonably be expected to have a Material Adverse Effect; a Borrower agrees to or commences any liquidation, dissolution or winding up of its affairs; or a Borrower is not Solvent;

(j) Any Obligor generally fails to pay, or admits in writing its inability or refusal to pay, its debts as they become due; or an Insolvency Proceeding is commenced by any Obligor; any Obligor agrees to, commences or is subject to a liquidation, dissolution or winding up of its affairs; any Obligor makes an offer of settlement, extension, proposal (or files a notice of intention to make a proposal), plan of arrangement or composition to its unsecured creditors generally; a Creditor Representative is appointed to take possession of any substantial Property of or to operate or sell any of the business of any Obligor; or an Insolvency Proceeding is commenced against any Obligor and such Obligor consents to the institution of the proceeding against it, such petition commencing the proceeding is not timely contested by such Obligor, such petition is not dismissed within 30 days after its filing, or an order for relief is entered in the proceeding;

(k) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC in an aggregate amount in excess of \$10,000,000, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$10,000,000; or any event similar to the foregoing occurs or exists with respect to a Foreign Plan;

(l) (A) a Termination Event shall occur or any Canadian Multi-Employer Plan shall be terminated, in each case, in circumstances which would result or could reasonably be expected to result in a Canadian Facility Obligor required to make a contribution to or in respect of a Canadian Pension Plan or a Canadian Multi-Employer Plan in an aggregate amount in excess of \$2,500,000 or results in the appointment, by FSCO, of an administrator to wind up a Canadian Pension Plan, (B) any Canadian Domiciled Obligor is in default with respect to any required

contributions to a Canadian Pension Plan or fails to eliminate a solvency deficiency or keep such plan fully funded; or (C) any Lien arises (save for contribution amounts not yet due) in connection with any Canadian Pension Plan; or

(m) A Change of Control occurs.

**11.2 Remedies upon Default.** If an Event of Default described in **Section 11.1(j)** occurs with respect to any Obligor, then to the extent permitted by Applicable Law, all Obligations (other than Secured Bank Product Obligations) shall become automatically due and payable and all Commitments shall terminate, without any action by Agent or notice of any kind. In addition, or if any other Event of Default exists, Agent may in its discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrowers to the fullest extent permitted by law;

(b) terminate, reduce or condition any Commitment, or make any adjustment to the Borrowing Base;

(c) require Obligors to Cash Collateralize LC Obligations, Secured Bank Product Obligations and other Obligations that are contingent or not yet due and payable, and, if Obligors fail promptly to deposit such Cash Collateral, Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolver Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC and the PPSA. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Obligors to assemble Collateral, at Obligors' expense, and make it available to Agent at a place designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by an Obligor, Obligors agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent, in its discretion, deems advisable. Each Obligor agrees that 10 days' notice of any proposed sale or other disposition of Collateral by Agent shall be reasonable. Agent shall have the right to conduct such sales on any Obligor's premises, without charge, and such sales may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

**11.3 License.** Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person), exercisable at any time following the occurrence and during the continuation of an Event

of Default, any or all Intellectual Property of Obligors, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Each Obligor's rights and interests under Intellectual Property shall inure to Agent's benefit.

**11.4 Setoff.** At any time during an Event of Default, Agent, Issuing Banks, Lenders, and any of their Affiliates are authorized, 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 Agent, such Issuing Bank, such Lender or such Affiliate to or for the credit or the account of an Obligor against any Obligations, irrespective of whether or not Agent, such Issuing Bank, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, such Issuing Bank, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, each Issuing Bank, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

**11.5 Remedies Cumulative; No Waiver.**

11.5.1. **Cumulative Rights.** All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent and Lenders are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

11.5.2. **Waivers.** No waiver or course of dealing shall be established by (a) the failure or delay of Agent or any Lender to require strict performance by Obligors with any terms of the Loan Documents, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. It is expressly acknowledged by Obligors that any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

**11.6 Judgment Currency.** If, for purposes of obtaining judgment in any court, it is necessary to convert a sum from the currency provided under a Loan Document ("Agreement Currency") into another currency, the Spot Rate shall be used as the rate of exchange. Notwithstanding any judgment in a currency ("Judgment Currency") other than the Agreement Currency, an Obligor shall discharge its obligation in respect of any sum due under a Loan Document only if, on the Business Day following receipt by Agent or any Secured Party of payment in the Judgment Currency, Agent or such Secured Party can use the amount paid to purchase the sum originally due in the Agreement Currency. If the purchased amount is less than the sum originally due, such Obligor agrees, as a separate obligation and notwithstanding any such

judgment, to indemnify Agent and Secured Parties against such loss. If the purchased amount is greater than the sum originally due, Agent or such Secured Party shall return the excess amount to such Obligor (or to the Person legally entitled thereto).

## SECTION 12. AGENT

### 12.1 Appointment, Authority and Duties of Agent.

#### 12.1.1. Appointment and Authority.

(a) Each Secured Party appoints and designates Bank of America as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents, for the benefit of Secured Parties. Each Secured Party agrees that any action taken by Agent, Required Lenders, U.S. Required Lenders, U.S. Required Term Lenders, U.K. Required Lenders, or Canadian Required Lenders in accordance with the provisions of the Loan Documents, and the exercise by Agent or Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Obligor or other Person; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. The duties of Agent shall be ministerial and administrative in nature, and Agent shall not have a fiduciary relationship with any Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto. Agent alone shall be authorized to determine whether any Accounts or Inventory constitute Eligible Accounts, Eligible Inventory or Eligible In-Transit Inventory, whether to impose or release any reserve, or whether any conditions to funding or to issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Lender or other Person for any error in judgment.

(b) For the purposes of creating a solidarité active in accordance with Article 1541 of the Civil Code of Quebec between each Secured Party, taken individually, on the one hand, and the Agent, on the other hand, each Obligor and each such Secured Party acknowledge and agree with the Agent that such Secured Party and the Agent are hereby conferred the legal status of solidary creditors of each such Obligor in respect of all Obligations owed by each such Obligor to the Agent and such Secured Party hereunder and under the other Loan Documents (collectively, the "Solidary Claim") and that, accordingly, but subject (for the avoidance of doubt) to Article 1542 of the Civil Code of Quebec, each such Obligor is irrevocably bound towards the Agent and each Secured Party in respect of the entire Solidary Claim of the Agent and such Secured Party. As a result of the foregoing, the parties hereto acknowledge that the Agent and each Secured Party shall at all times have a valid and effective right of action for the entire Solidary Claim of the Agent and such Secured Party and the right to give full acquittance for it.

Accordingly, and without limiting the generality of the foregoing, the Agent, as solidary creditor with each Secured Party, shall at all times have a valid and effective right of action in respect of the Solidary Claim and the right to give a full acquittance for same. By its execution of the Loan Documents to which it is a party, each such Obligor not a party hereto shall also be deemed to have accepted the stipulations hereinabove provided. The parties further agree and acknowledge that such Liens (hypothecs) under the Security Documents and the other Loan Documents shall be granted to the Agent, for its own benefit and for the benefit of the Secured Parties, as solidary creditor as hereinabove set forth.

(c) Without limiting the foregoing or any powers of Agent, for the purposes of holding any hypothec granted to the Attorney (as defined below) pursuant to the laws of the Province of Québec to secure the prompt payment and performance of any and all Obligations by any Obligor, each of the Secured Parties hereby irrevocably appoints and authorizes Agent and, to the extent necessary, ratifies the appointment and authorization of Agent, to act as the hypothecary representative of the present and future creditors as contemplated under Article 2692 of the Civil Code (in such capacity, the “Attorney”), and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Attorney under any related deed of hypothec. The Attorney shall: (i) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney pursuant to any such deed of hypothec and applicable law, and (ii) benefit from and be subject to all provisions hereof with respect to Agent mutatis mutandis, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Secured Parties and Obligors. Any person who becomes a Secured Party shall, by its execution of an Assignment and Acceptance, be deemed to have consented to and confirmed the Attorney as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Secured Party, all actions taken by the Attorney in such capacity. The substitution of Agent pursuant to the provisions of this Section 12 also constitutes the substitution of the Attorney.

12.1.2. Duties. Agent shall not have any duties except those expressly set forth in the Loan Documents. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

12.1.3. Agent Professionals. Agent may perform its duties through agents and employees. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

12.1.4. Instructions of Required Lenders. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against all Claims that could be incurred by Agent in connection with any act. Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and Agent shall not incur liability to any Person by reason of so refraining.

Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting in accordance with the instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that, in its opinion, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

12.1.5. Agent as Security Trustee. In this Agreement and the U.K. Security Agreement, any rights and remedies exercisable by, any documents to be delivered to, or any other indemnities or obligations in favor of Agent shall be, as the case may be, exercisable by, delivered to, or be indemnities or other obligations in favor of, Agent (or any other Person acting in such capacity) in its capacity as security trustee of Secured Parties to the extent that the rights, deliveries, indemnities or other obligations relate to the U.K. Security Agreement or the security thereby created. Any obligations of Agent (or any other Person acting in such capacity) in this Agreement and U.K. Security Agreement shall be obligations of Agent in its capacity as security trustee of Secured Parties to the extent that the obligations relate to the U.K. Security Agreement or the security thereby created. Additionally, in its capacity as security trustee of Secured Parties Agent (or any other Person acting in such capacity) shall have (i) all the rights, remedies and benefits in favor of Agent contained in the provisions of the whole of this **Section 12**; (ii) all the powers of an absolute owner of the security constituted by the U.K. Security Agreement and (iii) all the rights, remedies and powers granted to it and be subject to all the obligations and duties owed by it under the U.K. Security Agreement and/or any of the Loan Documents.

12.1.6. Appointment of Agent as Security Trustee. Each Secured Party hereby appoints Agent to act as its trustee under and in relation to the U.K. Security Agreement and to hold the assets subject to the security thereby created as trustee for Secured Parties on the trusts and other terms contained in the U.K. Security Agreement and each Secured Party hereby irrevocably authorizes Agent in its capacity as security trustee of Secured Parties to exercise such rights, remedies, powers and discretions as are specifically delegated to Agent as security trustee of Secured Parties by the terms of the U.K. Security Agreement together with all such rights, remedies, powers and discretions as are reasonably incidental thereto.

12.1.7. Liens. Any reference in this Agreement to Liens stated to be in favor of Agent shall be construed so as to include a reference to Liens granted in favor of Agent in its capacity as security trustee of Secured Parties.

12.1.8. Successors. Secured Parties agree that, if at any time that the Person acting as security trustee of Secured Parties in respect of the U.K. Security Agreement shall be a Person other than Agent, such other Person shall have the rights, remedies, benefits and powers granted to Agent in its capacity as security trustee of Secured Parties under this Agreement and the U.K. Security Agreement.

12.1.9. Capacity. Nothing in **Sections 12.1.5 to 12.1.8** shall require Agent in its capacity as security trustee of Secured Parties under this Agreement and the U.K. Security Agreement to act as a trustee at common law or to be holding any property on trust, in any

jurisdiction outside the United States or the U.K. which may not operate under principles of trust or where such trust would not be recognized or its effects would not be enforceable.

## **12.2 Agreements Regarding Collateral and Field Examination Reports.**

12.2.1. **Lien Releases; Care of Collateral.** Secured Parties authorize Agent to release any Lien with respect to any Collateral (a) upon Full Payment of the Obligations; (b) that is the subject of an Asset Disposition which Borrowers certify in writing to Agent is a disposition permitted hereunder or a Lien which Borrowers certify is a Permitted Lien entitled to priority over Agent's Liens (and Agent may rely conclusively on any such certificate without further inquiry); (c) that does not have, when aggregated with all other released Collateral under this clause (c) in any calendar year, a book value greater than \$5,000,000; or (d) with the written consent of all Lenders. Secured Parties authorize Agent to subordinate its Liens to any Lien permitted under **Section 10.2.1(j).** Agent shall have no obligation to assure that any Collateral exists or is owned by a Borrower, or is cared for, protected, insured or encumbered, nor to assure that Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

12.2.2. **Possession of Collateral.** Agent and Secured Parties appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.

12.2.3. **Reports.** Agent shall promptly forward to each Lender, when complete, copies of any field audit, examination or appraisal report prepared by or for Agent with respect to any Obligor or Collateral ("Report"). Each Lender agrees (a) that neither Bank of America nor Agent makes any representation or warranty as to the accuracy or completeness of any Report, and shall not be liable for any information contained in or omitted from any Report; (b) that the Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing any audit or examination will inspect only specific information regarding Obligations or the Collateral and will rely significantly upon the applicable Obligors' books and records as well as upon representations of the applicable Obligors' officers and employees; and (c) to keep all Reports confidential and strictly for such Lender's internal use, and not to distribute any Report (or the contents thereof) to any Person (except: (i) to such Lender's Participants, attorneys and accountants, (ii) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates, or (iii) to the extent required by Applicable Law or by any subpoena or other legal process) or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any Claims arising as a direct or indirect result of Agent furnishing a Report to such Lender.

12.3 **Reliance By Agent.** Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy or e-mail) believed by it to be genuine and correct and to have been signed, sent

or made by the proper Person, and upon the advice and statements of Agent Professionals. Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.

**12.4 Action Upon Default.** Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Section 6**, unless it has received written notice from a Borrower or Required Lenders specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations (other than Secured Bank Product Obligations), or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC or PPSA sales or other similar dispositions of Collateral or to assert any rights relating to any Collateral.

**12.5 Ratable Sharing.** No Lender shall set off against any Dominion Account without the prior consent of Agent. If any Lender shall obtain any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its share of such Obligation, determined on a Pro Rata basis or in accordance with **Section 5.6.1**, as applicable, such Lender shall forthwith purchase from Agent, the U.S. Issuing Bank (if such Obligation is a U.S. Facility Obligation), the Canadian Issuing Bank (if such Obligation is a Canadian Facility Obligation), the U.K. Issuing Bank (if such Obligation is a U.K. Facility Obligation), and the other Lenders such participations in the affected Obligation as are necessary to cause the purchasing Lender to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.6.1**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the amount thereof to Agent for application under **Section 4.2.2** and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction. No Lender shall set off against any Dominion Account without the prior consent of the Agent.

**12.6 Indemnification.** EACH LENDER SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE (OTHER THAN CLAIMS THAT ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE), PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee or Issuing Bank Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any Creditor Representative, debtor-in-possession or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred

in the defense of same, shall be promptly reimbursed to Agent by each Lender to the extent of its Pro Rata share.

**12.7 Limitation on Responsibilities of Agent.** Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

**12.8 Successor Agent and Co-Agents.**

**12.8.1. Resignation; Successor Agent.** Subject to the appointment and acceptance of a successor Agent as provided below, Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrower Agent. Upon receipt of such notice, Required Lenders shall have the right to appoint a successor Agent which shall be (a) a U.S. Lender or an Affiliate of a U.S. Lender; or (b) a commercial bank that is organized under the laws of the United States or any state or district thereof, has a combined capital surplus of at least \$200,000,000 and (provided no Default or Event of Default exists) is reasonably acceptable to Borrower Agent. If no successor agent is appointed prior to the effective date of the resignation of Agent, then Agent may appoint a successor agent from among Lenders or, if no Lender accepts such role, Agent may appoint Required Lenders as successor Agent. Upon acceptance by a successor Agent of an appointment to serve as Agent hereunder, or upon appointment of Required Lenders as successor Agent, such successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent (including as security trustee of Secured Parties under the U.K. Security Agreements) without further act, and the retiring Agent shall be discharged from its duties and obligations hereunder but shall continue to have the benefits of the indemnification set forth in **Sections 12.6 and 14.2**. Notwithstanding any Agent's resignation, the provisions of this **Section 12** shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while Agent. Any successor to Bank of America by merger or acquisition of stock or this loan shall continue to be Agent (including as security trustee of Secured Parties under the U.K. Security Agreements) hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above.

**12.8.2. Separate Collateral Agent.** It is the intent of the parties that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to

transact business in any jurisdiction. If Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any Applicable Law, Agent may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to Agent under the Loan Documents shall also be vested in such separate agent. Secured Parties shall execute and deliver such documents as Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

**12.9 Due Diligence and Non-Reliance.** Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans and participate in LC Obligations hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans and participating in LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates.

**12.10 Remittance of Payments and Collections.**

12.10.1. Remittances Generally. All payments by any Lender to Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Agent and request for payment is made by Agent by 11:00 a.m. (Applicable Time Zone) on a Business Day, payment shall be made by Lender not later than 2:00 p.m. (Applicable Time Zone) on such day, and if request is made after 11:00 a.m. (Applicable Time Zone), then payment shall be made by 11:00 a.m. (Applicable Time Zone) on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.

12.10.2. Failure to Pay. If any Secured Party fails to pay any amount when due by it to Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by Agent as customary in the banking industry for interbank compensation. In no event shall Obligors be entitled to receive credit for any interest paid by a Secured Party to Agent, nor shall any Defaulting Lender be entitled to interest on any amounts held by Agent pursuant to **Section 4.2**.

**12.10.3. Recovery of Payments.** If Agent pays any amount to a Secured Party in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from each Secured Party that received it. If Agent determines at any time that an amount received under any Loan Document must be returned to an Obligor or paid to any other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Agent shall not be required to distribute such amount to any Lender. If any amounts received and applied by Agent to any Obligations are later required to be returned by Agent pursuant to Applicable Law, each Lender shall pay to Agent, **on demand**, such Lender's Pro Rata share of the amounts required to be returned.

**12.11 Agent in its Individual Capacity.** As a Lender, Bank of America shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders," "U.S. Required Lenders," "U.S. Required Term Lenders," "U.K. Required Lenders," "Canadian Required Lenders" or any similar term shall include Bank of America, if applicable, in its capacity as a Lender. Bank of America and its Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if Bank of America were not Agent hereunder, without any duty to account therefor to Lenders. In their individual capacities, Bank of America and its Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Secured Party agrees that Bank of America and its Affiliates shall be under no obligation to provide such information to any Secured Party, if acquired in such individual capacity.

**12.12 Agent Titles.** Each Lender, other than Bank of America, that is designated (on the cover page of this Agreement or otherwise) by Bank of America as an "Agent" or "Arranger" of any type shall not have any right, power, responsibility or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event be deemed to have any fiduciary relationship with any other Lender.

**12.13 Bank Product Providers.** Each Secured Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by **Section 5.6** and this **Section 12**. Each Secured Bank Product Provider shall indemnify and hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all Claims that may be incurred by or asserted against any Agent Indemnitee in connection with such provider's Secured Bank Product Obligations, unless such Claim is caused by the gross negligence or willful misconduct of such Agent Indemnitee.

**12.14 No Third Party Beneficiaries.** This **Section 12** is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations. This **Section 12** does not confer any rights or benefits upon Obligors or any other Person. As between Obligors and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

## **SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS**

**13.1 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Obligors, Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) no Obligor shall have the right to assign its rights or delegate its obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with **Section 13.3**. Agent may treat the Person which made any Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

### **13.2 Participations.**

**13.2.1. Permitted Participants; Effect.** Any Lender may, in the Ordinary Course of Business and in accordance with Applicable Law, at any time sell to a financial institution (“Participant”) a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender’s obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for performance of such obligations, such Lender shall remain the holder of its Loans and Commitments for all purposes, all amounts payable by Obligors shall be determined as if such Lender had not sold such participating interests, and Obligors and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of **Section 5.9** unless Borrower Agent agrees otherwise in writing.

**13.2.2. Voting Rights.** Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of any Loan Documents other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Loan or Commitment in which such Participant has an interest, postpones the Canadian Revolver Commitment Termination Date (if such Participant has an interest in the Canadian Revolver Commitments), U.K. Revolver Commitment Termination Date (if such Participant has an interest in the U.K. Revolver Commitments), or U.S. Revolver Commitment Termination Date (if such Participant has an interest in the U.S. Revolver Commitments), or any date fixed for any regularly scheduled payment of principal, interest or fees on such Loan or Commitment, or releases any Borrower, Guarantor or substantial portion of the Collateral.

**13.2.3. Benefit of Set-Off.** Obligors agree that each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.

### **13.3 Assignments.**

13.3.1. **Permitted Assignments.** A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of \$10,000,000 (unless otherwise agreed by Agent in its discretion) and integral multiples of \$1,000,000 in excess of that amount; (b) except in the case of an assignment in whole of a Lender's rights and obligations, the aggregate amount of the Commitments retained by the transferor Lender is at least \$10,000,000 (unless otherwise agreed by Agent in its discretion); and (c) the parties to each such assignment shall execute and deliver to Agent, for its acceptance and recording, an Assignment and Acceptance. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to (i) any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors and any Operating Circular issued by such Federal Reserve Bank, or (ii) counterparties to swap agreements relating to any Loans; provided, however, that any payment by Obligors to the assigning Lender in respect of any Obligations assigned as described in this sentence shall satisfy Obligors' obligations hereunder to the extent of such payment, and no such assignment shall release the assigning Lender from its obligations hereunder.

13.3.2. **Effect; Effective Date.** Upon delivery to Agent of an assignment notice in the form of **Exhibit C** and a processing fee of \$3,500 (unless otherwise agreed by Agent in its discretion), the assignment shall become effective as specified in the notice, if it complies with this **Section 13.3**. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new Notes, as applicable. The transferee Lender shall comply with **Section 5.10** and deliver, upon request, an administrative questionnaire satisfactory to Agent.

13.3.3. **Certain Assignees.** No assignment or participation may be made to an Obligor, Affiliate of an Obligor, Defaulting Lender or natural person. In connection with any assignment by a Defaulting Lender, such assignment shall be effective only upon payment by the Eligible Assignee or Defaulting Lender to Agent of an aggregate amount sufficient, upon distribution (through direct payment, purchases of participations or other compensating actions as Agent deems appropriate), (a) to satisfy all funding and payment liabilities then owing by the Defaulting Lender hereunder, and (b) to acquire its Pro Rata share of all Loans and LC Obligations. If an assignment by a Defaulting Lender shall become effective under Applicable Law for any reason without compliance with the foregoing sentence, then the assignee shall be deemed a Defaulting Lender for all purposes until such compliance occurs.

**13.4 Replacement of Certain Lenders.** If a Lender (a) fails to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, or (b) is a Defaulting Lender, then, in addition to any other rights and remedies that any Person may have, Agent or Borrower Agent may, by notice to such Lender within 120 days after such event, require such Lender to assign all of its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment and Acceptance(s), within

20 days after the notice. Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Acceptance if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents, including all principal, interest and fees through the date of assignment (but excluding any prepayment charge).

## SECTION 14. MISCELLANEOUS

### 14.1 Consents, Amendments and Waivers.

14.1.1. Amendment. No modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of the Required Lenders or of Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; provided, however, that

(a) without the prior written consent of Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

(b) without the prior written consent of each affected Issuing Bank, no modification shall be effective with respect to any LC Obligations, **Section 2.2, Section 2.3, Section 2.4**, or any other provision in a Loan Document that relates to any rights, duties or discretion of such affected Issuing Bank;

(c) without the prior written consent of each affected Lender, including a Defaulting Lender, no modification shall be effective that would (i) increase the Commitment of such Lender; (ii) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2**); (iii) extend the Commitment of such Lender, or (iv) amend this clause (c);

(d) without the prior written consent of all Lenders (except any Defaulting Lender), no modification shall be effective that would (i) extend the U.S. Revolver Commitment Termination Date, the U.K. Revolver Commitment Termination Date, the Canadian Revolver Commitment Termination Date, the Term Loan Maturity Date, or the Facility Termination Date, (ii) alter **Section 5.6, 7.1** (except to add Collateral), **12.5** or **14.1.1**; (iii) amend the definition of Pro Rata, Supermajority Lenders, or Required Lenders; (iv) increase any advance rate; (v) release Collateral with a book value greater than \$5,000,000 during any calendar year, except as currently contemplated by the Loan Documents; or (vi) release any Obligor from liability for any Obligations;

(e) without the prior written consent of the Supermajority Lenders, no modification shall be effective that would amend the definition of U.S. Borrowing Base (or any defined term used in such definition, including any defined term used therein) to the extent that any such amendment results in more credit being made available to U.S. Borrowers, the Canadian Borrowing Base (or any defined term used in such definition, including any defined term used therein) to the extent that any such amendment results in more credit being made available to the Canadian Borrower, or the U.K. Borrowing Base (or any defined term used in such definition,

including any defined term used therein) to the extent that any such amendment results in more credit being made available to the U.K. Borrower;

(f) without the prior written consent of a Secured Bank Product Provider, no modification shall be effective that affects its relative payment priority under **Section 5.6**;

(g) without the prior written consent of all Lenders, (i) the Obligations shall not be subordinated to any other obligations, and (ii) Agent shall not agree to subordinate its Liens in the Collateral to any other Liens except to the extent contemplated by **Section 12.2.1**;

(h) without the prior written consent of all: (i) U.S. Lenders, amend the definition of U.S. Required Lenders, (ii) Canadian Lenders, amend the definition of Canadian Required Lenders, (iii) U.K. Lenders, amend the definition of U.K. Required Lenders, and (iv) Term Lenders, amend the definition of U.S. Required Term Lenders; and

(i) if Real Estate secures any Obligations, no modification of a Loan Document shall add, increase, renew or extend any credit line hereunder until the completion of flood diligence and documentation as required by all Flood Laws.

**14.1.2. Limitations.** The agreement of Obligors shall not be necessary to the effectiveness of any modification of a Loan Document that deals solely with the rights and duties of Lenders, Agent and/or Issuing Banks as among themselves. Only the consent of the parties to the Fee Letters or any agreement relating to a Bank Product shall be required for any modification of such agreement, and any non-Lender that is party to a Bank Product agreement shall have no right to participate in any manner in modification of any other Loan Document. Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.

**14.1.3. Payment for Consents.** No Obligor will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

**14.2 Indemnity. EACH OBLIGOR SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE.** In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee.

#### **14.3 Notices and Communications.**

**14.3.1. Notice Address.** Subject to **Section 4.1.4**, all notices and other communications by or to a party hereto shall be in writing and shall be given to any Obligor, at Borrower Agent's address shown on the signature pages hereof, and to any other Person at its

address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment and Acceptance), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. Each such notice or other communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to Agent pursuant to **Section 2.1.4, 2.2, 2.3, 2.4, 3.1.2, 4.1.1 or 5.3.3** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written notice or other communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by Borrower Agent shall be deemed received by all Obligors.

**14.3.2. Electronic Communications; Voice Mail.** Electronic mail and internet websites may be used only for routine communications, such as financial statements, Borrowing Base Certificates and other information required by **Section 10.1.2**, administrative matters, distribution of Loan Documents, and matters permitted under **Section 4.1.4**. Agent and Lenders make no assurances as to the privacy and security of electronic communications. Electronic and voice mail may not be used as effective notice under the Loan Documents.

**14.3.3. Non-Conforming Communications.** Agent and Lenders may rely upon any notices purportedly given by or on behalf of any Obligor even if such notices were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Obligor shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any telephonic communication purportedly given by or on behalf of an Obligor.

**14.4 Performance of Obligors' Obligations.** Agent may, in its discretion at any time and from time to time, at the applicable Borrowers' expense, pay any amount or do any act required of an Obligor under any Loan Documents or otherwise lawfully requested by Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All payments, costs and expenses (including Extraordinary Expenses) of Agent under this Section shall be reimbursed to Agent by Borrowers, **on demand**, with interest from the date incurred to the date of payment thereof at the Default Rate applicable to U.S. Base Rate Revolver Loans. Any payment made or action taken by Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

**14.5 Credit Inquiries.** Each Obligor hereby authorizes Agent and Lenders (but they shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

**14.6 Severability.** Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be

invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

**14.7 Cumulative Effect; Conflict of Terms.** The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations, tests or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

**14.8 Counterparts.** Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Agent has received counterparts bearing the signatures of all parties hereto. Delivery of a signature page of any Loan Document by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of such agreement.

**14.9 Entire Agreement.** Time is of the essence of the Loan Documents. The 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.

**14.10 Relationship with Lenders.** The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, association, joint venture or any other kind of entity, nor to constitute control of any Obligor.

**14.11 Lender Loss Sharing Agreement.**

(a) **Definitions.** As used in this **Section 14.11**, the following terms shall have the following meanings:

- (i) **CAM:** the mechanism for the allocation and exchange of interests in the Loans, participations in Letters of Credit and collections thereunder established under **Section 14.11(b).**
- (ii) **CAM Exchange:** the exchange of the U.S. Lenders' interests, U.K. Lenders' interests, and the Canadian Lenders' interests provided for in **Section 14.11(b).**
- (iii) **CAM Exchange Date:** the first date after the Closing Date on which there shall occur (a) any event described in **Section 11.1(j)** with respect to any Borrower, or (b) an acceleration of Loans and termination of the Commitments pursuant to **Section 11.2.**

(iv) **CAM Percentage**: as to each Lender, a fraction, (a) the numerator of which shall be the aggregate amount of such Lender's Revolver Commitments immediately prior to the CAM Exchange Date and the termination of the Revolver Commitments, and (b) the denominator of which shall be the amount of the Revolver Commitments of all the Lenders immediately prior to the CAM Exchange Date and the termination of the Revolver Commitments.

(v) **Designated Obligations**: all Obligations of the Borrowers with respect to (a) principal and interest under the U.S. Revolver Loans, U.K. Revolver Loans, Canadian Revolver Loans, Overadvance Loans and Protective Advances, (b) unreimbursed drawings under Letters of Credit and interest thereon, and (c) fees under **Sections 3.2.1, 3.2.2(a), 3.2.3(a), and 3.2.4(a)**.

(vi) **Revolver Facilities**: the facility established under the U.S. Revolver Commitments, the U.K. Revolver Commitments, and the Canadian Revolver Commitments, and **Revolver Facility** means any one of such Revolver Facilities.

(b) **CAM Exchange**.

(i) **On the CAM Exchange Date**,

(A) the U.S. Revolver Commitments, the U.K. Revolver Commitments, and the Canadian Revolver Commitments shall have terminated in accordance with **Section 11.2**,

(B) each U.S. Lender shall fund its participation in any outstanding Protective Advances in accordance with **Section 2.1.6**, each U.K. Lender shall fund its participation in any outstanding Protective Advances in accordance with **Section 2.1.6**, and each Canadian Lender shall fund its participation in any outstanding Protective Advances in accordance with **Section 2.1.6**

(C) each U.S. Lender shall fund its participation in any unreimbursed drawings made under the applicable Letters of Credit pursuant to **Section 2.3.2(b)**, each Canadian Lender shall fund its participation in any unreimbursed drawings made under the applicable Letters of Credit pursuant to **Section 2.4.2(b)**, and each U.K. Lender shall fund its participation in any unreimbursed drawings made under the applicable Letters of Credit pursuant to **Section 2.2.2(b)**, and

(D) the Lenders shall purchase at par interests (in Dollars) in the Designated Obligations under each Revolver Facility (and shall make payments to Agent for reallocation to other Lenders to the extent necessary to give effect to such purchases) and shall assume the obligations to reimburse the applicable Issuing Bank for unreimbursed drawings under

outstanding Letters of Credit under such Revolver Facility such that, in lieu of the interests of each Lender in the Designated Obligations under the U.S. Revolver Commitments, the U.K. Revolver Commitments, and the Canadian Revolver Commitments in which it shall participate immediately prior to the CAM Exchange Date, such Lender shall own an interest equal to such Lender's CAM Percentage in each component of the Designated Obligations immediately following the CAM Exchange.

(ii) Each Lender and each Person acquiring a participation from any Lender as contemplated by **Section 13.2** hereby consents and agrees to the CAM Exchange. Each Borrower agrees from time to time to execute and deliver to Lenders all such promissory notes and other instruments and documents as Agent shall reasonably request to evidence and confirm the respective interests and obligations of Lenders after giving effect to the CAM Exchange, and each Lender agrees to surrender any promissory notes originally received by it in connection with its Loans under this Agreement to Agent against delivery of any promissory notes so executed and delivered; provided that the failure of any Lender to deliver or accept any such promissory note, instrument or document shall not affect the validity or effectiveness of the CAM Exchange.

(iii) As a result of the CAM Exchange, from and after the CAM Exchange Date, each payment received by Agent pursuant to any Loan Document in respect of any of the Designated Obligations shall be distributed to Lenders, pro rata in accordance with their respective CAM Percentages.

(iv) In the event that on or after the CAM Exchange Date, the aggregate amount of the Designated Obligations shall change as a result of the making of a disbursement under a Letter of Credit by any Issuing Bank that is not reimbursed by the applicable Borrowers, then each Lender shall promptly reimburse such Issuing Bank for its CAM Percentage of such unreimbursed payment.

(c) Notwithstanding any other provision of this **Section 14.11**, Agent and each Lender agree that if Agent or a Lender is required under Applicable Law to withhold or deduct any taxes or other amounts from payments made by it hereunder or as a result hereof, such Person shall be entitled to withhold or deduct such amounts and pay over such taxes or other amounts to the applicable Governmental Authority imposing such tax without any obligation to indemnify Agent or any Lender with respect to such amounts and without any other obligation of gross up or offset with respect thereto and there shall be no recourse whatsoever by Agent or any Lender subject to such withholding to Agent or any other Lender making such withholding and paying over such amounts, but without diminution of the rights of Agent or such Lender subject to such withholding as against Borrowers and the other Obligors to the extent (if any) provided in this Agreement and the other Loan Documents. Any amounts so withheld or deducted shall be treated as, for the purpose of this **Section 14.11**, having been paid to Agent or such Lender with respect to which such withholding or deduction was made.

**14.12 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated by any Loan Document, Obligors acknowledge and agree that (a)(i) this credit facility and any related arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Obligors and such Person; (ii) Obligors have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Obligors are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger 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 Obligors, any of their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Obligors and their Affiliates, and have no obligation to disclose any of such interests to Obligors or their Affiliates. To the fullest extent permitted by Applicable Law, each Obligor hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

**14.13 Confidentiality.** Each of Agent, Lenders and Issuing Banks shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, advisors and representatives (provided such Persons are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto; (e) in connection with any action or proceeding, or other exercise of rights or remedies, relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product; (g) with the consent of Borrower Agent; or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) is available to Agent, any Lender, any Issuing Bank or any of their Affiliates on a nonconfidential basis from a source other than Obligors. Notwithstanding the foregoing, Agent and Lenders may publish or disseminate general information describing this credit facility, including the names and addresses of Obligors and a general description of Obligors' businesses, and may use Obligors' logos, trademarks or product photographs in advertising materials. As used herein, "Information" means all information received from an Obligor or Subsidiary relating to it or its business that is identified as confidential when delivered. Any Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises the same degree of care that it accords its own confidential information. Each of Agent, Lenders and Issuing Banks acknowledges that (i) Information may include material non-public information concerning an Obligor or Subsidiary; (ii) it has developed compliance procedures regarding the use of material non-public information; and (iii) it will handle such material non-public information in accordance with Applicable Law, including federal, state, provincial and territorial securities laws.

**14.14 GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS OTHERWISE SPECIFIED, SHALL BE GOVERNED BY THE**

**14.15 Consent to Forum; Judicial Reference; Bail-In of EEA Financial Institutions.**

14.15.1. Forum. EACH OBLIGOR HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURT SITTING IN OR WITH JURISDICTION OVER NEW YORK, NEW YORK, IN ANY PROCEEDING OR DISPUTE RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY SUCH PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH OBLIGOR IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1. Nothing herein shall limit the right of Agent or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

14.15.2. Judicial Reference. If any controversy or claim among the parties relating in any way to any Obligations or Loan Documents, including any alleged tort, shall be pending before any court sitting in or with jurisdiction over California or applying California law, then at the request of any party such proceeding shall be referred by the court to a referee (who shall be an active or retired judge) to hear and determine all issues in such proceeding (whether of fact or law) and to report a statement of decision for adoption by the court. Nothing in this Section shall limit any right of Agent or any other Secured Party to exercise self-help remedies, such as setoff, foreclosure or sale of any Collateral, or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, during or after any judicial reference. The exercise of a remedy does not waive the right of any party to resort to judicial reference. At Agent's option, foreclosure under a mortgage or deed of trust may be accomplished either by exercise of power of sale thereunder or by judicial foreclosure.

14.15.3. 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 the parties, each party hereto (including each Secured Party) acknowledges that, with respect to any Secured Party that is an EEA Financial Institution, any unsecured liability of such Secured Party arising under a Loan Document may be subject to the write-down and conversion powers of an EEA Resolution Authority, and each party hereto 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 liability which may be payable to it by such Secured Party; and (b) the effects of any Bail-in Action on any such liability, including (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, or a bridge institution that may be issued to the party 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 any Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of any Write-Down and Conversion Powers.

**14.16 Waivers by Obligors.** To the fullest extent permitted by Applicable Law, each Obligor waives (a) the right to trial by jury (which Agent and each Lender hereby also waives) in any proceeding or dispute of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent on which an Obligor may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisement and exemption laws; (f) any claim against Agent, any Issuing Bank or any Lender, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Obligor acknowledges that the foregoing waivers are a material inducement to Agent, Issuing Banks and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with Obligors. Each Obligor has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**14.17 Patriot Act Notice.** Agent and Lenders hereby notify Obligors that pursuant to the requirements of the Patriot Act, the Proceeds of Crime Act and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” policies, regulations, laws or rules (the Proceeds of Crime Act and such other applicable policies, regulations, laws or rules, collectively, including any guidelines or orders thereunder, “AML Legislation”), Agent and Lenders are required to obtain, verify and record information that identifies each Obligor, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act and the AML Legislation. Agent and Lenders will also require information regarding each personal guarantor, if any, and may require information regarding Obligors’ management and owners, such as legal name, address, social security number and date of birth. Each Obligor shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender, in order to comply with the Patriot Act and/or the applicable AML Legislation, whether now or hereafter in existence.

**14.18 Canadian Anti-Money Laundering Legislation.** If the Agent has ascertained the identity of any Canadian Facility Obligor or any authorized signatories of any Canadian Facility Obligor for the purposes of applicable AML Legislation, then the Agent: (a) shall be deemed to have done so as an agent for each Canadian Lender, and this Agreement shall constitute a “written agreement” in such regard between each Canadian Lender and the Agent within the meaning of the applicable AML Legislation; and (b) shall provide to each Canadian Lender copies of all

information obtained in such regard without any representation or warranty as to its accuracy or completeness. Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Canadian Lenders agrees that Agent has no obligation to ascertain the identity of the Canadian Facility Obligors or any authorized signatories of the Canadian Facility Obligors on behalf of any Canadian Lender, or to confirm the completeness or accuracy of any information it obtains from any Canadian Facility Obligor or any such authorized signatory in doing so.

**14.19 Reinstatement.** This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Obligor for liquidation or reorganization, should any Obligor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of such Obligor's assets, and shall continue to be effective or 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. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

**14.20 Nonliability of Lenders.** Neither the Agent, any Issuing Bank nor any Lender undertakes any responsibility to any Obligor to review or inform any Obligor of any matter in connection with any phase of any Obligor's business or operations. Each Obligor agrees, on behalf of itself and each other Obligor, that neither the Agent, any Issuing Bank nor any Lender shall have liability to any Obligor (whether sounding in tort, contract or otherwise) for losses suffered by any Obligor in connection with, arising out of or in any way related to any of the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final, non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence or willful misconduct of the party from which recovery is sought or a breach of obligations under this Agreement by the party from which recovery is sought. **NEITHER THE AGENT NOR ANY LENDER 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.**

**14.21 Know Your Customer.** Nothing in this Agreement shall oblige the Agent to carry out any "**know your customer**" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent.

**14.22 Amendment and Restatement.**

14.22.1. This Agreement amends and restates in its entirety the Second Amended and Restated Loan Agreement and, upon the effectiveness of this Agreement, the terms and provisions of the Second Amended and Restated Loan Agreement shall, subject to **Section 14.22.3**, be superseded hereby.

14.22.2. Notwithstanding the amendment and restatement of the Second Amended and Restated Loan Agreement by this Agreement, all of the Obligations under the Second Amended and Restated Loan Agreement which remain outstanding as of the date hereof, shall constitute Obligations owing hereunder. This Agreement is given in substitution for the Second Amended and Restated Loan Agreement, and not as payment of the Obligations of the Borrowers thereunder, and is in no way intended to constitute a novation of the Second Amended and Restated Loan Agreement.

14.22.3. Upon the effectiveness of this Agreement, unless the context otherwise requires, each reference to the Second Amended and Restated Loan Agreement in any of the Loan Documents and in each document, instrument or agreement executed and/or delivered in connection therewith shall mean and be a reference to this Agreement. Except as expressly modified as of the Closing Date, all of the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed. Without limiting the generality of the foregoing, all security interests, pledges, assignments and other Liens and Guarantees previously granted by any Obligor pursuant to the Loan Documents executed and delivered in connection with the Original Loan Agreement, the Original Amended and Restated Loan Agreement or the Second Amended and Restated Loan Agreement are hereby reaffirmed, ratified, renewed and continued, and all such security interests, pledges, assignments and other Liens and Guarantees shall remain in full force and effect as security for the Obligations on and after the Closing Date.

**14.23 Intercreditor Agreement.** Notwithstanding anything herein to the contrary, the priority of the Lien and security interest granted to the Agent pursuant to any Loan Document and the exercise of any right or remedy in respect of the Collateral by the Agent (or any Secured Party) hereunder or under any other Loan Document are subject to the provisions of the Intercreditor Agreement and in the event of any conflict between the terms of the Intercreditor Agreement and any Loan Document, the terms of the Intercreditor Agreement shall govern and control. Notwithstanding anything herein to the contrary, prior to the Discharge of Term Loan Obligations (as defined in the Intercreditor Agreement), (i) the delivery or granting of "control" (as defined in the UCC) to the extent only one Person can be granted "control" therein under applicable law of any Term Loan Collateral (as defined in the Intercreditor Agreement) by the Term Loan Collateral Agent pursuant to the terms of the Term Loan Collateral Documents (as defined in the Intercreditor Agreement) shall satisfy any such "control" requirement hereunder or under any other Loan Document with respect to any Term Loan Collateral to the extent that such "control" is consistent with the terms of the Intercreditor Agreement and (ii) the possession of any Term Loan Collateral by the Term Loan Collateral Agent pursuant to the terms of the Term Loan Collateral Documents shall satisfy any such possession requirement hereunder or under any other Loan Document with respect to Term Loan Collateral to the extent that such possession is consistent with the terms of the Intercreditor Agreement.

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

**OBLIGORS:**

**CALLAWAY GOLF COMPANY,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALLAWAY GOLF SALES COMPANY,**  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALLAWAY GOLF BALL OPERATIONS, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALLAWAY GOLF CANADA LTD.,**  
a Canada corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALLAWAY GOLF EUROPE LTD.,**  
a company organized under the laws of England and Wales

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Third Amended and Restated Loan and Security Agreement]

**CALLAWAY GOLF INTERACTIVE, INC.**  
a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALLAWAY GOLF INTERNATIONAL SALES  
COMPANY,**  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALLAWAY GOLF EUROPEAN HOLDING  
COMPANY LIMITED,**  
a company limited by shares incorporated under the laws of  
England and Wales

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OGIO INTERNATIONAL, INC.,**  
a Utah corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRAVISMATHEW, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Third Amended and Restated Loan and Security Agreement]

**AGENT AND LENDERS**

**BANK OF AMERICA, N.A.**, as Agent and as a U.S.  
Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BANK OF AMERICA, N.A.**  
(acting through its Canada branch), as a Canadian Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BANK OF AMERICA, N.A.**  
(acting through its London branch), as a U.K. Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Third Amended and Restated Loan and Security Agreement]

**[Additional Lender sig pages to be provided]**

[Signature Page to Third Amended and Restated Loan and Security Agreement]



**Contacts:** Brian Lynch  
Patrick Burke  
(760) 931-1771

## CALLAWAY GOLF COMPANY COMPLETES ACQUISITION OF JACK WOLFSKIN, A PREMIUM OUTDOOR APPAREL BRAND, FOR €418 MILLION

CARLSBAD, Calif., January 4, 2019 - Callaway Golf Company (NYSE: ELY) announced today that it has completed the previously announced acquisition of Jack Wolfskin for €418 million, or approximately \$476 million assuming a 1.140 Euro to US Dollar conversion rate, subject to a working capital adjustment.

Jack Wolfskin is an international, premium outdoor apparel, footwear and equipment brand. The company designs premium products targeted at the active outdoor and urban outdoor customer categories. The acquisition furthers Callaway's push into the active lifestyle category after its successful 2017 acquisitions of TravisMathew and Ogio. Post-acquisition, Jack Wolfskin will continue to operate out of its Idstein, Germany headquarters.

"We are very excited to have completed this acquisition and have the Jack Wolfskin brand as part of the Callaway portfolio," commented Chip Brewer, President and Chief Executive Officer of Callaway. "We believe Jack Wolfskin fits extremely well with our current brands and furthers our stated plan of strategic investments in complementary areas. Jack Wolfskin provides an innovative product offering with long-term synergies to the existing soft goods portfolio. We look forward to partnering with the Jack Wolfskin management team to maximize this brand's growth potential."

"We are thrilled to be joining Callaway's growing portfolio of premium, active lifestyle brands," said Jack Wolfskin's Chief Executive Officer Melody Harris-Jensbach. "The Callaway team has proven over many years that they are great innovators and brand builders. We are excited to have them invest in our brand and are eager to start working with them."

Callaway financed the transaction with a \$480 million Term Loan B facility, which was led by BofA Merrill Lynch and JP Morgan Securities LLC. The facility has a seven-year term, subject to certain prepayment rights, and bears interest at a rate of LIBOR plus 4.50%. The Term Loan B market weakened during the period the Company marketed the loan to investors and therefore the estimated annual financing costs will be approximately \$0.05 per share higher than previously estimated. As a result, Callaway currently estimates that this transaction is expected to be approximately \$0.11 per share dilutive for full year 2019 and slightly accretive in 2020, both on a non-GAAP basis, which excludes non-recurring transaction costs and non-cash purchase accounting adjustments. The Company intends to provide further guidance on a GAAP basis once it has completed its purchase accounting adjustments. Full year 2019 adjusted EBITDA, which excludes transaction costs and non-cash purchase accounting adjustments, is still estimated to be approximately \$33 million for the Jack Wolfskin business. The Company remains excited about adding this premium brand to its portfolio and the strategic benefits and long-term potential this acquisition provides.

Latham & Watkins LLP acted as legal counsel to Callaway for the acquisition and Gibson Dunn & Crutcher acted as legal counsel to Callaway for the Term Loan B facility. JP Morgan Securities LLC acted as exclusive financial advisor to Callaway for the acquisition. Kirkland & Ellis International LLP acted as legal counsel and Houlihan Lokey as exclusive financial advisor to Outdoor Holdings SCA - the holding company of Jack Wolfskin. THM Partners acted as director of and advisor to the Jack Wolfskin Group.

## **Forward-Looking Statements**

Statements used in this press release that relate to future plans, events, financial results, performance or prospects, and statements relating to the expected benefits of the Jack Wolfskin transaction, including future synergies and growth opportunities, and the estimated financial results and sales and earnings contribution from Jack Wolfskin, are forward-looking statements as defined under the Private Securities Litigation Reform Act of 1995. These statements are based upon current information and expectations. Accurately estimating the forward-looking statements is based upon various risks and unknowns, including unanticipated difficulties or expenditures relating to the transaction or the realization of the anticipated synergies and growth opportunities; the response of customers, suppliers and others to the announcement of the transaction; potential difficulties in employee retention as a result of the transaction; consumer acceptance of and demand for the Company's products; the level of promotional activity in the marketplace; unfavorable weather conditions; future consumer discretionary purchasing activity, which can be significantly adversely affected by unfavorable economic or market conditions; future retailer purchasing activity, which can be significantly negatively affected by adverse industry conditions and overall retail inventory levels; and future changes in foreign currency exchange rates and the degree of effectiveness of the Company's hedging programs. Actual results may differ materially from those estimated or anticipated as a result of these risks and unknowns or other risks and uncertainties. For additional information concerning these and other risks and uncertainties that could affect these statements, see Callaway's Annual Report on Form 10-K for the year ended December 31, 2017 as well as other risks and uncertainties detailed from time to time in Callaway's reports on Forms 10-K, 10-Q and 8-K subsequently filed with the Securities and Exchange Commission. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. Callaway undertakes no obligation to republish revised forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

## **About Callaway Golf**

*Through an unwavering commitment to innovation, Callaway Golf Company (NYSE: ELY) creates products designed to make every golfer a better golfer. Callaway Golf Company manufactures and sells golf clubs and golf balls, and sells bags, accessories and apparel in the golf and lifestyle categories, under the Callaway Golf®, Odyssey®, OGIO, and TravisMathew brands worldwide. For more information please visit [www.callawaygolf.com](http://www.callawaygolf.com), [www.odysseygolf.com](http://www.odysseygolf.com), [www.ogio.com](http://www.ogio.com), and [www.travismathew.com](http://www.travismathew.com).*

## **About Jack Wolfskin**

*Jack Wolfskin is one of the leading providers of functional outdoor clothing, footwear and equipment in Europe and the largest franchisor in the German specialist sports retail market. JACK WOLFSKIN articles are currently available in more than 3,000 points of sale across the globe. JACK WOLFSKIN articles feature a high degree of functionality, user-friendliness and innovation. In recent years, JACK WOLFSKIN successfully introduced numerous material and product innovations. The company is a member of Fair Wear Foundation and a bluesign® system partner. JACK WOLFSKIN has also been a member of the "Zero Discharge of Hazardous Chemicals" initiative since 2012. Jack Wolfskin is the official provider of apparel for the Innsbruck Alpine School. For more information please visit [www.jack-wolfskin.com](http://www.jack-wolfskin.com)*

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SOURCE Callaway Golf Company

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