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

FORM 8-K

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

Date of report (Date of earliest event reported): October 12, 2023

PARTY CITY HOLDCO INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-37344**	**46-0539758**
(State or other jurisdiction of incorporation)	*(Commission File Number)*	*(I.R.S. Employer Identification Number)*

100 Tice Boulevard, Woodcliff Lake, NJ	**07677**
(Address of principal executive offices)	*(Zip code)*

Registrant's telephone number, including area code: (914) 345-2020

Former name or former address, if changed since last report: N/A

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))

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**

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. ☐

Explanatory Note:

As previously disclosed, Party City Holdco Inc. (the "Company") and certain of its subsidiaries (together with the Company, the "Debtors") filed voluntary petitions (collectively, the "Chapter 11 Cases") in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") seeking relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). On August 31, 2023, the Company filed the *Fourth Amended Joint Chapter 11 Plan of Reorganization of Party City Holdco Inc. and Its Debtor Affiliates* [Docket No. 1672] (including all exhibits and supplements thereto, the "Plan").

On September 6, 2023, the Bankruptcy Court entered an order, Docket No. 1711, confirming the Plan (the "Confirmation Order"). The Plan and Confirmation Order were previously filed as Exhibits 99.1 and 2.1, respectively, to the Company's Current Report on Form 8-K, filed with the U.S. Securities and Exchange Commission (the "SEC") on September 6, 2023, and are hereby incorporated by reference as Exhibits 2.1 and 99.1 to this Current Report on Form 8-K (this "Current Report").

On October 12, 2023 (the "Effective Date"), the Plan became effective in accordance with its terms and the Debtors emerged from the Chapter 11 Cases. On the Effective Date, in connection with the effectiveness of, and pursuant to the terms of, the Plan and the Confirmation Order, the Company's common stock outstanding immediately before the Effective Date was canceled and is of no further force or effect, and the new organizational documents of the Company became effective, authorizing the issuance of shares of common stock representing 100% of the equity interests in the Company (the "New PCHI Shares"). In accordance with the foregoing, on the Effective Date, the Company, as reorganized on the Effective Date in accordance with the Plan, issued the New PCHI Shares and the Second Lien PIK Toggle Notes (as defined below) (collectively, the "New Securities"). The New Securities issued pursuant to the Plan, including the New Securities issued upon the exercise of the Subscription Rights (as defined in the Backstop Agreement (as defined below)) in connection with the Rights Offering (as defined below), all New Securities issued to the Commitment Parties (as defined below) in respect of their commitments under the Backstop Agreement and in connection with the Rights Offering was issued in reliance upon the exemption from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act") provided by section 1145 of the Bankruptcy Code and, to the extent such exemption was unavailable, was issued in reliance on the exemption provided by section 4(a)(2) under the Securities Act or another applicable exemption.

Information regarding the assets and liabilities of the Company and its subsidiaries that was filed with the Bankruptcy Court may be found at https://cases.ra.kroll.com/PCHI/Home DocketInfo?DocAttribute=7474&DocAttrName=SCHEDULESSOFA_Q&MenuID=19344&AttributeName=Schedules%20%26%20SOFA and is incorporated herein by reference.

Item 1.01 - Entry into a Material Definitive Agreement

ABL Facility and Intercreditor Agreement

On the Effective Date, pursuant to the terms of the Plan, the Company and certain of its subsidiaries entered into an ABL credit agreement (the "ABL Credit Agreement"), by and among the Company, as a parent guarantor, Party City Holdings Inc., a Delaware corporation, as the parent borrower (the "Parent Borrower"), Party City Corporation, a Delaware corporation, and each other subsidiary of the Borrowers party thereto as a subsidiary borrower from time to time (collectively with the Parent Borrower, the "Borrowers"), PC Intermediate Holdings, Inc. a Delaware corporation, as a parent guarantor ("Holdings"), the other subsidiaries of the Borrowers party thereto from time to time as subsidiary guarantors, the lenders party thereto from time to time, and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacities, the "ABL Agent"). The ABL Credit Agreement provides for a $545 million senior secured asset-based revolving loan facility (with a $60 million sublimit for the issuance of letters of credit thereunder) (the "ABL Revolving Facility" and the loans outstanding thereunder, the "ABL Revolving Loans") and a $17,110,500.00 senior secured asset-based first-in last-out loan facility (the "FILO Facility" and the loans outstanding thereunder, the "FILO Loans"; the FILO Facility together with the ABL Revolving Facility, the "ABL Facility"). The ABL Facility is scheduled to mature on October 12, 2028.

All obligations of the Borrowers under the ABL Credit Agreement, certain banking services obligations and certain hedging obligations are unconditionally guaranteed, on a joint and several basis, by the Borrowers, Holdings, the Company, and the material domestic direct and indirect restricted subsidiaries of the Company, subject to certain exceptions and limitations described in the ABL Credit Agreement (each a "Loan Party" and collectively, the "Loan Parties"). All such obligations, including the guarantees of the ABL Facility, are secured by (i) first priority liens on substantially all assets of the Loan Parties, and (ii) the equity interests in the Loan Parties other than the Company, in each case, subject to certain exceptions and limitations described in the ABL Credit Agreement.

The ABL Revolving Loans and the FILO Loans bear interest at a rate per annum equal to the applicable margin *plus*, at the Borrowers' option, either: (i) an adjusted term SOFR rate, subject to a floor of 0.00% or (ii) a base rate, subject to a floor of 0.00%, determined as the greatest of (x) the prime loan rate as published in *The Wall Street Journal*, (y) the federal funds effective rate *plus* $\frac{1}{2}$ of 1.00%, and (z) adjusted term SOFR rate for a one-month tenor *plus* 1.00%. The margin applicable to the loans bearing interest based on the adjusted term SOFR rate equals to: (i) with respect to the ABL Revolving Loans, 4.00% and (ii) with respect to the FILO Loans, 6.00%. The margin applicable to the loans bearing interest based on the base rate equals to: (i) with respect to the ABL Revolving Loans, 3.00% and (ii) with respect to the FILO Loans, 5.00%. The applicable margins are subject to certain specified increases on March 31, 2024 and June 30, 2024 if the Parent Borrower has, as of such date, not yet delivered to the ABL Agent an audited consolidated balance sheet of the Company and its subsidiaries as of the end of the fiscal year ended December 31, 2022. The Borrowers are required to pay interest on overdue principal or interest at the rate equal to 2.00% per annum in excess of the applicable interest rate under the ABL Facility to the extent lawful.

Outstanding loans under the ABL Credit Agreement are subject to an intercreditor agreement by and among the ABL Agent, as the First Priority Representative for the First Priority Secured Parties and Wilmington Savings Fund Society, FSB, as the Second Priority Representative for the Second Priority Secured Parties (in each case, as defined therein) (the "Intercreditor Agreement"). The Intercreditor Agreement provides, among other things, that the liens securing the obligations under the Second Lien PIK Toggle Notes (as defined below) rank junior in priority to the liens securing the obligations under the ABL Credit Agreement.

The Borrowers are required to pay a quarterly commitment fee to each ABL Revolving Lender (as defined in the ABL Credit Agreement), which accrues at a rate per annum equal to 0.50% on the average daily unused portion of such ABL Revolving Lender's commitments under the ABL Revolving Facility. The Borrowers are also required to pay participation fees and fronting fees with respect to letters of credit participation and issuance.

Borrowings under the ABL Credit Agreement may be used to (i) refinance indebtedness under the prepetition asset-based revolving credit facility and (ii) finance the working capital needs and other general corporate purposes of the Parent Borrower and its subsidiaries. Availability of borrowings of ABL Revolving Loans under the ABL Credit Agreement is subject to the satisfaction of certain conditions, including, after giving effect to any such borrowings, aggregate credit exposure of lenders under the ABL Credit Agreement not exceeding the lesser of the aggregate unblocked commitments and the borrowing base at such time. Borrowings of the FILO Loans are only available on the Effective Date and if repaid or prepaid may not be reborrowed.

Mandatory prepayment of loans under the ABL Credit Agreement is required if the aggregate credit exposure of lenders under the ABL Credit Agreement exceeds the borrowing base at such time. Such a mandatory prepayment would be applied to eliminate the availability shortfall as follows: first, to prepay the ABL Revolving Loans or cash collateralize, backstop or replace letters of credit under the ABL Facility; and second, to prepay the FILO Loans. The loans under the ABL Facility may be voluntarily prepaid without premium or penalty, other than customary breakage costs. Voluntary prepayments of loans under the ABL Credit Agreement are applied to satisfy FILO Loan obligations only after other outstanding loan obligations and letter of credit reimbursement obligations under the ABL Credit Agreement are satisfied. Voluntary prepayments of FILO Loans are additionally subject to the satisfaction of the Payment Conditions discussed below.

The ABL Credit Agreement requires the Borrowers to maintain, at all times, Excess Unadjusted Availability (as defined in the ABL Credit Agreement) of at least the greater of (i) 10.0% of the Total Line Cap (as defined in the ABL Credit Agreement) and (ii) $46 million.

The ABL Credit Agreement contains negative covenants that limit, among other things, the Borrowers' ability and the ability of their restricted subsidiaries to: (i) incur, assume or guarantee additional indebtedness; (ii) create, incur or assume liens; (iii) make investments; (iv) merge or consolidate with or into any other person or undergo certain other fundamental changes; (v) transfer or sell assets; (vi) pay dividends or distributions on capital stock or redeem or repurchase capital stock; (vii) enter into transactions with certain affiliates; (viii) repay or redeem certain indebtedness; (ix) sell stock of its subsidiaries; or (x) enter into certain burdensome agreements. These negative covenants are subject to a number of important limitations and exceptions. The Borrowers and their restricted subsidiaries can make certain acquisitions, restrictive payments, payments of certain indebtedness and investments if, after giving pro forma effect to such transactions, the "Payment Conditions" (as defined in the ABL Credit Agreement) are met, which include, among other things: (i) 90-Day Excess Availability and Excess Availability (each as defined in the ABL Credit Agreement) are equal to or greater than the greater of (x) 25.0% of the Total Line Cap and (y) $120 million and (ii) the Fixed Charge Coverage Ratio (as defined in the ABL Credit Agreement) is at least 1.00 to 1.00.

Additionally, the ABL Credit Agreement contains other covenants, representations and warranties and events of default that are customary for a financing of this type. Events of default include, among other things, nonpayment of principal or interest, breach of covenants, breach of representations and warranties, failure to pay final judgments in excess of a specified threshold, failure of a guarantee to remain in effect, failure of a collateral document to create an effective security interest in collateral, bankruptcy and insolvency events, cross-default to other material indebtedness, and a change of control. The occurrence of any event of default under the ABL Credit Agreement would permit all obligations under the ABL Facility to be declared due and payable immediately and all commitments thereunder to be terminated.

The foregoing descriptions of the ABL Credit Agreement and the Intercreditor Agreement are qualified in their entirety by the full text of the ABL Credit Agreement and the Intercreditor Agreement which are attached as Exhibits 10.1 and 10.2, respectively, to this Current Report and are incorporated herein by reference.

Second Lien PIK Toggle Notes Indenture

On the Effective Date, the Issuers issued an aggregate principal amount of $232,394,231 of Second Lien PIK Toggle Notes. The Second Lien PIK Toggle Notes are scheduled to mature on January 11, 2029. Interest on the Second Lien PIK Toggle Notes accrues, at a rate of 12.00% per annum, payable, at the Company's option, either in cash or by increasing the amount of the Second Lien PIK Toggle Notes outstanding ("PIK Interest"). The Company shall pay interest quarterly in arrears on February 15, May 15, August 15 and November 15 of each year, commencing February 15, 2024. Interest on the Second Lien PIK Toggle Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the Effective Date. Interest is computed on the basis of a 360-day year of twelve 30-day months. The Company is required to pay interest on overdue installments of interest or premium, if any, without regard to any applicable grace period, at the rate equal to the then applicable interest rate on the Second Lien PIK Toggle Notes to the extent lawful.

As previously reported, on September 1, 2023, the Debtors entered into a backstop commitment agreement (as amended, supplemented or modified from time to time, together with all exhibits and schedules thereto, the "Backstop Agreement") with the commitment parties thereto (collectively, the "Commitment Parties"). On the Effective Date, pursuant to the Backstop Agreement and in accordance with the Plan, the Company consummated the rights offering (the "Rights Offering") of an investment package consisting of, in aggregate, $75,000,000 (a portion of the $232,394,231 in aggregate principal amount issued on the Effective Date in aggregate principal amount of the Company's 12.00% Senior Secured Second Lien PIK Toggle Notes due 2029 (the "Second Lien PIK Toggle Notes") and 3,634,614 New PCHI Shares at the aggregate purchase price of $75,000,000.

The Second Lien PIK Toggle Notes were issued pursuant to that certain indenture, dated as of the Effective Date (the "Second Lien PIK Toggle Notes Indenture"), by and among the Company, the guarantors party thereto and Wilmington Savings Fund Society, FSB, as trustee, collateral agent, paying agent and registrar.

The Second Lien PIK Toggle Notes are jointly and severally irrevocably and unconditionally guaranteed on a senior secured basis by certain subsidiaries of the Company, including all "Loan Parties" (other than the Company) under

the ABL Credit Agreement. The Second Lien PIK Toggle Notes and such guarantees are secured by second priority liens on the assets subject to liens securing the ABL Facility, including the equity interests of each guarantor of the Second Lien PIK Toggle Notes, all assets owned by the Company as of the Effective Date or acquired thereafter, certain assets related thereto, and substantially all other assets of the Company and such guarantors, in each case, subject to certain exceptions and limitations. The outstanding Second Lien PIK Toggle Notes are subject to the Intercreditor Agreement. The following is a brief description of the material provisions of the Second Lien PIK Toggle Notes Indenture and the Second Lien PIK Toggle Notes.

On or after April 11, 2025, the Company may redeem all of the Second Lien PIK Toggle Notes at 100% of the principal amount, *plus* accrued and unpaid interest, if any, to, but excluding, the redemption date. The Company may also redeem the Second Lien PIK Toggle Notes, in whole or in part, at any time and from time to time prior to April 11, 2025 at a redemption price equal to 100% of the principal amount, *plus* the Applicable Premium (as defined in the Second Lien PIK Toggle Notes Indenture), *plus* accrued and unpaid interest, if any, to, but excluding, the applicable redemption date. Notwithstanding the foregoing, if a Change of Control (as defined in the Second Lien PIK Toggle Notes Indenture) occurs, then, within 60 days of such Change of Control, the Company must offer to purchase all outstanding Second Lien PIK Toggle Notes at a redemption price equal to 101% of the principal amount, *plus* accrued and unpaid interest, if any, to, but excluding, the date of purchase.

The Second Lien PIK Toggle Notes Indenture contains covenants that limit, among other things, the ability of the Company and certain of its subsidiaries to: (i) incur, assume or guarantee additional indebtedness; (ii) pay dividends or distributions on capital stock or redeem or repurchase capital stock; (iii) make investments; (iv) repay or redeem junior debt; (v) sell stock of its subsidiaries; (vi) transfer or sell assets; (vii) create, incur or assume liens; or (viii) enter into transactions with certain affiliates. These covenants are subject to a number of important limitations and exceptions.

The Second Lien PIK Toggle Notes Indenture also provides for certain customary events of default, including, among other things, nonpayment of principal or interest, breach of covenants, failure to pay final judgments in excess of a specified threshold, failure of a guarantee to remain in effect, failure of a security document to create an effective security interest in collateral, bankruptcy and insolvency events, and cross acceleration, which would permit the principal, premium, if any, interest and other monetary obligations on all the then outstanding Second Lien PIK Toggle Notes to be declared due and payable immediately.

The foregoing descriptions of the Second Lien PIK Toggle Notes Indenture and the Second Lien PIK Toggle Notes are qualified in their entirety by the full text of the Second Lien PIK Toggle Notes Indenture, including the form of Global Note attached thereto, which is attached as Exhibit 4.1 to this Current Report and is incorporated herein by reference.

Registration Rights Agreement

On the Effective Date, the Company entered into a registration rights agreement (the "Registration Rights Agreement") with certain parties who received New PCHI Shares under the Plan ("RRA Shareholders"). Pursuant to the Registration Rights Agreement, following the completion of an initial public offering (as defined in the Registration Rights Agreement, an "IPO"), the Company will file a shelf registration statement promptly, no later than a date that is 30 days following the later of the IPO and the date of the expiration of the lockup agreement with the underwriters in such IPO. However, the Company is not required to file the shelf registration statement unless RRA Shareholders request the inclusion of Registrable Securities (as defined in the Registration Rights Agreement) constituting at least 25% of all Registrable Securities.

The RRA Shareholders also have demand registration rights, provided that such RRA Shareholders request the inclusion of Registrable Securities constituting at least 25% of all Registrable Securities or the gross proceeds of the offering are expected to be at least $50 million, and customary piggyback registration rights.

The Company will generally pay all registration expenses in connection with its obligations under the Registration Rights Agreement, regardless of whether a registration statement is filed or becomes effective. The registration rights granted in the Registration Rights Agreement are subject to customary indemnification and contribution provisions, as well as customary restrictions such as blackout periods.

The foregoing description of the Registration Rights Agreement is not complete and is qualified in its entirety by reference to the Registration Rights Agreement, which is filed as Exhibit 10.3 to this Current Report and is incorporated by reference herein.

Stockholders' Agreement

On the Effective Date, the Company entered into a stockholders agreement (the "Stockholders Agreement") with holders of common stock of the Company (the "Stockholders"), pursuant to which each of the Stockholders agreed to certain restrictions on the transfer of the common stock of the Company and the Company agreed (i) to provide to certain Stockholders the right to designate directors of the Board, subject to certain limitations, (ii) to certain limitations and obligations on its operations without Stockholder approval and (iii) to provide certain information to the Stockholders. Pursuant to the Plan, each holder of common stock of the Company on the Effective Date was deemed to be a party to, and bound by, the Stockholders Agreement, regardless of whether such holder executed a signature page thereto.

The foregoing description of the Stockholders Agreement is not complete and is qualified in its entirety by reference to the Stockholders Agreement, which is filed as Exhibit 10.4 to this Current Report and is incorporated by reference herein.

Item 1.02 - Termination of a Material Definitive Agreement

Equity Interests

On the Effective Date, all interests in the Company that existed immediately prior to the Effective Date were cancelled, and the Company issued or caused to be issued the New PCHI Shares in accordance with the terms of the Plan. Pursuant to the Plan, each holder of an Allowed Secured Notes Claim (as defined in the Plan) received, among other things, its pro rata share of 100% of the New PCHI Shares, subject to dilution by the New PCHI Shares issued as DIP Reorganized Securities (as defined in the Plan), the New PCHI Shares issued in connection with the Rights Offering (including in partial satisfaction of the Backstop Commitment Premium (as defined in the Plan)), and the MIP Equity Pool (as defined in the Plan).

Debt Securities and Agreements

Except for the purpose of evidencing a right to a distribution under the Plan or as otherwise provided in the Plan, on the Effective Date, the obligations of the Debtors under the Prepetition ABL Facility (as defined in the Plan), the Secured Notes Indentures (as defined in the Plan), the Unsecured Notes Indentures (as defined the Plan), stock certificates, book entries, and any other certificate, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document, directly or indirectly, evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any claim or interest (except such certificates, notes or other instruments or documents evidencing indebtedness or obligations of, or interests in, the Debtors that are specifically reinstated pursuant to the Plan) were cancelled, and the duties and obligations of all parties thereto were deemed satisfied in full, canceled, released, discharged, and of no force or effect.

Claims Treatment Under the Plan

In accordance with the Plan, holders of claims against and interests in the Debtors received (or shall receive, as soon as reasonably practicable following the date such holder's claim or interest becomes an Allowed Claim or Interest (each as defined in the Plan)) the following treatment (capitalized terms used but not defined in this section have the meanings ascribed to them in the Plan):

- ***Prepetition ABL Revolver Claims.*** Each holder of an Allowed Prepetition ABL Revolver Claim voted to accept the Plan and elected to participate in the ABL Exit Facility, and the ABL Exit Facility Trigger occurred, such that (i) each such holder's Allowed Prepetition ABL Revolver Claims was deemed repaid and refinanced in full by such holder's extension and receipt of its Pro Rata share of ABL Revolving Credit Loans and (ii) such holder assumed a commitment with respect to the ABL Exit Facility equal to its (or its predecessor in interest's) commitment under the Prepetition ABL Facility immediately prior to the Petition Date.

- ***Prepetition ABL FILO Claims.*** Each holder of an Allowed Prepetition ABL FILO Claim voted to accept the Plan and elected to participate in its Pro Rata share of the ABL Exit Facility, and the ABL Exit Facility Trigger occurred, such that each such holder's Allowed Prepetition ABL FILO Claims was deemed repaid and refinanced in full by such holder's extension and receipt of its Pro Rata share of ABL FILO Loans.

- ***Secured Notes Claims***. Each holder of an Allowed Secured Notes Claim received (i) its Pro Rata share of the New PCHI Shares issued on the Effective Date on account of the Allowed Secured Notes Claims, representing 100% of the New PCHI Shares outstanding on the Effective Date, subject to dilution by the New PCHI Shares issued as DIP Reorganized Securities, the New PCHI Shares issued in connection with the Rights Offering (including in partial satisfaction of the Backstop Commitment Premium), and the MIP Equity Pool and (ii) subscription rights to purchase up to its Pro Rata share of the securities comprising the Investment Package for an aggregate purchase price of $75.0 million offered in the Rights Offering in accordance with the Rights Offering Procedures.

- ***General Unsecured Claims***. Each holder of an Allowed General Unsecured Claim received its Pro Rata share of the GUC Recovery Pool.

- ***Interests in the Company***. Holders of Interests in the Company, including the Company's common stock prior to emergence, received no recovery or distribution on account of such Interests, and upon emergence from Chapter 11, all such Interests in the Company were canceled, released, extinguished, and discharged, and are of no further force or effect.

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

On the Effective Date, the Company and certain of its subsidiaries, as applicable, entered into certain direct financial obligations under each of the ABL Credit Agreement and Second Lien PIK Toggle Notes Indenture (and the Second Lien PIK Toggle Notes). The descriptions of each of the ABL Credit Agreement and the Second Lien PIK Toggle Notes Indenture (and the Second Lien PIK Toggle Notes) set forth in Item 1.01 of this Current Report are incorporated herein by reference.

Item 3.02 - Unregistered Sales of Equity Securities

Unregistered Sales of Equity Securities

On the Effective Date, pursuant to the Plan:

- 36,879 New PCHI Shares were issued pro rata to holders of Secured Notes Claims in partial exchange for the cancellation of the Secured Notes (as defined in the Plan);

- 3,516,079 New PCHI Shares were issued to holders of Secured Notes Claims (or their designees) in exchange for exercising Subscription Rights under the Rights Offering;

- 118,535 New PCHI Shares were issued to certain holders of Secured Notes Claims that purchased in connection with their Backstop Commitments (as defined in the Backstop Agreement), the New PCHI Shares that were offered in the Rights Offering and not properly subscribed for;

- 363,462 New PCHI Shares were issued to certain holders of Secured Notes Claims in exchange for providing $75.0 million of Backstop Commitments to the Debtors in connection with the Rights Offering; and

- 9,339,564 New PCHI Shares were issued to holders of Allowed DIP Claims on account of such holders' DIP Loans (each as defined in the Plan).

As of the Effective Date, 13,374,519 New PCHI Shares were issued and outstanding, of which 118,535 New PCHI Shares were issued in transactions not involving an underwriter pursuant to and in accordance with an exemption from registration under the Securities Act. For further information, see the Explanatory Note and Item 1.01 of this Current Report, which are incorporated herein by reference.

Item 3.03 - Material Modifications to Rights of Security Holders

Except as otherwise provided in the Plan and related documentation, all notes, equity, agreements, instruments, certificates and other documents evidencing any claim against or interest in the Debtors (except such certificates, notes or other instruments or documents evidencing indebtedness or obligations of, or interests in, the Debtors that are specifically reinstated pursuant to the Plan) were cancelled on the Effective Date and the obligations of the Debtors thereunder or in any way related thereto were released and discharged. The securities cancelled on the Effective Date include all of the Secured Notes Claims (as defined in the Plan), all of the Unsecured Notes Claims (as defined in the Plan), and Interests. For further information, see the Explanatory Note and Items 1.02 and 5.03 of this Current Report, which are incorporated herein by reference.

Item 5.01 - Changes in Control of Registrant

On the Effective Date, all of the Prepetition ABL Claims (as defined in the Plan), Secured Notes Claims (as defined in the Plan), Unsecured Notes Claims (as defined in the Plan) and Interests (as defined in the Plan) were cancelled. In respect of the cancellation of the Secured Notes Claims and pursuant to the Plan and related documentation, 100% of the New PCHI Shares were issued to holders of the Secured Notes Claims (including for properly subscribed Subscription Rights in connection with the Rights Offering), the Commitment Parties, and the DIP Backstop Lenders (as defined in the Plan). For further information, see Items 1.01, 1.02, 3.02 and 5.02 of this Current Report, which are incorporated herein by reference.

Item 5.02 - Departure of Directors; Election of Directors; Compensatory Arrangements of Certain Officers and Directors

Departure of Officers

On the Effective Date, Mr. Brad Weston provided notice of his intention to resign as Chief Executive Officer ("CEO") of the Company, effective November 3, 2023. Mr. Sean Thompson, the Company's current President & Chief Commercial Officer, is expected to assume the role of Interim CEO upon the effectiveness of Mr. Weston's resignation.

Departure of Directors

In accordance with the Plan, Norman S. Matthews, Joel A. Alsfine, Steven Collins, James Conroy, William S. Creekmuir, Sarah Dodds-Brown, Jennifer Fleiss, John A. Frascotti, and Michelle Millstone-Shroff resigned from the board of directors of the Company (the "Board") on the Effective Date. There were no known disagreements between such directors and the Company which led to their respective resignations from the Board.

Appointment of Directors

As of the Effective Date, the Board consists of the following five directors who were appointed: Neal Goldman, Robert Hull, Mark King, Anthony Truesdale, and Bradley Weston (the Company's Chief Executive Officer). The appointments were made pursuant to the terms of the Confirmation Order. Mr. Robert Hull was appointed to serve as Chairman of the Board. Additionally, the Board will have an Audit Committee and Compensation Committee.

There are no other arrangements or understandings between the directors of the Board and any other persons pursuant to which he or she was appointed as a member of the Board. None of the directors of the Board have any family relationship with any director or executive officer of the Company. There is no relationship between any director of the Board and the Company that would require disclosure pursuant to Item 404(a) of Regulation S-K.

Indemnification Agreements

The Company's COI (as defined below) provides that it will indemnify, to the fullest extent authorized or permitted by applicable law, each of its directors and officers against any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, because of their status as one of its directors or officers. The Board has approved a form of indemnification agreement to be entered into with each person who serves as one of the Company's directors or officers from time to time in order to provide for, among other things, such indemnification (subject to certain limitations) as well as the advancement of all expenses incurred by the director or executive officer in connection with a legal proceeding arising out of their service to the Company, in each case to the extent permitted by applicable law.

On or around the Effective Date, the Company entered into its standard form of indemnification agreement with each person serving as one of its directors and officers. The Company expects each person who joins the Company as a new director or officer after the Effective Date to enter into the standard form of indemnification agreement promptly after commencing service with the Company. The Company will also maintain reasonable directors and officer's liability insurance covering each member of the Board and the Company's officers.

The foregoing description of the Company's form of indemnification agreement is qualified in its entirety by reference to the full text of form of indemnification agreement, which is filed as Exhibit 10.5 to this Current Report and is incorporated by reference herein.

Item 5.03 - Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

After the Effective Date, in accordance with the Plan, the Company will file the Third Amended and Restated Certificate of Incorporation (the "COI") with the Delaware Secretary of State.

Pursuant to the COI, the authorized capital stock of the Company consists of 300,000,000 New PCHI Shares, par value $0.01 per share, and 15,000,000 shares of preferred stock, par value $0.01 per share ("New PCHI Preferred Shares").

Each holder of New PCHI Shares, as such, shall be entitled to one vote for each New PCHI Share held of record by such holder on all matters on which stockholders generally are entitled to vote. Except as otherwise required by law or provided in the COI, at any annual or special meeting of stockholders, the New PCHI Shares shall have the right to vote on all matters properly submitted to a vote of the stockholders.

Subject to the rights of any then-outstanding series of New PCHI Shares, the holders of New PCHI Shares may receive dividends as and if declared by the Board in accordance with applicable law. Subject to the rights and preferences of any then-outstanding series of New PCHI Preferred Shares, will share ratably in all dividends payable in cash, stock or otherwise and other distributions.

Preferred Stock

New PCHI Preferred Shares may be issued in one or more series from time to time, with each such series to consist of such number of shares and to have such powers, designations, preferences and relative, participating, optional or

other rights, and the qualifications, limitations or restrictions thereof, if any, as shall be stated in the resolution or resolutions providing for the issuance of such series adopted by the Board.

It is not possible to state the actual effect of the issuance of any New PCHI Preferred Shares upon the rights of New PCHI Shares until the Board determines the specific rights of the holders of any series of New PCHI Preferred Shares. However, these effects might include:

- restricting dividends on the New PCHI Shares;
- diluting the voting power of the New PCHI Shares;
- impairing the liquidation rights of the New PCHI Shares; and
- delaying or preventing a change of control of the Company.

Anti-Takeover Provisions

Some provisions of Delaware law, the COI and the Bylaws summarized below could make certain change of control transactions more difficult, including acquisitions of the Company by means of a tender offer, proxy contest or otherwise, as well as removal of the incumbent directors. These provisions may have the effect of preventing changes in management. It is possible that these provisions would make it more difficult to accomplish or deter transactions that a stockholder might consider in his or her best interest, including those attempts that might result in a premium over the market price for the New PCHI Shares.

Number, Election and Removal of Directors

As of the Effective Date, the Board will consist of five members. At each annual meeting of stockholders of the Company beginning with the first annual meeting of stockholders following the Effective Date, the successors of directors will be elected to hold office for a term expiring at the next annual meeting of stockholders. Each director will hold office until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal.

Subject to the rights of any then-outstanding series of New PCHI Preferred Shares, the Board or any individual director may be removed from office at any time, with or without cause, in any manner allowed by applicable law and the provisions of the Stockholders Agreement.

Calling of Special Meeting of Stockholders

The COI and the Stockholders Agreement provide that special meetings of stockholders may be called at any time by either (i) the Board pursuant to a resolution adopted by a majority of the total number of directors or (ii) the stockholders of the Company holding not less than a majority of the voting power of the outstanding shares of capital stock of the Company entitled to vote, in each case on at least 72 hours' prior written notice (which includes e-mail).

Amendments to the Bylaws

The Bylaws may be altered, amended or repealed by the Board. Subject to the provisions of the Stockholders Agreement, the Bylaws may also be altered, amended or repealed by the affirmative vote of at least a majority of the voting power of all of the then outstanding shares of voting stock of the Company entitled to vote generally in the election of directors.

Other Limitations on Stockholder Actions

Advance notice is required for stockholders to nominate directors or to submit proposals for consideration at meetings of stockholders. These procedures provide that notice of stockholder proposals must be timely given in writing to the Secretary of the Company prior to the meeting at which the action is to be taken. Generally, to be timely, notice of stockholder proposals relating to an annual meeting must be received at the principal executive offices not less than 90 days nor more than 120 days prior to the date of the one-year anniversary of the immediately preceding annual meeting of stockholders. The Bylaws specify in detail the requirements as to form and content of

all stockholder notices. These requirements may preclude stockholders from bringing matters before the stockholders at an annual or special meeting. The Bylaws also describe certain criteria for when stockholder-requested meetings need not be held.

Newly Created Directorships and Vacancies on the Board

Subject to the provisions of the Stockholders Agreement and the rights of any then-outstanding series of New PCHI Preferred Shares, any vacancies on the Board or newly created directorships resulting from any increase in the number of directors will be filled by the vote of a majority of the directors then in office, even though less than a quorum, or by a sole remaining director, except that any vacancy created by the removal of a director by the stockholders for cause shall only be filled, in addition to any other vote otherwise required by law, by vote of a majority of the outstanding shares of common stock.

Authorized but Unissued Shares

Under Delaware law, the Company's authorized but unissued New PCHI Shares are available for future issuance without stockholder approval. The Company may use these additional New PCHI Shares for a variety of corporate purposes, including future public offerings to raise additional capital, acquisitions and employee benefit plans. The existence of authorized but unissued New PCHI Shares could render more difficult or discourage an attempt to obtain control of the Company by means of a proxy contest, tender offer, merger or otherwise.

Exclusive Forum

The COI provides that, the Court of Chancery of the State of Delaware (the "Court of Chancery") shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer other employee of the Company to the Company or to the Company's stockholders, (iii) any action asserting a claim against the Company arising pursuant to any provision of the Delaware General Corporation Law ("DGCL") or the Bylaws or the COI (as either may be amended from time to time), (iv) any action, asserting a claim against the Company governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein.

This summary is qualified in its entirety by reference to the full text of the COI and the Bylaws, which are attached hereto as Exhibits 3.1 and 3.2, respectively, and incorporated by reference herein.

Item 7.01 – Regulation FD Disclosure

On October 12, 2023, the Company issued a press release announcing the Emergence. A copy of the press release is attached as Exhibit 99.3 to this Current Report on Form 8-K and is incorporated herein by reference.

Forward-Looking Statements

This Form 8-K includes "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Some of the forward-looking statements in this Form 8-K can be identified by the use of forward-looking terms such as "believes," "expects," "projects," "forecasts," "may," "will," "estimates," "should," "would," "anticipates," "plans" or other comparable terms. Forward-looking statements speak only as of the date they are made and, except for the Company's ongoing obligations under the U.S. federal securities laws, the Company does not undertake any obligation to publicly update any forward-looking statement, whether to reflect actual results of operations; changes in financial condition; changes in results of operations and liquidity, changes in general U.S. or international economic or industry conditions; changes in estimates, expectations or assumptions; or other circumstances, conditions, developments or events arising after the date of this Form 8-K. You should not rely on forward-looking statements as predictions of future events. The Company's actual results may differ materially from those anticipated in these forward-looking statements as a result of certain risks and other factors including but not limited to the risk factors set forth in the Company's Annual Report on Form 10-K and Quarterly Reports on

Form 10-Q filed with the SEC. The Company therefore cautions readers against relying on these forward-looking statements. All forward-looking statements attributable to the Company or persons acting on the Company's behalf are expressly qualified in their entirety by the foregoing cautionary statements.

Item 9.01 - Financial Statements and Exhibits

(d) Exhibits.

The following exhibits are filed in accordance with the provisions of Item 601 of Regulation S-K:

Exhibit No.	Description
2.1	Fourth Amended Joint Chapter 11 Plan of Reorganization of Party City Holdco Inc. and Its Debtor Affiliates (incorporated by reference to Exhibit 1 of the Confirmation Order attached as Exhibit 99.1 to Party City Holdco Inc.'s Current Report on Form 8-K filed on September 6, 2023).
3.1	Third Amended and Restated Certificate of Incorporation of Party City Holdco Inc.
3.2	Second Amended and Restated Bylaws of Party City Holdco Inc.
4.1*	Indenture, dated as of October 12, 2023, among Party City Holdco Inc, the guarantors party thereto, Wilmington Savings Fund Society, FSB, as trustee, collateral agent, paying agent and registrar (including the form of Global Note attached thereto).
10.1*	ABL Credit Agreement, dated as of October 12, 2023, by and among the Company, as parent guarantor, Party City Holdings Inc., as parent borrower, Party City Corporation, and each other subsidiary of the Borrowers party thereto from time to time, PC Intermediate Holdings, Inc., the lenders party thereto and JP Morgan Chase Bank, N.A., as administrative agent and collateral agent.
10.2*	Intercreditor Agreement, dated as of October 12, 2023, by and among JP Morgan Chase Bank, N.A., as first priority representative for the first priority secured parties and Wilmington Savings Fund Society, FSB, as the second priority representative for the second priority secured parties.
10.3	Registration Rights Agreement, dated as of October 12, 2023, by and among Party City Holdco Inc. and the holders party thereto.
10.4	Stockholders' Agreement, dated as of October 12, 2023, by and among Party City Holdco Inc. and the holders party thereto.
10.5	Form of Indemnification Agreement.
99.1	Confirmation Order of the United States Bankruptcy Court for the Southern District of Texas, dated September 6, 2023 (incorporated by reference to Exhibit 99.1 to Party City Holdco Inc.'s Current Report on Form 8-K filed on September 6, 2023).
99.2	Notice of Effective Date.
99.3	Press Release dated October 12, 2023.
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document.

* Certain of the exhibits and schedules to these exhibits have been omitted in accordance with Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish copies of any of the omitted exhibits and schedules to the SEC upon its 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.

PARTY CITY HOLDCO INC.

Date: October 12, 2023

By: /s/ Ian Heller
Name: Ian Heller
Title: Senior Vice-President & General Counsel

EXHIBIT 3.1

THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
PARTY CITY HOLDCO INC.

Party City Holdco Inc., a Delaware corporation (the "Corporation"), hereby certifies that this Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL") and that:

A. The name of the Corporation is: Party City Holdco Inc.

B. The original Certificate of Incorporation of the Corporation was filed with the Secretary of the State of Delaware on May 31, 2012 under the name PC Topco Holdings, Inc., amended on November 25, 2013 and amended on April 2, 2015 (as amended, the "Original Certificate of Incorporation").

C. The Amended and Restated Certificate of incorporation (the "Amended and. Restated Certificate of Incorporation") was filed on April 21, 2015, which amended and restated the Original Certificate of Incorporation.

D. The Second Amended and Restated Certificate of Incorporation (the "Second Amended and Restated Certificate of Incorporation") was filed on June 6, 2019, which amended and restated the Amended and Restated Certificate of Incorporation.

E. This Third Amended and Restated Certificate of Incorporation (the "Third Amended and Restated Certificate of Incorporation") amends and restates the Second Amended and Restated Certificate of Incorporation.

F. The Certificate of Incorporation of the Corporation upon the filing of this Third Amended and Restated Certificate of Incorporation, shall read in its entirety as follows:

ARTICLE I

NAME

The name of the corporation is Party City Holdco Inc.

ARTICLE II

REGISTERED OFFICE AND AGENT

The address of the Corporation's registered office in the State of Delaware is 3411 Silverside Road Tatnall Building #104, Wilmington, DE 19810. The name of the Corporation's registered agent at such address is United Agent Group Inc.

ARTICLE III

PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

CAPITALIZATION

(a) Authorized Shares. The total number of shares of stock which the Corporation shall have authority to issue is 315,000,000, consisting of 300,000,000 shares of Common Stock, par value $0.01 per share ("Common Stock") and 15,000,000 shares of Preferred Stock, par value $0.01 per share ("Preferred Stock").

(b) Common Stock. Subject to the powers, preferences and rights of any Preferred Stock, including any series thereof, having any preference or priority over, or rights superior to, the Common Stock and except as otherwise provided by law and this Article IV, the holders of the Common Stock shall have and possess all powers and voting and other rights pertaining to the stock of the Corporation.

(i) *Voting.* Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Third Amended and Restated Certificate of Incorporation (including, but not limited to, any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Third Amended and Restated Certificate of Incorporation (including, but not limited to, any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL. There shall be no cumulative voting.

(ii) *Dividends.* Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the board of directors of the Corporation (the "Board of Directors") and subject to any preferential dividend rights of any then outstanding Preferred Stock. Except as otherwise provided by the DGCL or this Third Amended and Restated Certificate of Incorporation, the holders of record of Common Stock shall share ratably in all dividends payable in cash, stock or otherwise and other distributions.

(iii) *No Preemptive Rights.* Except as otherwise set forth in the Stockholders Agreement, the holders of the Common Stock shall have no preemptive rights to subscribe for any shares of any class of stock of the Corporation whether now or hereafter authorized.

(iv) *No Conversion Rights.* The Common Stock shall not be convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same class of the Corporation's capital stock.

(v) *Liquidation Rights.* Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock. A merger or consolidation of the Corporation with or into any other corporation or other entity or a sale or conveyance of all or any part of the assets of the Corporation, in any such case which shall not in fact result in the liquidation of the Corporation and the distribution of assets to its stockholders, shall not be deemed to be a voluntary or involuntary liquidation or dissolution or winding up of the Corporation within the meaning of this Article IV(b)(v).

(c) Preferred Stock. Shares of Preferred Stock may be issued in one or more series, from time to time, with each such series to consist of such number of shares and to have such voting powers relative to other classes or series of Preferred Stock, if any, or Common Stock, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as shall be stated in the resolution or resolutions providing for the issuance of such series adopted by the Board of Directors, and the Board of Directors is hereby expressly vested with the authority, to the full extent now or hereafter provided by applicable law, to adopt any such resolution or resolutions. Except as otherwise provided in this Third Amended and Restated Certificate of Incorporation, no vote of the holders of the Preferred Stock or Common Stock shall be a prerequisite to the designation or issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Third Amended and Restated Certificate of Incorporation, the right to have such vote being expressly waived by all present and future holders of the capital stock of the Corporation. Any shares of Preferred Stock that are redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law or this Third Amended and Restated Certificate of Incorporation. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors.

(d) No Class Vote On Changes In Authorized Number of Shares Of Preferred Stock. Subject to the special rights of the holders of any series of Preferred Stock pursuant to the terms of this Third Amended and Restated Certificate of Incorporation, any certificate of designations or any resolution or resolutions providing for the issuance of such series of stock adopted by the Board of Directors, the number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL.

(e) Non-Voting Equity Securities. Pursuant to Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Corporation will not issue non-voting equity securities (which shall not be deemed to include any warrants or options or similar interests to purchase equity of the Corporation); provided, however, that this provision (i) will have no further force or effect beyond that required under Section 1123 of the Bankruptcy Code, (ii) will have such force and effect, if any, only for so long as such section is in effect and applicable to the Corporation or any of its wholly owned subsidiaries and (iii) in all events may be amended or eliminated in accordance with applicable law as from time to time in effect.

ARTICLE V

BOARD OF DIRECTORS

(a) Number of Directors, Vacancies and Newly Created Directorships. The number of directors constituting the Board of Directors shall be not fewer than three (3) and not more than fifteen (15), each of whom shall be a natural person. Subject to the provisions set forth in the Stockholders Agreement, all elections of directors shall be determined by a plurality of the votes cast by stockholders entitled to vote in such elections, the number of directors initially shall be five (5) and, subject to the special rights of the holders of any series of Preferred Stock to elect directors, the precise number of directors shall be fixed exclusively pursuant to a resolution adopted by the Board of Directors. Subject to the provisions set forth in the Stockholders Agreement, vacancies and newly-created directorships shall be filled exclusively pursuant to a vote of a majority of the directors then in office, although less than a quorum, or by the sole remaining director, except that any vacancy created by the removal of a director by the stockholders for cause shall only be filled, in addition to any other vote otherwise required by law, by vote of a majority of the outstanding shares of Common Stock. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office, and a director chosen to fill a position resulting from an increase in the number of directors shall hold office until the next election of the directors, subject to the election and qualification of his or her successor and to his or her earlier death, resignation or removal.

(b) Term. Subject to the special rights of the holders of any class or series of stock to elect directors, and subject to the provisions set forth in the Stockholders Agreement, each director shall be elected annually for terms expiring at the next annual meeting of stockholders until his or her earlier death, resignation or removal.

(c) Removal. Subject to the provisions of the Stockholders Agreement and the rights of the holders of any series of Preferred Stock to elect directors, any director of the Corporation may be removed with or without cause in any manner allowed by applicable law and the provisions of the Stockholders Agreement.

ARTICLE VI

LIMITATION OF LIABILITY; INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

(a) Limitation of Liability. To the fullest extent that the DGCL or any other law of the State of Delaware (as they exist on the date hereof or as they may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to limit or eliminate the liability of directors and officers further than such law permitted the Corporation prior to such amendment)) permits the limitation or elimination of the liability of directors and officers, no director or officer of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, except for liability (i) for any breach of the director's or officer's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve international misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, (iv) for any transaction from which the director or officer derived an improper personal benefit, or (v) with respect to an officer only, in any action by or in the right of the Corporation. No amendment to, or modification or repeal of, this Article VI shall adversely affect any right or protection of a director or officer of the Corporation existing hereunder with respect to any state of facts existing or act or omission occurring, or any cause of action, suit or claim that, but for this Article VI, would accrue or arise, prior to such amendment, modification or repeal. If the DGCL is amended after this Amended and Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

(b) Indemnification. Subject to the provisions of the Stockholders Agreement, the Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation prior to such amendment), any person (an "Indemnitee") who was or is made, or is threatened to be made, a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or an officer of the Corporation or, while a director or an officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, member, trustee or agent of another corporation or of a partnership, joint venture, trust, nonprofit entity or other enterprise (including, but not limited to, service with respect to employee benefit plans) (any such entity, an "Other Entity"), against all liability and loss suffered (including, but not limited to, expenses (including, but not limited to, attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnitee in connection with such Proceeding). Notwithstanding the preceding sentence, the Corporation shall be required to indemnify an Indemnitee in connection with a Proceeding (or part thereof) commenced by such Indemnitee only if the commencement of

such Proceeding (or part thereof) by the Indemnitee was authorized by the Board of Directors or the Proceeding (or part thereof) relates to the enforcement of the Corporation's obligations under this Article VI(b).

(c) Advancement of Expenses. The Corporation may to the extent permitted by applicable law and subject to the provisions of the Stockholders Agreement pay the expenses (including, but not limited to attorneys' fees and expenses) incurred by an Indemnitee in defending any proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnitee to repay all amounts advanced if it should be ultimately determined that the Indemnitee is not entitled to be indemnified under the Stockholders Agreement, this Article VI or otherwise.

(d) Claims. If a claim for indemnification (following the final disposition of such proceeding) under this Article VI is not paid in full within sixty days after a written claim therefor by the Indemnitee has been received by the Corporation, the Indemnitee may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the Corporation shall have the burden of proving that the Indemnitee is not entitled to the requested indemnification under applicable law.

(e) Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, trustee, employee, member, trustee or agent of the Corporation, or was serving at the request of the Corporation as a director, officer, trustee, employee or agent of an Other Entity, against any liability asserted against the person and incurred by the person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VI.

(f) Non-Exclusivity of Rights. The rights conferred on any Indemnitee by this Article VI are not exclusive of other rights arising under any bylaw, agreement, vote of directors or stockholders or otherwise, and shall inure to the benefit of the heirs and legal representatives of such Indemnitee.

(g) Amounts Received from an Other Entity. Subject to Article VI(h), the Corporation's obligation, if any, to indemnify any Indemnitee who was or is serving at the Corporation's request as a director, officer, employee or agent of an Other Entity shall be reduced by any amount such Indemnitee may collect as indemnification or advancement of expenses from such Other Entity.

(h) Indemnification Priority. As between the Corporation and any other person (other than an entity directly or indirectly controlled by the Corporation) who provide indemnification and advancement of expenses to the Indemnitees for their service to, or on behalf of, the Corporation (collectively, the "Secondary Indemnitors") (i) the Corporation shall be the full indemnitor of first resort in respect of indemnification or advancement of expenses in connection with any Jointly Indemnifiable Claims (as defined below), pursuant

to and in accordance with the terms of this Article VI, irrespective of any right of indemnification, advancement of expenses or other right of recovery any Indemnitee may have from any Secondary Indemnitor (i.e., the Corporation's obligations to such Indemnitees are primary and any obligation of any Secondary Indemnitor to advance expenses or to provide indemnification for the same loss or liability incurred by such Indemnitees is secondary to the Corporation's obligations), (ii) the Corporation shall be required to advance the full amount of expenses incurred by any such Indemnitee and shall be liable for the full amount of all liability and loss suffered by such Indemnitee (including, but not limited to, expenses (including, but not limited to, attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnitee in connection with such Proceeding), without regard to any rights any such Indemnitee may have against any Secondary Indemnitor, and (iii) the Corporation irrevocably waives, relinquishes and releases each Secondary Indemnitor from any and all claims against such Secondary Indemnitor for contribution, subrogation or any other recovery of any kind in respect thereof The Corporation shall indemnify each Secondary Indemnitor directly for any amounts that such Secondary Indemnitor pays as indemnification or advancement on behalf of any *such* Indemnitee and for which such Indemnitee may be entitled to indemnification from the Corporation in connection with Jointly Indemnifiable Claims. No right of indemnification, advancement of expenses or other right of recovery that an Indemnitee may have from any Secondary Indemnitor shall reduce or otherwise alter the rights of the Indemnitee or the obligations of the Corporation hereunder. No advancement or payment by any Secondary Indemnitor on behalf of any such Indemnitee with respect to any claim for which such Indemnitee has sought indemnification from the Corporation shall affect the foregoing and the Secondary Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Indemnitee against the Corporation. Each Indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure the rights of such Indemnitee's Secondary Indemnitors under this Article VI(h), including the execution of such documents as may be necessary to enable the Secondary Indemnitors effectively to bring suit to enforce such rights, including in the right of the Corporation. Each of the Secondary Indemnitors shall be third-party beneficiaries with respect to this Article VI(h), entitled to enforce this Article VI(h). As used in this Article VI(h), the term "Jointly Indemnifiable Claims" shall be broadly construed and shall include, without limitation, any action, suit, proceeding or other matter for which an Indemnitee shall be entitled to indemnification or advancement of expenses from both a Secondary Indemnitor and the Corporation, whether pursuant to Delaware law, any agreement or certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or the Secondary Indemnitors, as applicable.

(i) Amendment or Repeal. Any right to indemnification of any Indemnitee arising hereunder shall not be eliminated or impaired by an amendment to or repeal of this Article VI after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit, proceeding or other matter for which indemnification or advancement of expenses is sought.

(j) Other Indemnification and Advancement of Expenses. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Indemnitees when and as authorized by appropriate corporate action.

(k) Reliance. Indemnitees who after the date of the adoption of this Article VI become or remain an Indemnitee described in Article VI(b) will be conclusively presumed to have relied on the rights contained in this Article VI in entering into or continuing the service. The rights to indemnification conferred in this Article VI will apply to claims made against any Indemnitee described in Article VI(b) arising out of acts or omissions that occurred or occur either before or after the adoption of this Article VI in respect of service as a director or officer of the corporation or other service described in Article VI(b).

ARTICLE VII

ACTION BY CONSENT: SPECIAL MEETINGS OF STOCKHOLDERS

(a) Action by Written Consent. Except as otherwise provided for or fixed by or pursuant to the provisions of this Third Amended and Restated Certificate of Incorporation or any resolution or resolutions of the Board of Directors providing for the issuance of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation may be effected only at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

(b) Special Meetings of Stockholders. Subject to the provisions of the Stockholders Agreement and the rights of the holders of any series of Preferred Stock, and to the requirements of applicable law, special meetings of stockholders of the Corporation may be called at any time only by either (a) the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors or (b) the stockholders of the Corporation holding not less than a majority of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote, in each case on at least 72 hours' prior written notice (which includes e-mail).

(c) Election of Directors, by Written Ballot. Election of directors need not be by written ballot.

ARTICLE VIII

AMENDMENTS TO THE THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION AND BYLAWS

(a) Bylaws. In furtherance and not in limitation of the powers conferred by law, but subject to the provisions of the Stockholders Agreement, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation subject to the power of the stockholders of the Corporation to alter, amend or repeal the Bylaws; provided, that with respect to the powers of stockholders to make, alter, amend or repeal the Bylaws, in addition to any other vote otherwise required by law, the affirmative vote

of the holders of at least a majority of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote on the subject matter shall be required to make, alter amend or repeal the Bylaws of the Corporation.

(b) Amendments to the Third Amended and Restated Certificate of Incorporation. Notwithstanding any other provision of this Third Amended and Restated Certificate of Incorporation, but subject to the provisions of the Stockholders Agreement and notwithstanding that a lesser percentage may be permitted from time to time by applicable law, no provision of this Third Amended and Restated Certificate of Incorporation may be altered, amended or repealed in any respect, nor may any provision or bylaw inconsistent therewith be adopted, unless in addition to any other vote required by this Third Amended and Restated Certificate of Incorporation or otherwise required by law, such alteration, amendment, repeal or adoption is approved by, in addition to any other vote otherwise required by law, the affirmative vote of the holders of at least a majority of the voting power of the outstanding shares of capital stock entitled to vote on the subject matter.

ARTICLE IX

BUSINESS COMBINATIONS

(a) Section 203 of the DGCL. The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

(b) Interested Stockholder Transactions. Notwithstanding any other provision in this Third Amended and Restated Certificate of Incorporation to the contrary, the Corporation shall not engage in any Business Combination (as defined below) with any Interested Stockholder (as defined hereinafter) for a period of three years following the time that such stockholder became an Interested Stockholder, unless:

(1) prior to such time the Board of Directors approved either the Business Combination or the transaction which resulted in such stockholder becoming an interested Stockholder;

(2) upon consummation of the transaction which resulted in such stockholder becoming an Interested Stockholder, such stockholder owned at least eighty-five percent (85%) of the Voting Stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the Voting Stock outstanding (but not the outstanding Voting Stock owned by such stockholder) those shares owned (i) by Persons (as defined below) who are directors and also officers of the Corporation and (ii) employee stock plans of the Corporation in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

(3) at or subsequent to such time the Business Combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders by the affirmative vote of at least sixty-six and two-thirds percent ($66^2/_3\%$) of the outstanding Voting Stock which is not owned by such stockholder.

(c) Exceptions to Prohibition on Interested Stockholder Transactions. The restrictions contained in this Article IX shall not apply if:

(1) a stockholder becomes an Interested Stockholder inadvertently and (i) as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an Interested Stockholder; and (ii) would not, at any time within the three-year period immediately prior to a Business Combination between the Corporation and such stockholder, have been an Interested Stockholder but for the inadvertent acquisition of ownership; or

(2) the Business Combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (i) constitutes one of the transactions described in the second sentence of this Article IX(c)(2); (ii) is with or by a Person who either was not an Interested Stockholder during the previous three years or who became an Interested Stockholder with the approval of the Board of Directors; and (iii) is approved or not opposed by a majority of the directors then in office (but not less than one) who were directors prior to any Person becoming an Interested Stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the Corporation (except for a merger in respect of which, pursuant to §251(f) of the DGCL, no vote of the stockholders of the Corporation is required); (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation (other than to any direct or indirect wholly-owned subsidiary or to the Corporation) having an aggregate market value equal to fifty percent (50%) or more of either that aggregate market value of all of the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding Stock (as defined hereinafter) of the Corporation; or (z) a proposed tender or exchange offer for fifty percent (50%) or more of the outstanding Voting Stock of the Corporation. The Corporation shall give not less than 20 days' notice to all Interested Stockholders prior to the consummation of any of the transactions

described in clause (x) or (y) of the second sentence of this Article IX(c)(2).

(d) Definitions. As used in this Article IX only, and unless otherwise provided by the express terms of this Article IX, the following terms shall have the meanings ascribed to them as set forth in paragraph (d) of this Article IX:

(1) "Associate," when used to indicate a relationship with any Person, means: (i) any corporation, partnership, unincorporated association or other entity of which such Person is a director, officer or partner or is, directly or indirectly, the owner of twenty percent (20%) or more of any class of Voting Stock; (ii) any trust or other estate in which such Person has at least a twenty percent (20%) beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such Person, or any relative of such spouse, who has the same residence as such Person;

(2) "Business Combination" means:

i any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation with (A) the Interested Stockholder, or (B) with any Person if the merger or consolidation is caused by the Interested Stockholder and as a result of such merger or consolidation paragraph (b) of this Article IX is not applicable to the surviving entity;

ii any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the Interested Stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding Stock of the Corporation; or

iii any transaction or series of transactions which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of ten percent (10%) or more of any class or series of Stock of the Corporation or of such subsidiary to the Interested Stockholder, except: (A) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for

or convertible into Stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the Interested Stockholder became such; (B) pursuant to a merger under § 251(g) or § 253 of the DGCL; (C) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into Stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of Stock of the Corporation subsequent to the time the Interested Stockholder became such; or (D) pursuant to an exchange offer by the Corporation to purchase Stock made on the same terms to all holders of such Stock;

(3) "Interested Stockholder" means any Person (other than the Corporation and any direct or indirect majority-owned subsidiary of the Corporation) that is the owner of fifteen percent (15%) or more of the outstanding Voting Stock of the Corporation, or is an Affiliate or Associate of the Corporation and was the owner of fifteen percent (15%) or more of the outstanding Voting Stock of the Corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such Person is an Interested Stockholder, and the Affiliates and Associates of such Person. Notwithstanding anything in this Article IX to the contrary, the term "Interested Stockholder" shall not include: (i) investment funds affiliated with Thomas H. Lee Partners, L.P. or their respective Affiliates or Associates; (ii) any Person who would otherwise be an Interested Stockholder because of a transfer, sale, assignment, conveyance, hypothecation, encumbrance, or other disposition of five percent (5%) or more of the outstanding Voting Stock of the Corporation (in one transaction or a series of transactions) by any party specified in the immediately preceding clause (i) to such Person; provided, however, that such Person was not an Interested Stockholder prior to such transfer, sale, assignment, conveyance, hypothecation, encumbrance, or other disposition; or (iii) any Person whose ownership of shares in excess of the fifteen percent (15%) limitation set forth herein is the result of action taken solely by the Corporation, provided, that, for purposes of this clause (iii), such Person shall be an Interested Stockholder if thereafter such Person acquires additional shares of Voting Stock of the Corporation, except as a result of further action by the Corporation not caused, directly or indirectly, by such Person;

(4) "Owner," including the terms "own" and "owned," when used with respect to any Stock, means a Person that individually or with or through any of its affiliates or associates beneficially owns such Stock, directly or indirectly; or has (i) the right to acquire such Stock

(whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a Person shall not be deemed the owner of Stock tendered pursuant to a tender or exchange offer made by such Person or any of such Person's Affiliates or Associates until such tendered Stock is accepted for purchase or exchange; or (ii) the right to vote such Stock pursuant to any agreement, arrangement or understanding; provided, however, that a Person shall not be deemed the owner of any Stock because of such Person's right to vote such Stock if the agreement, arrangement or understanding to vote such Stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more Persons; or (iii) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in (ii) of this Article IX (d)(4), or disposing of such Stock with any other Person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such Stock; provided, that, for the purpose of determining whether a Person is an Interested Stockholder, the Voting Stock of the Corporation deemed to be outstanding shall include Stock deemed to be owned by the Person through application of this definition of "owned" but shall not include any other unissued Stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise;

(5) "Person" means any individual, corporation, partnership, unincorporated association or other entity;

(6) "Stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest; and

(7) "Voting Stock" means, with respect to any corporation, Stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of Voting Stock shall refer to such percentage of the votes of such Voting Stock.

ARTICLE X

RENOUNCEMENT OF CORPORATE OPPORTUNITY

(a) Scope. Subject to the provisions of the Stockholders Agreement, the provisions of this Article X are set forth to define, to the extent permitted by applicable law

and the Stockholders Agreement, the duties of Exempted Persons (as defined below) to the Corporation with respect to certain classes or categories of business opportunities. "Exempted Persons" means the stockholders of the Corporation and their respective Affiliates (other than the Corporation and its subsidiaries) and all of their respective partners, principals, directors, officers, members, managers and/or employees, including any of the foregoing who serve as officers, directors or employees of the Corporation or any of its subsidiaries.

(b) Competition and Allocation of Corporate Opportunities. The Exempted Persons shall not have any fiduciary duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as the Corporation or any of its subsidiaries. To the fullest extent permitted by applicable law, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to the Exempted Persons, even if the opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and each such Exempted Person shall have no duty to communicate or offer such business opportunity to the Corporation and, to the fullest extent permitted by applicable law, shall not be liable to the Corporation or any of its subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such Exempted Person pursues or acquires such business opportunity, directs such business opportunity to another person or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or its subsidiaries.

(c) Certain Matters Deemed Not Corporate Opportunities. In addition to and notwithstanding the foregoing provisions of this Article X, a corporate opportunity shall not be deemed to belong to the Corporation if it is a business opportunity that the Corporation is not financially able or contractually permitted or legally able to undertake, or that is, from its nature, not in the line of the Corporation's business or is of no practical advantage to it or that is one in which the Corporation has no interest or reasonable expectancy.

(d) Amendment of this Article. No amendment or repeal of this Article X shall apply to or have any effect on the liability or alleged liability of any Exempted Person for or with respect to any activities or opportunities of which such Exempted Person becomes aware prior to such amendment or repeal.

ARTICLE XI

EXCLUSIVE JURISDICTION OF CERTAIN ACTIONS

The Court of Chancery of the State of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against

the Corporation arising pursuant to any provision of the DGCL or the Corporation's Third Amended and Restated Certificate of Incorporation or bylaws or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI.

ARTICLE XII

SEVERABILITY

If any provision or provisions of this Third Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Third Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Third Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Third Amended and Restated Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Third Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

SECOND AMENDED AND RESTATED BYLAWS OF PARTY CITY HOLDCO INC.

SECTION 1 — STOCKHOLDERS

Section 1.1 Annual Meeting. An annual meeting of the stockholders of Party City Holdco Inc. (the "Corporation") for the election of directors to succeed those whose term expire and for the transaction of such other business as may properly come before the meeting shall be held at the place, if any, within or without the State of Delaware, on the date and at the time that the board of directors of the Corporation (the "Board of Directors") shall each year fix. Unless stated otherwise in the notice of the annual meeting of the stockholders of the Corporation, such annual meeting shall be at the principal office of the Corporation.

Section 1.2 Advance Notice of Nominations and Proposals of Business.

(a) Nominations of persons for election to the Board of Directors and proposals for business to be transacted by the stockholders at an annual meeting of stockholders may be made (i) pursuant to the Corporation's notice with respect to such meeting (or any supplement thereto), (ii) by or at the direction of the Board of Directors or any committee thereof or (iii) by any stockholder of record of the Corporation who (A) was a stockholder of record at the time of the giving of the notice contemplated in Section 1.2(b), (B) is entitled to vote at such meeting and (C) has complied with the notice procedures set forth in this Section 1.2. Subject to Section 1.2(i) and except as otherwise required by law, clause (iii) of this Section 1.2(a) shall be the exclusive means for a stockholder to make nominations or propose other business (other than matters properly brought pursuant to applicable provisions of federal law, including the Securities Exchange Act of 1934 (as amended from time to time, the "Act") and the rules and regulations of the Securities and Exchange Commission thereunder) before an annual meeting of stockholders.

(b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 1.2(a), (i) the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation with the information contemplated by Section 1.2(c), and (ii) the business must be a proper matter for stockholder action under the Delaware General Corporation Law (the "DGCL"). The notice requirements of this Section 1.2 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Act and such stockholder's proposal has been included in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting.

(c) To be timely, a stockholder's notice must be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation a date (i) not less than 90 nor more than 120 days prior to the anniversary date of the prior year's annual meeting or (ii) if there was no annual meeting in the prior year or if the date of the current year's annual meeting is more than 30 days before or after the anniversary date of the prior year's annual meeting, on or before 10 days after the day on which the date of the current year's annual meeting is first disclosed in a public announcement. In no event shall any adjournment or postponement of

an annual meeting or the announcement thereof commence a new time period for the delivery of such notice. Such notice from a stockholder must include (i) as to each nominee that the stockholder proposes for election or reelection as a director, (A) all information relating to such nominee that would be required to be disclosed in solicitations of proxies for the election of such nominee as a director pursuant to Regulation 14A under the Act and such nominee's written consent to serve as a director if elected, and (B) a description of all direct and indirect compensation and other material monetary arrangements, agreements or understandings during the past three years, and any other material relationship, if any, between or concerning such stockholder and its respective affiliates or associates, or others with whom they are acting in concert, on the one hand, and the proposed nominee, and his or her respective affiliates or associates, on the other hand; (ii) as to each proposal that the stockholder seeks to bring before the meeting, a brief description of such proposal, the reasons for making the proposal at the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws of the Corporation, the language of the proposed amendment) and any material interest that the stockholder has in the proposal; (iii) (A) the name and address of the stockholder giving the notice and the Stockholder Associated Person (as defined below), if any, on whose behalf the nomination or proposal is made, (B) the class (and, if applicable, series) and number of shares of stock of the Corporation that are, directly or indirectly, owned beneficially or of record by the stockholder or any Stockholder Associated Person, (C) a description of any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class (or, if applicable, series) of shares of stock of the Corporation or with a value derived in whole or in part from the value of any class (or, if applicable, series) of shares of stock of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (each, a "Derivative Instrument") directly or indirectly owned beneficially or of record by such stockholder or any Stockholder Associated Person and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of stock of the Corporation of the stockholder or any Stockholder Associated Person, (D) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder or any Stockholder Associated Person has a right to vote any securities of the Corporation, (E) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or any Stockholder Associated Person is a general partner or beneficially owns an interest in a general partner, (F) any performance-related fees (other than an asset-based fee) that such stockholder or any Stockholder Associated Person is entitled to based on any increase or decrease in the value of the shares of stock of the Corporation or Derivative Instruments, (G) any other information relating to such stockholder and Stockholder Associated Person, if any, required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Act, (H) a representation that the stockholder is a holder of record of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (I) a certification as to whether or not the stockholder and all Stockholder Associated Persons have complied with all applicable federal, state and other legal requirements in connection with the stockholder's and each Stockholder Associated Person's acquisition of shares of capital stock or other securities of the

Corporation and the stockholder's and each Stockholder Associated Person's acts or omissions as a stockholder (or beneficial owner of securities) of the Corporation and (J) whether either the stockholder intends to deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the Corporation's voting shares reasonably believed by such stockholder to be sufficient to elect such nominee or nominees or otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination. For purposes of these bylaws, a "Stockholder Associated Person" of any stockholder means (i) any "affiliate" or "associate" (as those terms are defined in Rule 12b-2 under the Act) of such stockholder, (ii) any beneficial owner of any capital stock or other securities of the Corporation owned of record or beneficially by such stockholder, (iii) any person directly or indirectly controlling, controlled by or under common control with any such Stockholder Associated Person referred to in clause (i) or (ii) above, and (iv) any person acting in concert in respect of any matter involving the Corporation or its securities with either such stockholder or any beneficial owner of any capital stock or other securities of the Corporation owned of record or beneficially by such stockholder; "beneficial ownership" shall be determined in accordance with Rule 13d-3 promulgated under the Act; and "control" means the power to direct or cause the direction of the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and "controlled" and "controlling" have meanings correlative to the foregoing. In addition, in order for a nomination to be properly brought before an annual or special meeting by a stockholder pursuant to clause (iii) of Section 1.2(a), any nominee proposed by a stockholder shall complete a questionnaire, in a form provided by the Corporation, and deliver a signed copy of such completed questionnaire to the Corporation within 10 days of the date that the Corporation makes available to the stockholder seeking to make such nomination or such nominee the form of such questionnaire. The Corporation may require any proposed nominee to furnish such other information as may be reasonably requested by the Corporation to determine the eligibility of the proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of the nominee. The information required to be included in a notice pursuant to this Section 1.2(c) shall be provided as of the date of such notice and shall be supplemented by the stockholder not later than 10 days after the record date for the determination of stockholders entitled to notice of the meeting to disclose any changes to such information as of the record date. The information required to be included in a notice pursuant to this Section 1.2(c) shall not include any ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is directed to prepare and submit the notice required by this Section 1.2(c) on behalf of a beneficial owner of the shares held of record by such broker, dealer, commercial bank, trust company or other nominee and who is not otherwise affiliated or associated with such beneficial owner.

(d) Subject to the certificate of incorporation of the Corporation (the "Certificate of Incorporation"), Section 1.2(i) and applicable law, only persons nominated in accordance with procedures stated in this Section 1.2 shall be eligible for election as and to serve as a member of the Board of Directors and the only business that shall be conducted at an annual meeting of stockholders is the business that has been brought before the meeting in accordance with the procedures set forth in this Section 1.2. The chairman of the meeting shall have the power and the duty to determine whether a nomination or any proposal has been made according to the

procedures stated in this Section 1.2 and, if any nomination or proposal does not comply with this Section 1.2, unless otherwise required by law, the nomination or proposal shall be disregarded.

(e) For purposes of this Section 1.2, "public announcement" means disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable news service or in a document publicly filed or furnished by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Act.

(f) Notwithstanding the foregoing provisions of this Section 1.2, a stockholder shall also comply with (i) that certain Stockholders Agreement, dated as of __, 2023, by and among the Corporation and the stockholders party thereto (as amended, modified or supplemented from time to time in accordance with the terms thereof, the "Stockholders Agreement") and (ii) all applicable requirements of the Act and the rules and regulations thereunder with respect to matters set forth in this Section 1.2. Nothing in this Section 1.2 shall affect any rights, if any, of stockholders to request inclusion of nominations or proposals in the Corporation's proxy statement pursuant to applicable provisions of federal law, including the Act.

(g) Notwithstanding the foregoing provisions of this Section 1.2, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business or does not provide the information required by Section 1.2(c), including any required supplement thereto, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.2, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(h) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or any committee thereof or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 1.2 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 1.2. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (b) of this Section 1.2 shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 90th day prior to such special meeting and not later than the close of business on the later of the 60th day prior to such special meeting or the 10th day following the day on which

public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(i) All provisions of this Section 1.2 are subject to, and nothing in this Section 1.2 shall in any way limit the exercise, or the method or timing of the exercise of, the rights of any person granted by the Corporation to nominate directors, which rights may be exercised without compliance with the provisions of this Section 1.2.

Section 1.3 Special Meetings; Notice.

Special meetings of the stockholders of the Corporation may be called only in the manner set forth in the Certificate of Incorporation. Notice of every special meeting of the stockholders of the Corporation shall state the purpose(s) of such meeting. Except as otherwise required by law or section 1.2(h), the business conducted at a special meeting of stockholders of the Corporation shall be limited exclusively to the business set forth in the Corporation's notice of meeting, and the individual or group calling such meeting shall have exclusive authority to determine the business included in such notice.

Section 1.4 Notice of Meetings.

Notice of the place, if any, date and time of all meetings of stockholders of the Corporation, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for the stockholders entitled to notice of the meeting) and the means of remote communications, if any, by which stockholders and proxy holders may be deemed present and vote at such meeting, and, in the case of all special meetings of stockholders, the purpose(s) of the meeting, shall be given, not less than 10 nor more than 60 days before the date on which such meeting is to be held, to each stockholder entitled to notice of the meeting.

The Corporation may postpone or cancel any previously called annual or special meeting of stockholders of the Corporation by making a public announcement (as defined in Section 1.2(e)) of such postponement or cancellation prior to the meeting. When a previously called annual or special meeting is postponed to another time, date or place, if any, notice of the place (if any), date and time of the postponed meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for the stockholders entitled to notice of the meeting) and the means of remote communications, if any, by which stockholders and proxy holders may be deemed present and vote at such postponed meeting, shall be given in conformity with this Section 1.4 unless such meeting is postponed not more than 60 days after initial notice of the meeting was provided in conformity with this Section 1.4.

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; however, if the date of any adjourned meeting is more than 30 days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, notice of the place,

if any, date and time of the adjourned meeting and the means of remote communication, if any, by which stockholders and proxy holders may be deemed present and vote at such adjourned meeting, shall be given in conformity herewith to each stockholder of record entitled to vote at such adjourned meeting. At any adjourned meeting, any business may be transacted that may have been transacted at the original meeting.

Section 1.5 Quorum.

At any meeting of the stockholders, the holders of shares of stock of the Corporation entitled to cast a majority of the total votes entitled to be cast by the holders of all outstanding capital stock of the Corporation, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number is required by applicable law or the Certificate of Incorporation. If a separate vote by one or more classes or series is required, the holders of shares entitled to cast a majority of the total votes entitled to be cast by the holders of the shares of the class or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter.

If a quorum shall fail to attend any meeting, the chairman of the meeting may adjourn the meeting to another place, if any, date and time.

Section 1.6 Organization.

The Chairman of the Board of Directors or, in his or her absence, the person whom the Board of Directors designates or, in the absence of that person or the failure of the Board of Directors to designate a person, the Chief Executive Officer of the Corporation or, in his or her absence, the person chosen by the holders of a majority of the shares of capital stock entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders of the Corporation and act as chairman of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be the person the chairman appoints.

Section 1.7 Conduct of Business.

The chairman of any meeting of stockholders of the Corporation shall determine the order of business and the rules of procedure for the conduct of such meeting, including the manner of voting and the conduct of discussion as he or she determines to be in order. The chairman shall have the power to adjourn the meeting to another place, if any, date and time. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the right and authority to convene and (for any or no reason) to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the

chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The chairman of the meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a nomination or matter of business was not properly brought before the meeting and if such chairman should so determine, such chairman shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.8 Proxies; Inspectors.

(a) At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by applicable law.

(b) Prior to a meeting of the stockholders of the Corporation, the Corporation shall appoint one or more inspectors to act at a meeting of stockholders of the Corporation and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by applicable law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before beginning the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of inspectors. The inspectors shall have the duties prescribed by applicable law.

Section 1.9 Voting.

Except as otherwise required by the rules or regulations of any stock exchange on which any capital stock of the Corporation may be listed or pursuant to any law or regulation applicable to the Corporation or its securities or by the Certificate of Incorporation, the Stockholders Agreement or these bylaws, all matters other than the election of directors shall be determined by a majority of the votes cast on the matter affirmatively or negatively. Subject to the provisions of the Stockholders Agreement, all elections of directors shall be determined by a plurality of the votes cast.

Section 1.10 Stock List.

A complete list of stockholders of the Corporation entitled to vote at any meeting of stockholders of the Corporation, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in the name of such stockholder, shall be open to the examination of any such stockholder, for any purpose germane to a meeting of the stockholders of the Corporation, for a period of at least 10 days before the meeting (i) on a reasonably accessible electronic network, provided that the information required

to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours at the principal place of business of the Corporation; provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the 10th day before such meeting date.

The stock list shall also be open to the examination of any such stockholder during the entire meeting. The Corporation may look to this list as the sole evidence of the identity of the stockholders entitled to vote at a meeting and the number of shares held by each stockholder.

Section 1.11 Written Consent.

Except as otherwise provided in the Certificate of Incorporation, any action required or permitted to be taken by the stockholders of the Corporation may be taken without a meeting, if consent to such action is delivered in writing or via electronic transmission by such number of stockholders that would be required if such action were voted on at a meeting of the stockholders. Such written consent or a record of such electronic transmission shall be filed with the records of the Corporation.

SECTION 2 — BOARD OF DIRECTORS

Section 2.1 Qualifications of Directors.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities these bylaws expressly confer upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not prohibited by the DGCL or by the Certificate of Incorporation, the Stockholders Agreement or by these bylaws required to be exercised or done by the stockholders. Directors need not be stockholders to be qualified for election or service as a director of the Corporation.

Section 2.2 Removal; Resignation.

Subject to the provisions of the Stockholders Agreement, any director may be removed with or without cause in any manner allowed by applicable law and the provisions of the Stockholders Agreement. Any director may resign at any time upon notice given in writing, including by electronic transmission, to the Corporation.

Section 2.3 Regular Meetings.

Regular meetings of the Board of Directors shall be held at the place (if any), on the date and at the time as shall have been established by the Board of Directors and publicized among all directors. A notice of a regular meeting, the date of which has been so publicized, shall not be required.

Section 2.4 Special Meetings.

Subject to the provisions of the Stockholders Agreement, special meetings of the Board of Directors may be called at any time by either (i) the Board of Directors or (ii) the stockholders of

the Corporation holding not less than a majority of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote, in each case on the date and at the time as they shall fix. Written notice (including by means of electronic transmission) of the place, if any, date and time of each special meeting shall be given to each director thereof not less than seventy-two hours before the meeting. Any and all business may be transacted at a special meeting of the Board of Directors.

Section 2.5 Quorum.

Subject to the provisions of the Stockholders Agreement, (i) at any meeting of the Board of Directors, a majority of the total number of directors then in office shall constitute a quorum for all purposes and (ii) if a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, if any, date or time, without further notice or waiver thereof.

Section 2.6 Participation in Meetings By Conference Telephone or Other Communications Equipment.

Members of the Board of Directors, or of any committee thereof, may participate in a meeting of the Board of Directors or committee thereof by means of conference telephone or other communications equipment by means of which all directors participating in the meeting can hear each other director, and such participation shall constitute presence in person at the meeting.

Section 2.7 Conduct of Business.

At any meeting of the Board of Directors, business shall be transacted in the order and manner that the Board of Directors may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, except as otherwise provided in the Certificate of Incorporation, the Stockholders Agreement or these bylaws or required by applicable law. Subject to the provisions of the Stockholders Agreement, the Board of Directors or any committee thereof may take action without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings, or electronic transmission or electronic transmissions, are filed with the minutes of proceedings of the Board of Directors or any committee thereof. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.8 Compensation of Directors.

Subject to the provisions of the Stockholders Agreement, the Board of Directors shall be authorized to fix the compensation of directors. The directors of the Corporation shall be paid their expenses, if any, of attendance at each meeting of the Board of Directors and shall be reimbursed a fixed sum for attendance at each meeting of the Board of Directors, paid an annual retainer or paid other compensation, including equity compensation, as directors of the Corporation. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees may have their expenses, if any, of attendance of each meeting of such committee reimbursed and may be paid compensation for attending committee meetings or being a member of a committee.

SECTION 3 — COMMITTEES

Section 3.1 Committees of the Board of Directors.

The Board of Directors may designate committees of the Board of Directors, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board of Directors and shall, for those committees, subject to the provisions of the Stockholders Agreement, appoint a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member. All provisions of this Section 3.1 are subject to, and nothing in this Section 3.1 shall in any way limit the exercise or method or timing of the exercise of, the rights of any person granted by the Corporation with respect to the existence, duties, composition or conduct of any committee of the Board of Directors.

SECTION 4 — OFFICERS

Section 4.1 Generally.

The officers of the Corporation shall consist of a Chief Executive Officer, a President, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurer, a Chief Financial Officer and other officers as may from time to time be appointed by the Board of Directors. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any number of offices may be held by the same person. The compensation of officers appointed by the Board of Directors shall be determined from time to time by the Board of Directors or a committee thereof or by the officers as may be designated by resolution of the Board of Directors.

Section 4.2 President.

Unless otherwise determined by the Board of Directors, the President shall be the Chief Executive Officer of the Corporation. Subject to the provisions of these bylaws and to the direction of the Board of Directors, he or she shall have the responsibility for the general management and control of the business and affairs of the Corporation and shall perform all duties and have all powers that are commonly incident to the office of chief executive or which are delegated to him or her by the Board of Directors. He or she shall have the power to sign all stock certificates, contracts and other instruments of the Corporation that are authorized and shall have general supervision and direction of all of the other officers, employees and agents of the Corporation.

Section 4.3 Vice President.

Each Vice President shall have the powers and duties delegated to him or her by the Board of Directors or the President. One Vice President may be designated by the Board of Directors to perform the duties and exercise the powers of the President in the event of the President’s absence or disability.

Section 4.4 Secretary and Assistant Secretaries.

The Secretary shall issue all authorized notices for, and shall keep minutes of, all meetings of the stockholders and the Board of Directors. He or she shall have charge of the corporate books and shall perform other duties as the Board of Directors may from time to time prescribe.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or, if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

Section 4.5 Chief Financial Officer, Treasurer and Assistant Treasurers.

The Chief Financial Officer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the Corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

Section 4.6 Delegation of Authority.

The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 4.7 Removal.

The Board of Directors may remove any officer of the Corporation at any time, with or without cause.

Section 4.8 Action with Respect to Securities of Other Companies.

Unless otherwise directed by the Board of Directors, the President, or any officer of the Corporation authorized by the President, shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders or equityholders of, or with respect to any action of, stockholders or equityholders of any other entity in which the Corporation may hold securities and otherwise to exercise any and all rights and powers which the Corporation may possess by reason of its ownership of securities in such other entity.

SECTION 5 — STOCK

Section 5.1 Certificates of Stock.

Shares of the capital stock of the Corporation may be certificated or uncertificated, as provided in the DGCL. Stock certificates shall be signed by, or in the name of the Corporation by, (i) the Chairman of the Board (if any) or the Vice Chairman of the Board (if any), the President or a Vice President, and (ii) the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer, or the Chief Financial Officer certifying the number of shares owned by such stockholder. Any signatures on a certificate may be by facsimile.

Section 5.2 Transfers of Stock.

Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation (within or without the State of Delaware) or by transfer agents designated to transfer shares of the stock of the Corporation.

Section 5.3 Lost, Stolen or Destroyed Certificates.

In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to regulations as the Board of Directors may establish concerning proof of the loss, theft or destruction and concerning the giving of a satisfactory bond or indemnity.

Section 5.4 Regulations.

The issue, transfer, conversion and registration of certificates of stock of the Corporation shall be governed by other regulations as the Board of Directors may establish.

Section 5.5 Record Date.

(a) In order for the Corporation to determine the stockholders of the Corporation entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may, except as otherwise required by applicable law, fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than 60 nor less than 10 days before the date of any meeting of stockholders. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders of the Corporation shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders of the Corporation shall apply to any postponement or adjournment of the meeting, provided, that the Board of Directors may fix a new record date for determination of the stockholders entitled to vote at a postponed or adjourned meeting, and in such case shall also fix the record date of the stockholders entitled to notice of such postponed or

adjourned meeting at the same or on an earlier date as that fixed for determination of the stockholders entitled to vote at the postponed or adjourned meeting.

(c) In order that the Corporation may determine the stockholders of the Corporation entitled to consent to corporate action in writing without a meeting (until such time as stockholders are no longer permitted to act by written consent pursuant to the Certificate of Incorporation), the Board of Directors may fix a record date, which date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request that the Board of Directors fix a record date. The Board of Directors shall promptly, but in any event no later than 10 days after the date on which such a request is received, adopt a resolution fixing the record date (unless the Board of Directors has previously fixed a record date pursuant to the first sentence hereof). If no record date has been fixed by the Board of Directors pursuant to the first sentence hereof or otherwise within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, where no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered agent in Delaware, its principal place of business or to any officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are reported. Delivery shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be the close of business on the date on which the Board of Directors adopts the resolution taking the prior action.

(d) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not be more than sixty (60) days prior to such other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 6 — NOTICES

Section 6.1 Notices.

Except as otherwise provided herein or permitted by applicable law, notices to stockholders shall be in writing and delivered personally or mailed to the stockholders at their addresses appearing on the books of the Corporation. If mailed, notice to a stockholder of the Corporation shall be deemed given when deposited in the mail, postage prepaid, directed to a stockholder at such stockholder’s address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to

stockholders of the Corporation may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

Section 6.2 Waivers.

A written waiver of any notice, signed by a stockholder or director, or a waiver by electronic transmission by such person or entity, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person or entity. Neither the business nor the purpose of any meeting need be specified in the waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 7— MISCELLANEOUS

Section 7.1 Corporate Seal.

The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 7.2 Reliance upon Books, Reports, and Records.

Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books and records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers, agents or employees, or committees of the Board of Directors so designated, or by any other person or entity as to matters which such director or committee member reasonably believes are within such other person’s or entity’s professional or expert competence and that has been selected with reasonable care by or on behalf of the Corporation.

Section 7.3 Fiscal Year.

The fiscal year of the Corporation shall be as fixed by the Board of Directors. If the Board of Directors makes no determination to the contrary, the fiscal year of the Corporation shall be the twelve months ending with December 31, in each year.

Section 7.4 Time Periods.

In applying any provision of these bylaws that requires that an act be done or not be done a specified number of days before an event or that an act be done during a specified number of days before an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

Section 7.5 Conflicts.

In the event of any conflict between the terms and provisions of these bylaws and those contained in the Stockholders Agreement, the terms and provisions of the Stockholders Agreement shall govern.

SECTION 8 — AMENDMENTS

These bylaws may be altered, amended or repealed in accordance with the Certificate of Incorporation and the DGCL.

EXHIBIT 4.1

Execution Version

Party City Holdco Inc.

as Issuer

The Guarantors Party Hereto From Time to Time,

as Guarantors,

Wilmington Savings Fund Society, FSB,

as Trustee, Collateral Trustee, Paying Agent and Registrar

12.00% Senior Secured Second Lien PIK Toggle Notes due 2029

INDENTURE

Dated as of October 12, 2023

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INDENTURE (the "**Indenture**") dated as of October 12, 2023, among PARTY CITY HOLDCO INC., a Delaware corporation (the "**Issuer**" or the "**Company**"), the guarantors from time to time party hereto, and Wilmington Savings Fund Society, FSB, as trustee (together with its successors and assigns, in such capacity the "**Trustee**"), collateral agent (together with its successors and assigns, in such capacity, the "**Collateral Trustee**"), paying agent (in such capacity, the "**Paying Agent**"), and registrar (in such capacity, the "**Registrar**") for the benefit of the Secured Parties.

WHEREAS, the Company and certain affiliated debtors filed the Fourth Amended Joint Plan of Reorganization of Party City Holdco, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code on July 31, 2023, which was confirmed by the United States Bankruptcy Court for the Southern District of Texas on September 6, 2023 (as may be amended, supplemented, or otherwise modified from time to time, including all exhibits, schedules, supplements, appendices, annexes, and attachments thereto, the "**Plan**"); and

WHEREAS, the Plan provides that the Company must issue the Original Securities (as defined below) on the terms and subject to the conditions of the Plan; and

WHEREAS, the Company, the Trustee and the Collateral Trustee are entering into this Indenture in furtherance of the aforesaid provisions of the Plan.

NOW THEREFORE, each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders (as defined below) of (a) $232,394,231 aggregate principal amount of the Issuer's 12.00% Senior Secured Second Lien PIK Toggle Notes due 2029, issued pursuant to this Indenture (as defined below) on the Issue Date (the "**Original Securities**"), (b) any Additional Securities (as defined herein) that may be issued after the Issue Date in the form of Exhibit A, and (c) any PIK Securities (as defined herein) that may be issued in connection with the payment of interest or as otherwise set forth herein, in the form of Exhibit A, (all such securities in clauses (a), (b) and (c) being referred to collectively as the "**Securities**"). The Original Securities and any Additional Securities (as defined herein) and PIK Securities (as defined herein) shall constitute a single series hereunder. Subject to the conditions and compliance with the covenants set forth herein, the Issuer may issue an unlimited aggregate principal amount of Additional Securities.

ARTICLE 1
Definitions and Incorporation by Reference

Section 1.01. *Definitions*.

"**ABL Administrative Agent**" means JPMorgan Chase Bank, N.A. (and any successor or thereto named in accordance with the terms of the ABL Credit Agreement)

"**ABL Collateral Documents**" means, collectively, the Pledge and Security Agreement, the ABL Mortgages, short-form intellectual property security agreements,

and any other documents granting a Lien upon the Collateral as security for payment of the ABL Obligations.

"**ABL Credit Agreement**" means the ABL credit agreement, dated as of October 12, 2023, among Parent Borrower, as parent borrower under the ABL Facility, the other borrowers party thereto, the Subsidiaries of the borrowers party thereto from time to time, the Issuer, PC Intermediate, the ABL Lenders, the ABL Administrative Agent, as administrative agent and collateral agent, and the other agents party thereto, as amended, restated, amended and restated, supplemented, waived, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified in whole or in part from time to time. For the avoidance of doubt, in no event shall "ABL Credit Agreement" refer to more than one ABL credit agreement (as amended, restated, amended and restated, supplemented, waived, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified).

"**ABL Facility**" means (1) the credit facilities provided under the ABL Credit Agreement, including one or more debt facilities or other financing arrangements (including, without limitation indentures) providing for revolving credit loans, term loans, letters of credit, notes, debt securities or other indebtedness for borrowed money that replace or refinance such credit facility, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof or any such indentures or credit facilities that replace or refinance such credit facility and (2) whether or not the ABL Credit Agreement referred to in clause (1) remains outstanding, if designated by the Issuer to be included in the definition of "ABL Facility," one or more (i) debt facilities or commercial paper facilities, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrower from lenders against such receivables) or letters of credit, (ii) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers' acceptances) or (iii) instruments or agreements evidencing any other Indebtedness, in each case, with the same or different arrangements, agents, lenders, borrowers or issuer and, in each case, as amended, restated, amended and restated, supplemented, waived, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified in whole or in part from time to time.

"**ABL Facility Documents**" means the ABL Credit Agreement, any promissory notes issued pursuant to the ABL Credit Agreement in accordance with its terms, any related letters of credit or letter of credit applications, the ABL Collateral Documents and the ABL Intercreditor Agreement. Any reference in this Indenture or any other Notes Document to an ABL Facility Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto.

"**ABL Intercreditor Agreement**" means that certain Intercreditor Agreement, dated as of October 12, 2023, by and among the ABL Administrative Agent, the Collateral Trustee, and, from time to time, any other representative or agent of each class of the secured parties party thereto, and the Issuer and the Guarantors from time to time party thereto, as such agreement may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance therewith and with the terms of this Indenture.

"**ABL Lender**" means a lender from time to time under the ABL Credit Agreement.

"**ABL Mortgages**" means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the administrative agent named in the ABL Credit Agreement on owned real property of a loan party (as defined in the ABL Credit Agreement).

"**ABL Obligations**" has the meaning assigned to "Obligations" in the ABL Credit Agreement.

"**ABL Payoff Date**" means the date on or as of which the ABL Obligations under the ABL Credit Agreement (in accordance with its terms as of the Issue Date) have been paid in full, renewed and/or extended, refunded, replaced, restructured, repaid, or refinanced).

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

"**ACH**" means automated clearing house transfers.

"**Additional Securities**" means additional Securities issued from time to time under this Indenture in accordance with Section 2.01, it being understood that any Securities issued in replacement of any Original Securities pursuant to Section 2.08 shall not be Additional Securities.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Anagram Issuers**" means Anagram Holdings, LLC, a Delaware limited liability company, and Anagram International, Inc., a Minnesota corporation.

"**Appendix**" means Appendix A hereto.

"**Applicable Premium**" means, with respect to any Security on any redemption date, the greater of:

(1) 1.0% of the principal amount of such Security; and

(2) the excess, if any, of:

(a) the present value at such redemption date of (i) the redemption price of such Security at January 11, 2029, plus (ii) all required remaining scheduled interest payments due on such Security through January 11, 2029 (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date *plus* 50 basis points; over

(b) the then outstanding principal amount of such Security,

as calculated by the Issuer or on behalf of the Issuer by such Person as the Issuer shall designate; *provided* that such calculation shall not be a duty or an obligation of the Trustee, Collateral Trustee, Paying Agent or Registrar.

"**Banking Services**" means each and any of the following bank services provided to any Notes Party (a) under any arrangement that is in effect on the Issue Date between any Notes Party and a counterparty that is the ABL Administrative Agent or an ABL Lender or an Affiliate of such Persons as of the Issue Date or (b) under any arrangement that is entered into after the Issue Date by any Notes Party with any counterparty that is the administrative agent under the ABL Credit Agreement or an ABL Lender or an Affiliate of such Persons at the time such arrangement is entered into: (i) commercial credit cards, (ii) stored value cards, (iii) purchasing cards and (iv) treasury management services (including, without limitation, controlled disbursement, ACH transactions, return items and interstate depository network services).

"**Banking Services Obligations**" of the Notes Parties means any and all obligations of the Notes Parties, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), in connection with Banking Services, in each case, that has been designated to the Trustee in writing by the Issuer as being a Banking Services Obligation for the purposes of the Notes Documents.

"**Bankruptcy Code**" means title 11 of the United States Code, as amended.

"**Bankruptcy Law**" means the Bankruptcy Code and any similar federal, state or foreign law for relief of debtors.

"**Borrowing Base**" shall mean, as of any date, the sum of (i) 95% of the face amount of the credit card receivables of the Issuer and the Guarantors as of the end of the most recent fiscal quarter preceding such date, (ii) 97.5% of the book value of the inventory of the Issuer and the Guarantors as of the end of the most recent fiscal quarter preceding

such date and (iii) 95% of the face amount of the trade receivables of the Issuer and the Guarantors as of the end of the most recent fiscal quarter preceding such date, in each case calculated on a consolidated basis in accordance with GAAP (calculated on a Pro Forma Basis to give effect to any Investment, acquisition, disposition, mergers, consolidations and discontinued operation, in each case with such pro forma adjustments as are consistent with the pro forma adjustment provisions set forth in Section 1.05).

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or Chicago are authorized or required by law to remain closed.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"**Capital Markets Indebtedness**" means any Indebtedness consisting of bonds, debentures, notes or other similar debt securities issued in (a) a public offering registered under the Securities Act, (b) a private placement to institutional investors that is resold in accordance with Rule 144A or Regulation S under the Securities Act, whether or not it includes registration rights entitling the holders of such debt securities to registration thereof with the SEC or (c) a private placement to multiple institutional investors. For the avoidance of doubt, the term "Capital Markets Indebtedness" does not include any Indebtedness under commercial bank facilities, Indebtedness incurred in connection with a Sale and Lease-Back Transaction, Indebtedness incurred in the ordinary course of business of the Issuer or any of its Restricted Subsidiaries or recourse transfer of any financial asset or any other type of Indebtedness incurred in a manner not customarily viewed as a "securities offering."

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing, but excluding for the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing.

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

"**Cash**" means money, currency or a credit balance in any demand or Deposit Account.

"**Cash Equivalents**" means, as at any date of determination, (a) readily marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States government or (ii) issued by any agency of the United States, the obligations of which are backed by the full faith and credit of the United

States, in each case maturing within one year after such date; (b) readily marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody's; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (d) certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that has a capital surplus of not less than $500,000,000 (each commercial bank referred to herein as a "**Cash Equivalent Bank**"); (e) shares of any money market mutual fund (i) whose investment guidelines restrict 95% of such fund's investments to the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than $250,000,000, and (iii) has the highest rating obtainable from either S&P or Moody's; and (f) with respect to Foreign Subsidiaries, investments of the types described in clause (d) above issued by a Cash Equivalent Bank or any commercial bank of recognized international standing chartered in the country where such Foreign Subsidiary is domiciled having unimpaired capital and surplus of at least $500,000,000. In the case of Investments by any Foreign Subsidiary that is a Subsidiary or Investments made in a country outside the United States, Cash and Cash Equivalents shall also include (x) investments of the type and maturity described in clauses (a) through (e) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (y) other short-term investments utilized by Foreign Subsidiaries that are Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments described in clauses (a) through (e) of the first sentence of this definition of "Cash Equivalents".

"**Change of Control**" means the occurrence of any of the following after the Issue Date:

(1) the sale, lease or transfer, in one or a series of related transactions (other than by way of merger or consolidation), of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries, taken as a whole, to any Person; or

(2) the Issuer becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by (A) any Person or (B) Persons that are together (1) a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), or (2) are acting, for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), as a group, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of more than 50% of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect Parent Companies holding directly or indirectly 100% of the total voting power of the Voting Stock of the Issuer, other than in connection with any transaction or

transactions in which the Issuer shall become a Wholly-Owned Subsidiary of a Parent Company. Notwithstanding the preceding or any provision of Section 13d-3 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement and (ii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person as a result of its ownership of Voting Stock or other securities of such other Person's parent entity (or related contractual rights) unless it owns more than 50% of the total voting power of the Voting Stock entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the board of directors (or similar body) of such parent entity.

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

"**Collateral**" has the meaning set forth in Article 2 of the Security Agreement.

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

"**Collateral Trustee**" has the meaning set forth in the preamble.

"**Company**" or "**Issuer**" means Party City Holdco Inc., a Delaware corporation.

"**Consolidated Adjusted EBITDA**" means, for any period, an amount determined for the Issuer and its Restricted Subsidiaries on a consolidated basis equal to the total of (a) Consolidated Net Income for such period plus (b) the sum, without duplication, of (to the extent deducted in calculating Consolidated Net Income, other than in respect of clauses (xii) and (xiv)), the amounts of (*provided* that, in no event shall revenue synergies be added-back to Consolidated Net Income in calculating Consolidated Adjusted EBITDA hereunder):

(i) consolidated interest expense (including (A) fees and expenses paid to the Trustee, Collateral Trustee, Paying Agent and Registrar (including any successor(s)) in connection with its services hereunder, (B) other bank, administrative agency (or trustee) and financing fees, (C) costs of surety bonds in connection with financing activities and (D) commissions, discounts and other fees and charges owed with respect to letters of credit, bankers' acceptance or any similar facilities or financing and hedging agreements);

(ii) taxes paid and provisions for taxes based on income, profits or capital of the Issuer and its Restricted Subsidiaries, including, in each case federal, state, provincial, local, foreign, unitary, franchise, excise, property, withholding and similar taxes, including any penalties and interest;

(iii) Consolidated Depreciation and Amortization Expense for such period;

(iv) other non-Cash charges; *provided* that if any such non-Cash charge represents an accrual or reserve for potential Cash items in any future period, (A) the Issuer may determine not to add back such non-Cash charge in the current period and (B) to the extent the Issuer does decide to add back such non-Cash charge, the Cash payment in respect thereof in such future period shall be subtracted from Consolidated Adjusted EBITDA in the period in which such payment is made;

(v) (A) Transaction Costs and (B) transaction fees, costs and expenses incurred (1) in connection with the consummation of any transaction (or any transaction proposed and not consummated) permitted under this Indenture, including the issuance of Capital Stock, Investments, acquisitions, dispositions, recapitalizations, mergers, option buyouts or the incurrence or repayment of Indebtedness or similar transactions, (2) in connection with an underwritten public offering or (3) to the extent reimbursable by third parties pursuant to indemnification provisions or similar agreements or insurance; *provided* that, in respect of any fees, costs and expenses incurred pursuant to clause (3) above, the Issuer in good faith expects to receive reimbursement for such fees, costs and expenses within the next four Fiscal Quarters (it being understood that to the extent not actually received within such Fiscal Quarters, such reimbursement amounts shall be deducted in calculating Consolidated Adjusted EBITDA for such Fiscal Quarters);

(vi) the amount of any expense or deduction associated with any Restricted Subsidiary attributable to non-controlling interests or minority interests of third parties;

(vii) [reserved];

(viii) the amount of any one-time restructuring charge or reserve, including in connection with (A) acquisitions permitted hereunder after the Issue Date and (B) the consolidation or closing of facilities, stores or distribution centers during such period;

(ix) earn-out obligations incurred in connection with any Permitted Acquisition or other Investment permitted pursuant to Section 4.08 and paid or accrued during such period and on similar acquisitions and Investments completed prior to the Issue Date;

(x) pro forma “run rate” cost savings, product margin synergies (including increased share of shelf), operating expense reductions and product cost (including sourcing) and other synergies (net of the amount of actual amounts realized) reasonably identifiable and factually supportable (in the good faith determination of the Issuer) related to and projected by the Issuer in good faith to result from actions taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Issuer) within 18 months after the occurrence of, (A) the Transactions and (B) after the

Issue Date, permitted asset sales, acquisitions, Investments, dispositions, operating improvements, restructurings, cost saving initiatives and certain other similar initiatives and specified transactions; *provided* that the aggregate amount of such costs savings, operating expense reductions and synergies under this clause (x) (other than in connection with any mergers, business combinations, acquisitions or divestures) shall not exceed, together with any amounts added back pursuant to clause (xi) and pursuant to any pro forma adjustment in accordance with Section 1.05, 25.0% of Consolidated Adjusted EBITDA in any four-Fiscal Quarter period (calculated before giving effect to any such add-backs and adjustments);

(xi) costs, charges, accruals, reserves or expenses attributable to the undertaking and/or implementation of cost savings initiatives, operating expense reductions, integration, transition, facilities opening and pre-opening, business optimization and other restructuring costs, charges, accruals, reserves and expenses (including, without limitation, inventory optimization programs, software development costs and costs related to the closure or consolidation of facilities, stores or distribution centers (without duplication of amounts in clause (ix) above) and curtailments, costs related to entry into new markets, consulting fees, signing costs, retention or completion bonuses, relocation expenses, severance payments, modifications to pension and post-retirement employee benefit plans, new systems design and implementation costs and project startup costs); *provided* that the aggregate amount of any such costs, charges, accruals, reserves or expenses under this clause (xi) (other than any applicable adjustments set forth in Schedule 1.01 and other than in connection with any mergers, business combinations, acquisitions or divestures) shall not exceed, together with any amounts added back pursuant to clause (x) and pursuant to any pro forma adjustment in accordance with Section 1.05, 25.0% of Consolidated Adjusted EBITDA in any four-Fiscal Quarter period (calculated before giving effect to any such add-backs and adjustments);

(xii) business interruption insurance in an amount representing the earnings for the applicable period that such proceeds are intended to replace (whether or not received so long as the Issuer in good faith expects to receive the same within the next four Fiscal Quarters (it being understood that to the extent not actually received within such Fiscal Quarters, such proceeds shall be deducted in calculating Consolidated Adjusted EBITDA for such Fiscal Quarters));

(xiii) unrealized net losses in the fair market value of any arrangements under Hedge Agreements;

(xiv) Cash actually received (or any netting arrangements resulting in reduced Cash expenditures) during such period, and not included in Consolidated Net Income in any period, to the extent that the non-Cash gain relating to such Cash receipt or netting arrangement was deducted in the calculation of Consolidated Adjusted EBITDA pursuant to clause (c)(i) below for any previous period and not added back; and

(xv) any non-cash adjustments and charges resulting from the application of fresh start accounting such as the loss of deferred gross profit related to inventory purchased prior to emergence, and amortization of lease incentives no longer allowed post emergence under fresh start accounting;

minus (c) to the extent such amounts increase Consolidated Net Income:

(i) other non-Cash items (excluding any such non-Cash item to the extent it represents the reversal of an accrual or reserve for a potential Cash item in any prior period);

(ii) unrealized net gains in the fair market value of any arrangements under Hedge Agreements; and

(iii) the amount added back to Consolidated Adjusted EBITDA pursuant to clause (b)(xii) above to the extent such business interruption proceeds were not received within the time period required by such clause.

"**Consolidated Capital Expenditures**" means, for any period, the aggregate amount of all expenditures of the Issuer and its Restricted Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included as additions to property, plant and equipment in the consolidated statement of cash flows of the Issuer and its Restricted Subsidiaries. Notwithstanding the foregoing, Consolidated Capital Expenditures shall not include:

(a) the purchase price of property, plant or equipment or software in an amount equal to the proceeds of asset dispositions of fixed or capital assets that are not required to be applied to prepay ABL Obligations,

(b) expenditures made with tenant allowances received by the Issuer or any of its Restricted Subsidiaries from landlords in the ordinary course of business and subsequently capitalized,

(c) any amounts spent in connection with Investments permitted pursuant to Section 4.08 and expenditures made in connection with the Transactions,

(d) expenditures financed with the proceeds of an issuance of Capital Stock of the Issuer, or a capital contribution to the Issuer,

(e) expenditures that are accounted for as capital expenditures by the Issuer or any Restricted Subsidiary and that actually are paid for by a Person other than the Issuer or any Restricted Subsidiary to the extent neither the Issuer nor any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person (whether before, during or after such period),

(f) any expenditures which are contractually required to be, and are, advanced or reimbursed to the Notes Parties in Cash by a third party (including landlords) during such period of calculation,

(g) the book value of any asset owned by the Issuer or any Restricted Subsidiary prior to or during such period to the extent that such book value is included as a capital expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; *provided* that (i) any expenditure necessary in order to permit such asset to be reused shall be included as a capital expenditure during the period in which such expenditure actually is made and (ii) such book value shall have been included in capital expenditures when such asset was originally acquired,

(h) that portion of interest on Indebtedness incurred for capital expenditures which is paid in Cash and capitalized in accordance with GAAP,

(i) expenditures made in connection with the replacement, substitution, restoration, upgrade, development or repair of assets to the extent financed with (x) insurance or settlement proceeds paid on account of the loss of or damage to the assets being replaced, substituted, restored, upgraded, developed or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, or

(j) in the event that any equipment is purchased simultaneously with the trade-in of existing equipment, the gross amount of the credit granted by the seller of such equipment for the equipment being traded in at such time.

"**Consolidated Cash Interest Expense**" means, for any period, Consolidated Interest Expense for such period, excluding (a) any amount not paid or payable currently in Cash, (b) amortization of deferred financing costs, (c) Transaction Costs otherwise included in Consolidated Interest Expense and (d) any annual agency fees with respect to any Indebtedness, in each case, to the extent included in Consolidated Interest Expense.

"**Consolidated Depreciation and Amortization Expense**" means, with respect to any Person, for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"**Consolidated Interest Expense**" means, for any period (a) total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of the Issuer and its Restricted Subsidiaries on a consolidated basis in accordance with GAAP with respect to all outstanding Indebtedness of the Issuer and its Restricted Subsidiaries, (i) including, (A) all commissions, discounts and other fees and charges owed with respect to Indebtedness of the Issuer and any of its Restricted Subsidiaries and (B) any commitment fees on the unused portion of commitments

available under the ABL Facility and (ii) excluding (A) any costs associated with obtaining, or breakage costs in respect of, Hedge Agreements and (B) any fees and expenses associated with any permitted dispositions and asset sales, acquisitions and Investments, equity issuances or issuances of Indebtedness (in each case, whether or not consummated), *less* (c) any Cash interest income of the Issuer or any of its Restricted Subsidiaries actually received during such period. For the avoidance of doubt, Consolidated Interest Expense shall be net of payments made or received under interest rate Hedge Agreements.

"**Consolidated Net Income**" means, for any period, the net income (or loss) of the Issuer and its Restricted Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP; *provided* that there shall be excluded, without duplication,

(a) the income (or loss) of any Person (other than a Restricted Subsidiary of the Issuer) in which any other Person (other than the Issuer or any of its Restricted Subsidiaries) has a joint interest, except, with respect to any income, to the extent of the amount of dividends or distributions or other payments (including any ordinary course dividend, distribution or other payment) paid in Cash (or to the extent converted into Cash) to the Issuer or any of its Restricted Subsidiaries by such Person during such period,

(b) gains or losses (less all fees and expenses chargeable thereto) attributable to asset sales or dispositions (including asset retirement costs) or returned surplus assets of any Pension Plan outside of the ordinary course of business,

(c) gains or losses from (i) extraordinary items and (ii) nonrecurring or unusual items (including costs of and payments of legal settlements, fines, judgments or orders),

(d) any unrealized or realized net foreign currency translation or transaction gains or losses impacting net income (including currency re-measurements of Indebtedness and any net gains or losses resulting from Hedge Agreements for currency exchange risk associated with the above or any other currency related risk),

(e) any net gains, charges or losses with respect to (i) disposed, abandoned and discontinued operations (other than assets held for sale) and any accretion or accrual of discounted liabilities in connection with store closures or asset retirement obligations and (ii) facilities, stores or distribution centers that have been closed during such period,

(f) any net income or loss (less all fees and expenses or charges related thereto) attributable to the early extinguishment of Indebtedness,

(g) (i) any charges or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, pension plan, any stock subscription or shareholder agreement or any distributor equity plan or agreement and (ii) any charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Capital Stock held by management of the Issuer or any of its Restricted Subsidiaries, in each case, to the extent

that (in the case of any Cash charges, costs and expenses) such charges, costs or expenses are funded with net Cash proceeds contributed to the common equity of the Issuer as a capital contribution or as a result of the sale or issuance of Capital Stock (other than Disqualified Capital Stock) of the Issuer,

(h) accruals and reserves that are established within 12 months after the Issue Date that are so required to be established as a result of the Transactions in accordance with GAAP,

(i) any (A) write-off or amortization made in such period of deferred financing costs and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness or (B) good will or other asset impairment charges, write-offs or write-downs, and

(j) (i) effects of adjustments (including, without limitation, the effects of such adjustments pushed down to the Issuer and its Restricted Subsidiaries) in such Person's consolidated financial statements pursuant to GAAP (including in the inventory, property and equipment, software, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition or the amortization or write-off of any amounts thereof and (ii) the cumulative effect of changes in accounting principles.

"**Consolidated Total Assets**" means, at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total assets" (or any like caption) on a consolidated balance sheet of the Issuer and its Restricted Subsidiaries at such date.

"**Consolidated Total Debt**" means, as at any date of determination, the aggregate principal amount of all funded Indebtedness described in clauses (a), (b), (c), (d) and (f) (with respect to amounts drawn and not reimbursed for a period in excess of five Business Days) of the definition of "Indebtedness" of the Issuer and its Restricted Subsidiaries.

"**Cost**" means cost determined according to the accounting policies used in the preparation of the Issuer's most recent audited financial statements prior to the Issue Date (pursuant to which the average cost method of accounting is used for retail inventories and the FIFO method of accounting is being used for wholesale inventories) without regard to intercompany profit or increases for currency exchange rates.

"**Default**" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default; *provided* that any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default will be deemed to be cured if such previous Default is cured prior to becoming an Event of Default.

"**Definitive Security**" has the meaning set forth in Appendix A.

"**Deposit Account**" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"**Depositary**" means, with respect to the Securities issuable or issued in whole or in part in global form, the Person specified in Section 2.04 as the Depositary with respect to the Securities, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"**Derivative Transaction**" means (a) any interest-rate transaction, including any interest-rate swap, basis swap, forward rate agreement, interest rate option (including a cap collar and floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted), (b) any exchange-rate transaction, including any cross-currency interest-rate swap, any forward foreign-exchange contract, any currency option, and any other instrument linked to exchange rates that gives rise to similar credit risks, (c) any equity derivative transaction, including any equity-linked swap, any equity-linked option, any forward equity-linked contract, and any other instrument linked to equities that gives rise to similar credit risk and (d) any commodity (including precious metal) derivative transaction, including any commodity-linked swap, any commodity-linked option, any forward commodity-linked contract, and any other instrument linked to commodities that gives rise to similar credit risks; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Issuer or its Restricted Subsidiaries shall be a Derivative Transaction.

"**Disqualified Capital Stock**" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely as a result of a change of control or asset sale) pursuant to a sinking fund obligation or otherwise or is redeemable at the option of the holder thereof (other than solely as a result of a change of control or asset sale), in whole or in part, in each case prior to the date 91 days after the earlier of the stated Maturity Date of the Securities or the date the Securities are no longer outstanding; *provided, however*, that if such Capital Stock is issued to any current or former employee or to any plan for the benefit of employees, directors, officers, members of management or consultants of the Issuer or its Restricted Subsidiaries or by any such plan to such employees, directors, officers, members of management or consultants, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the Issuer or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's or consultant's termination, death or disability.

"**Disregarded Domestic Subsidiary**" means any Restricted Subsidiary incorporated or organized under the laws of the United States, any State thereof or the District of Columbia that is treated as a disregarded entity for U.S. federal income tax purposes that holds directly, or indirectly through one or more disregarded entities, the

equity and/or indebtedness treated as equity for U.S. federal income tax purposes, of one or more Foreign Subsidiaries or one or more FSHCO Subsidiaries.

"**Domestic Subsidiaries**" means all Restricted Subsidiaries incorporated or organized under the laws of the United States, any State thereof or the District of Columbia.

"**DTC**" or "**Depository**" means The Depository Trust Company.

"**Equity Interests**" means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

"**ERISA**" means the Employment Retirement Income Security Act of 1974, as amended.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Excluded Asset Sale**" means:

(a) sales or other dispositions among Notes Parties or sales or other dispositions among Restricted Subsidiaries that are not Notes Parties (upon voluntary liquidation or otherwise) (for the avoidance of doubt, any such sales or dispositions by a Notes Party to a Person that is not a Notes Party shall be treated as an Investment and shall be otherwise made in compliance with Section 4.08);

(b) (i) the liquidation or dissolution of any Restricted Subsidiary (so long as, in the case of the liquidation or dissolution of the Subsidiary Borrower (as defined in the ABL Credit Agreement), the Parent Borrower receives any assets of such entity) or change in form of entity of any Restricted Subsidiary if the Issuer determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Issuer, is not materially disadvantageous to the Holders and one or more Restricted Subsidiaries receives any assets of such dissolved or liquidated Restricted Subsidiary and (ii) any merger, amalgamation, dissolution, liquidation or consolidation, the purpose of which is to effect a sale or disposition otherwise permitted under Section 4.09 (other than clause (a) or this clause (b)); *provided, further*, in the case of a change in the form of entity of any Restricted Subsidiary that is a Notes Party, the security interests in the Collateral shall remain in full force and effect and perfected to the same extent as prior to such change;

(c) (x) sales or leases of inventory or equipment in the ordinary course of business and (y) the leasing or subleasing of real property in the ordinary course of business;

(d) (x) disposals of surplus, obsolete, used or worn out property or other property that, in the reasonable judgment of the Parent Borrower, is no longer useful in its business and (y) any assets acquired in connection with the acquisition of another

Person or a division or line of business of such Person which the Parent Borrower reasonably determines are surplus assets;

(e) sales of Cash Equivalents for the fair market value thereof;

(f) dispositions, mergers, amalgamations, consolidations or conveyances that constitute Investments permitted pursuant to Section 4.08 (other than Section 4.08(j)), Permitted Liens, Restricted Payments permitted by Section 4.06(a) and Sale and Lease-back Transactions permitted by Section 4.10;

(g) sales or other dispositions of any assets of any Restricted Subsidiary for fair market value; *provided* that with respect to sales or dispositions (other than any Store Exchange) in an aggregate amount in excess of $17,250,000 or, after the date that the audited financial statements have been received by the Trustee pursuant to Section 4.15(a), if greater, 0.8625% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 4.02, at least 75.0% of the consideration for such sale or disposition shall consist of Cash or Cash Equivalents (*provided* that for purposes of the 75.0% Cash consideration requirement (w) the amount of any Indebtedness or other liabilities (other than Indebtedness or other liabilities that are subordinated to the Securities or that are owed to the Parent Borrower or a Restricted Subsidiary) of the Parent Borrower or any Restricted Subsidiary (as shown on such person's most recent balance sheet or in the notes thereto) that are assumed by the transferee of any such assets and for which the Parent Borrower and the Restricted Subsidiaries shall have been validly released by all creditors in writing, (x) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such sale or disposition and (y) any securities received by such Restricted Subsidiary from such transferee that are converted by such Restricted Subsidiary into Cash or Cash Equivalents (to the extent of the Cash or Cash Equivalents received) within 180 days following the closing of the applicable sale or disposition, in each case, shall be deemed to be Cash for purposes of this clause (g); *provided, further*, that (i) immediately prior to and after giving effect to such sale or disposition, no Event of Default shall have occurred that is continuing on the date on which the agreement governing such sale or disposition is executed and (ii) the Net Proceeds of such sale or disposition (including any "cash boot" arising in connection with a Store Exchange) shall be applied and/or reinvested as (and to the extent) required by Section 4.09;

(h) to the extent that (i) such property is exchanged for credit against the purchase price of substantially similar replacement property or (ii) the proceeds of such disposition are promptly applied to the purchase price of such replacement property;

(i) dispositions of Investments in joint ventures to the extent required by, or made pursuant to, buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(j) sales, discounting or forgiveness of Accounts in the ordinary course of business or in connection with the collection or compromise thereof;

(k) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and which (i) do not materially interfere with the business of the Issuer and the Restricted Subsidiaries or (ii) relate to closed stores;

(l) (i) termination of leases in the ordinary course of business, (ii) the expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or other litigation claims in the ordinary course of business;

(m) transfers of property subject to casualty, eminent domain or condemnation proceedings (including in lieu thereof);

(n) licenses for the conduct of licensed departments within the Notes Parties' stores in the ordinary course of business;

(o) as long as no Event of Default then exists or would arise therefrom, bulk sales or other dispositions of the Notes Parties' Inventory outside of the ordinary course of business in connection with store closings that are conducted on an arm's-length basis; *provided* that such store closures and related Inventory dispositions shall not exceed, in any Fiscal Year 10.0% of the number of the Notes Parties' stores as of the beginning of such Fiscal Year (net of store relocations (x) occurring substantially contemporaneously with, but in no event later than ten Business Days after, the related store closure date and (y) wherein a binding lease has been entered into for a new store opening prior to the related store closure date); *provided, further*, that all sales of Inventory in connection with store closings in a transaction or series of related transactions shall be in accordance with liquidation agreements and with professional liquidators under customary and commercially reasonable arrangements;

(p) sales of non-core assets acquired in connection with a Permitted Acquisition and sales of Real Estate Assets acquired in a Permitted Acquisition which, within 30 days of the date of the acquisition, are designated in writing to the Trustee as being held for sale and not for the continued operation of a store; *provided* that no Event of Default shall have occurred and be continuing;

(q) exchanges or swaps, including, without limitation, transactions covered by Section 1031 of the Code, of Real Estate Assets so long as the exchange or swap is made for fair value and on an arm's length basis for other Real Estate Assets; *provided* that upon the consummation of such exchange or swap, in the case of any Notes Party, the Collateral Trustee has a perfected Lien having the same priority as any Lien held on the Real Estate Assets so exchanged or swapped;

(r) sales and dispositions for fair market value in an aggregate amount since the Issue Date of up to $20,125,000 or, after the date that the audited financial statements have been received by the Trustee pursuant to Section 4.15(a), if greater, 1.15% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 4.02;

(s) (i) non-exclusive licensing and cross-licensing arrangements involving any technology or other intellectual property of the Issuer or any Restricted Subsidiary in the ordinary course of business and (ii) dispositions of property in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of the Parent Borrower, are not material to the conduct of the business of the Issuer and the Restricted Subsidiaries; and

(t) terminations of Derivative Transactions.

"**Excluded Subsidiary**" means (a) any Immaterial Subsidiary, (b) any Domestic Subsidiary that is (and for so long as such Domestic Subsidiary is) prohibited by law, regulation or contractual obligations (to the extent existing on the Issue Date or on the date such Person becomes a Subsidiary (and not entered into in contemplation of such Person becoming a Subsidiary or for the primary purpose of being classified as an Excluded Subsidiary hereunder)) from Guaranteeing the Guaranteed Obligations or that would (and for so long as it would) require a governmental (including regulatory) consent, approval, license or authorization to provide such a Guarantee or where the provision of such Guarantee would result in material adverse tax consequences as reasonably determined by the Issuer, (c) any Foreign Subsidiary, (d) any not-for-profit Subsidiary, (e) any Captive Insurance Subsidiaries, (f) any special purpose entities used for securitization facilities, (g) any Disregarded Domestic Subsidiary, (h) any FSHCO Subsidiary, (i) any direct or indirect Domestic Subsidiary of a Foreign Subsidiary, FSHCO Subsidiary or Disregarded Domestic Subsidiary, and (j) any other Domestic Subsidiary with respect to which, in the reasonable judgment of the Issuer, the burden or cost of providing a Guarantee or a Lien to secure such Guarantee shall outweigh the benefits to be afforded thereby; *provided* that any Subsidiary that provides a Guarantee in respect of the ABL Obligations shall not be permitted to be an Excluded Subsidiary hereunder for so long as it provides such Guarantee.

"**Existing Credit Agreement**" means that certain ABL Credit Agreement (as amended, restated, modified or otherwise supplemented from time to time prior to the Issue Date), dated as of August 19, 2015, among, inter alios, the borrowers named therein, certain Subsidiaries of the borrowers from time to time party thereto, as guarantors, the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

"**Fair Market Value**" means the value that would be paid by a buyer to an unaffiliated seller, determined in good faith by senior management of the Company; *provided*, that if such value is in excess of $10.0 million, it shall be determined in good faith by the board of directors of the Company (unless otherwise provided in this Indenture) and evidenced by a board resolution.

"FILO Loan" has the meaning assigned to "FILO Loan" in the ABL Credit Agreement.

"**Financial Officer**" of any Person means the chief financial officer, treasurer, assistant treasurer, vice president of finance or controller of such Person.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of a Financial Officer of the Issuer that such financial statements fairly present, in all material respects, in accordance with GAAP, the financial condition of the Issuer and its Restricted Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year, such fiscal quarter ending on the later of the retail fiscal quarter and the calendar quarter.

"**Fiscal Year**" means the fiscal year of the Issuer and its Restricted Subsidiaries ending on December 31 of each calendar year or the Saturday closest to December 31 of each calendar year.

"**Fixed Charge Coverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Adjusted EBITDA for such Test Period *minus* (i) Maintenance Capital Expenditures (except such expenditures financed with Indebtedness other than ABL Obligations) during such period to (b) Fixed Charges for such Test Period, in all cases calculated for the Issuer and its Restricted Subsidiaries on a Pro Forma Basis.

"**Fixed Charges**" means, with reference to any period, without duplication, the sum of (a) Consolidated Cash Interest Expense, *plus* (b) the aggregate amount of scheduled principal payments in respect of Indebtedness of the Issuer and its Restricted Subsidiaries paid or payable in Cash during such period (other than payments made by the Issuer or any Restricted Subsidiary to the Issuer or any Restricted Subsidiary), *plus* (c) the aggregate amount of any mandatory prepayments of principal in respect of the Securities and any Indebtedness permitted under Section 4.03(w) (other than payments made by the Issuer or any Restricted Subsidiary to the Issuer or any Restricted Subsidiary), *plus* (d) the aggregate amount of federal, state, local and foreign income taxes paid or payable in Cash during such period, plus (e) the aggregate amount of Restricted Payments under Section 4.06(a)(i)(B) (to the extent not otherwise included pursuant to clause (c)), Section 4.06(a)(ii) and Section 4.06(a)(iii) plus (f) scheduled payments in respect of Capital Leases paid or payable in Cash during such period, all calculated for such period for the Issuer and its Restricted Subsidiaries on a consolidated basis.

"**Foreign Subsidiary**" means, with respect to any Person (1) (A) any Restricted Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof or the District of Columbia and (B) any Restricted Subsidiary of such Foreign Subsidiary, and (2) any FSHCO Subsidiary of such Person.

"**FSHCO Subsidiary**" means any direct or indirect Domestic Subsidiary substantially all of the assets of which consist of the equity and/or indebtedness treated as equity for U.S. federal income tax purposes, of one or more Foreign Subsidiaries.

"**GAAP**" means generally accepted accounting principles in the United States which are in effect on the Issue Date, except for any reports required to be delivered

under Section 4.02, which shall be prepared in accordance with GAAP in effect on the date thereof. For purposes of this Indenture, the term "consolidated" with respect to any Person means such Person consolidated with its Restricted Subsidiaries and does not include any Unrestricted Subsidiary.

"**Global Securities**" has the meaning set forth in Appendix A.

"**Government Securities**" means securities that are:

(1) direct obligations of the United States for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States,

which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

"Governmental Authority" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state or locality of the United States, the United States, or a foreign government.

"Grantor" has the meaning set forth in the Security Agreement.

"**Grantor Supplement**" means a supplement to the Security Agreement in substantially the form of Exhibit H attached to the Security Agreement.

"**guarantee**" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"**Guarantee**" means the guarantee by any Guarantor of the Issuer's Obligations under this Indenture and the Securities.

"**Guarantor**" means each Restricted Subsidiary that Guarantees the Securities in accordance with the terms of this Indenture. On the Issue Date, the Guarantors consist of:

Party City Holdings Inc., Party City Corporation, PC Intermediate Holdings, Inc., Amscan Inc., Am-Source, LLC and Trisar, Inc.

"**Hedge Agreement**" means any agreement with respect to any Derivative Transaction between the Issuer or any Restricted Subsidiary and any other Person.

"**Holder**" or "**Holders**" means the Person(s) in whose name a Security is registered on the registrar's books.

"**Immaterial Subsidiary**" means, as of any date, any Restricted Subsidiary of the Parent Borrower (a) having Consolidated Total Assets in an amount of less than 4.0% of Consolidated Total Assets of the Issuer and its Restricted Subsidiaries and (b) contributing less than 4.0% to consolidated revenues of the Issuer and its Restricted Subsidiaries, in each case, for the most recently ended Test Period for which financial statements have been delivered pursuant to Section 4.02; *provided* that the Consolidated Total Assets (as so determined) and revenue (as so determined) of all Immaterial Subsidiaries shall not exceed 5.0% of Consolidated Total Assets of the Issuer and its Restricted Subsidiaries or 5.0% of the consolidated revenues of the Issuer and its Restricted Subsidiaries for the relevant Test Period, as the case may be.

"**Immediate Family Member**" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"**Indebtedness**", as applied to any Person, means, without duplication, (a) all indebtedness for borrowed money; (b) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (c) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet prepared in accordance with GAAP; (d) any obligation owed for all or any part of the deferred purchase price of property or services (excluding (w) any earn out obligation or purchase price adjustment until such obligation becomes a liability on the balance sheet in accordance with GAAP, (x) any such obligations incurred under ERISA, (y) trade accounts payable in the ordinary course of business (including on an inter-company basis), other than trade accounts payable owed to Persons other than Notes Parties which are overdue by more than 90 days and not being contested in good faith by appropriate proceedings, and (z) liabilities associated with customer prepayments and deposits), which purchase price is (i) due more than six months from the date of incurrence of the obligation in respect thereof or (ii) evidenced by a note or similar written instrument; (e) all Indebtedness of others secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is non-recourse to the credit of that Person; (f) the face amount

of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (g) the guarantee by such Person of the Indebtedness of another; (h) all obligations of such Person in respect of any Disqualified Capital Stock and (i) all net obligations of such Person in respect of any Derivative Transaction, including, without limitation, any Hedge Agreement, whether or not entered into for hedging or speculative purposes; *provided* that (i) in no event shall obligations under any Derivative Transaction be deemed "Indebtedness" for any calculation of the Total Leverage Ratio, Fixed Charge Coverage Ratio or any other financial ratio under this Indenture except to the extent of any accrued interest in respect of unpaid termination or settlement amounts thereunder and (ii) the amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith. 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, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would otherwise be included in the calculation of Consolidated Total Debt; *provided* that, notwithstanding anything herein to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Accounting Standards Codification Topic 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose hereunder as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness hereunder but for the application of this proviso shall not be deemed an incurrence of Indebtedness hereunder.

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

"**Intercreditor Agreements**" means, collectively, (a) the ABL Intercreditor Agreement and (b) any additional (including a Subordinating Intercreditor Agreement and/or a Pari Intercreditor Agreement) or replacement intercreditor agreement entered into by the Collateral Trustee pursuant to Article 11, each as amended, restated, modified or supplemented from time to time in accordance with the terms of such intercreditor agreement.

"**Interest Payment Date**" means (i) February 15, May 15, August 15 and November 15 of each year, commencing February 15, 2024 and ending on the date that is exactly five years after the date hereof and (ii) the Maturity Date; *provided*, however, that if the last Interest Payment Date prior to the Maturity Date would not be a Business Day, then such Interest Payment Date shall instead be the immediately preceding Business Day.

"**Interest Period**" means, with respect to any Security, the period commencing on and including an Interest Payment Date and ending on and including the day immediately preceding the next Interest Payment Date, with the exception that the first Interest Period

with respect to any Security shall commence on and include the Issue Date of the Securities and end on and exclude the first Interest Payment Date to occur after the Issue Date (the Interest Payment Date for any Interest Period shall be the interest payment date occurring on the date immediately following the last day of such Interest Period).

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

"**Investments**" means (a) any purchase or other acquisition by the Issuer or any of its Restricted Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than the Issuer or a Guarantor), (b) the acquisition by purchase or otherwise (other than purchases or other acquisitions of inventory, materials, supplies and equipment in the ordinary course of business) of all or a substantial portion of the business, property or fixed assets of any Person or any division or line of business or other business unit of any Person, and (c) any loan, advance (other than (i) advances to current or former employees, officers, directors and consultants of the Issuer or its Restricted Subsidiaries for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business and (ii) advances made on an inter-company basis in the ordinary course of business for the purchase of inventory) or capital contribution by the Issuer or any of its Restricted Subsidiaries to any other Person (other than the Issuer or any Guarantor). Subject to the definition of "Unrestricted Subsidiary" and Section 4.08, the amount of any Investment shall be the original cost of such Investment *plus* the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment, but giving effect to any repayments of principal in the case of Investments in the form of loans and any return of capital or return on Investment in the case of equity Investments (whether as a distribution, dividend, redemption or sale but not in excess of the amount of the initial Investment).

"**Issue Date**" means October 12, 2023.

"Junior Indebtedness" means any Subordinated Indebtedness, unsecured Indebtedness for borrowed money and any Indebtedness secured by Liens junior to the Lien of the Collateral Trustee with respect to the Collateral.

"**Legal Holiday**" means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or in the State of the place of payment. If a payment date at a place of payment is on a Legal Holiday, payment shall be made at that place on the next succeeding Business Day, and no interest shall accrue on such payment for the intervening period.

"**Lien**" means any mortgage, pledge, hypothecation, license, 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 (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capital Lease having substantially the same economic effect as any of the foregoing), in each case, in the

nature of security; *provided* that in no event shall an operating lease in and of itself be deemed a Lien.

"**Limited Condition Acquisition**" means any Permitted Acquisition whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

"**Maintenance Capital Expenditures**" means any Consolidated Capital Expenditures of the Issuer and its Restricted Subsidiaries that are necessary to (a) repair any damage to any store, distribution center or other facility of the Issuer or any of its Restricted Subsidiaries or (b) maintain any store, distribution center or other facility of the Issuer or any of the Restricted Subsidiaries in good condition and working order (including any Consolidated Capital Expenditures that are necessary to repair any ordinary wear and tear to such store, distribution center or other facility).

"Material Adverse Effect" means, a material adverse effect on (i) the business, assets, financial condition or results of operations, in each case, of the Issuer and its Restricted Subsidiaries, taken as a whole, (ii) the rights and remedies (taken as a whole) of the Trustee and/or the Collateral Trustee or the Holders under the applicable Notes Documents or (iii) the ability of the Notes Parties (taken as a whole) to perform their payment obligations under the Notes Documents.

"**Material Indebtedness**" means any Indebtedness permitted under Sections 4.03(w) and Indebtedness (other than Indebtedness under the ABL Facility and Letters of Credit) or obligations in respect of one or more Derivative Transactions of any one or more of the Notes Parties in an aggregate principal amount that exceeds $28,750,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Notes Parties in respect of any Derivative Transaction at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Notes Party would be required to pay if such Derivative Transaction were terminated at such time.

"**Material Intellectual Property**" means any Intellectual Property owned by the Issuer or any of its Restricted Subsidiaries that, in the good faith determination of the Issuer, is material to the business of the Issuer and its Restricted Subsidiaries, taken as a whole (whether owned as of the Issue Date or thereafter acquired).

"**Maturity Date**" means January 11, 2029.

"**Moody's**" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"**Mudrick Promissory Note**" means the promissory note due October 12, 2024 issued by the Issuer in the aggregate principal amount equal to $1.5 million.

"**Narrative Report**" means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of the Issuer and its Restricted Subsidiaries in the form prepared for presentation to senior management thereof for the applicable Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate.

"**Net Proceeds**" means the aggregate cash proceeds received by the Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale, net of the direct costs relating to such Asset Sale, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, and brokerage and sales commissions, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries that are not Guarantors as a result of any such Asset Sale by such Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Issuer or any Restricted Subsidiary as a result of such Asset Sale, until such time as such claim shall have been settled or otherwise finally resolved, or paid or payable by the Issuer or any Restricted Subsidiary, in either case, in respect of such Asset Sale, any relocation expenses incurred as a result thereof, other fees and expenses, including title and recordation expenses, taxes paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Indenture (including taxes that are or would be imposed on the distribution or repatriation of any such Net Proceeds), amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than Indebtedness under the Notes Documents and Subordinated Indebtedness) secured by a Lien on the assets disposed of required to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"**New York UCC**" means the Uniform Commercial Code as from time to time in effect in the State of New York.

"**Notes Documents**" means this Indenture, the Securities, the Security Documents and the Intercreditor Agreements.

"**Notes Parties**" means the Issuer and any Guarantor.

"**Obligations**" means any principal, accrued but unpaid interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker's acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

"**Officer**" means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Issuer.

"**Officer's Certificate**" means a certificate signed on behalf of the Issuer by an Officer of the Issuer, who must be the principal executive officer, the principal financial officer or the principal accounting officer of the Issuer, that meets the requirements set forth in this Indenture and is delivered to the Trustee.

"**Opinion of Counsel**" means a written opinion from legal counsel who is reasonably acceptable to the Trustee, which meets the requirements set forth in this Indenture. The counsel may be an employee of or counsel to the Issuer.

"**Original Securities**" means the $232,394,231 aggregate principal amount of the Issuer's 12.00% Senior Secured Second Lien PIK Toggle Notes due 2029, issued pursuant to this Indenture on the Issue Date.

"**Parent Borrower**" means Party City Holdings Inc.

"**Parent Company**" means (a) the Issuer, (b) PC Intermediate and (c) any other Person of which the Parent Borrower is an indirect Wholly-Owned Subsidiary to the extent such Person is a Notes Party.

"**Pari Intercreditor Agreement**" means an intercreditor agreement which shares the Lien on the Collateral of the holders of the Pari Passu Lien Indebtedness on a *pari passu* basis and the terms of which are consistent with market terms (in the view of the Collateral Trustee (as defined therein)) governing security arrangements for the sharing of Liens on a *pari passu* basis or arrangements relating to the distribution of payments, as applicable, at the time the intercreditor agreement is proposed to be established in light of the type of Indebtedness subject thereto.

"**Pari Passu Indebtedness**" means Indebtedness that ranks equally in right of payment to the Securities, in the case of the Issuer, or the Guarantees, in the case of any Guarantor (without giving effect to collateral arrangements).

"**Pari Passu Lien Indebtedness**" means any Additional Securities, any PIK Securities and any other Indebtedness that is Pari Passu Indebtedness and that is secured by a Lien on the Collateral that has equal priority as the Liens securing the Securities and

the Guarantees with respect to the Collateral and is not secured by any other assets; *provided* that, in each case, an authorized representative of the holders of such Indebtedness (other than any Additional Securities and any PIK Securities issued in connection with the payment of interest or as otherwise set forth herein) shall have executed a joinder to the Security Documents, the ABL Intercreditor Agreement (if applicable) and the Pari Intercreditor Agreement in the forms provided therein.

"**Paying Agent**" means an office or agency maintained by the Issuer pursuant to the terms of this Indenture, where Securities may be presented for payment.

"**Payment Conditions**" means, with respect to any transaction, (a) there is no Default or Event of Default existing immediately before or after such transaction, (b) the Fixed Charge Coverage Ratio (calculated on a Pro Forma Basis in connection with the proposed transaction) as of such date is at least 1.00 to 1.00, (c) the audited financial statements have been received by the Trustee in the manner required by Section 4.02(a) and (d) the Issuer shall have delivered an Officer's Certificate to the Trustee certifying as to compliance with the requirements of clauses (a) through (c).

"**PC Intermediate**" means PC Intermediate Holdings, Inc., a Delaware Corporation.

"**Pension Plan**" means any employee pension benefit plan, as defined in Section 3(2) of ERISA (other than a Multiemployer Plan), subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Issuer or any of its Restricted Subsidiaries, or any of their respective ERISA Affiliates, is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Perfection Certificate" has the meaning set forth in the Security Agreement.

"Perfection Certificate Supplement" has the meaning assigned to "Perfection Certificate Supplement" in the Security Agreement.

"**Permitted Acquisition**" means any acquisition by the Parent Borrower or any of its Restricted Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of or any business line, unit, division or any operating stores of, any Person or of a majority of the outstanding Capital Stock of any Person (but in any event including any Investment in a Restricted Subsidiary which serves to increase the Issuer's or any Restricted Subsidiary's respective equity ownership in such Restricted Subsidiary), or any acquisition of or Investment in any joint venture; *provided* that:

(a) immediately prior to, and after giving effect to such acquisition, the Payment Conditions shall have been satisfied, *provided* that this clause (a) shall not apply to any acquisition or series of related acquisitions during any Fiscal Year in which the aggregate amount of consideration for such acquisition or series of related acquisitions is less than $28,750,000, so long as the aggregate amount of consideration for such acquisition or series of related acquisitions, together with the aggregate amount of consideration for all other Permitted Acquisitions in such period (excluding any

Permitted Acquisition previously subject to the Payment Conditions pursuant to this clause (a)), is less than $40,250,000;

(b) on the date of execution of the purchase agreement in respect of such acquisition, no Event of Default shall have occurred and be continuing or would result therefrom;

(c) the Parent Borrower shall take or cause to be taken with respect to the acquisition of any new Subsidiary of the Parent Borrower, each of the actions required to be taken under Section 4.17 as applicable;

(d) the total consideration paid for by the Notes Parties for (i) the acquisition, directly or indirectly, of any Person that does not become a Guarantor and (ii) if an asset acquisition, assets that are not acquired by the Issuer or any Guarantor, when taken together with the total consideration for all such acquired Persons and assets acquired after the Issue Date, shall not exceed the sum of (A) $86,250,000 or, after the date that the audited financial statements have been received by the Trustee pursuant to Section 4.15(a), if greater, 5.50% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 4.02 at such time and (B) amounts available under clause (q) of Section 4.08; *provided* that the limitation under this clause (d) shall not apply to any acquisition to the extent (x) such acquisition is made with the proceeds of sales of the Qualified Capital Stock of, or common equity capital contributions to, the Parent Borrower or (y) the Person so acquired (or the Person owning the assets so acquired) becomes a Guarantor even though such Guarantor owns Capital Stock in Persons that are not otherwise required to become Guarantors, if, in the case of this clause (y) for such acquisition, not less than 80.0% of the Consolidated Adjusted EBITDA of the Person(s) acquired (for this purpose and for the component definitions used therein, determined on a consolidated basis for such Persons and their Restricted Subsidiaries) is directly generated by Person(s) that become Guarantors (*i.e.*, disregarding all such Consolidated Adjusted EBITDA generated by Restricted Subsidiaries of such Guarantors that are not Guarantors);

(e) the Issuer shall have delivered to the Trustee the final executed documentation relating to such acquisition within one (1) Business Day following the consummation thereof; and

(f) the Issuer shall have delivered to the Trustee on or prior to such acquisition an Officer's Certificate stating that any related incurrence of Indebtedness is permitted pursuant to this Indenture, that the conditions set forth in clauses (a) through (d) above have been satisfied and including any supporting calculations to demonstrate compliance with clause (a) above.

"**Permitted Liens**" means, with respect to any Person:

(a) Liens granted pursuant to the ABL Facility Documents to secure the ABL Obligations incurred under Section 4.03(a);

(b) Liens for taxes which are (i) not then due or if due obligations with respect to such taxes that are not at such time required to be paid or (ii) which are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (A) adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made therefor and (B) in the case of a tax which has or may become a Lien against any of the Collateral, such contest proceedings operate to stay the sale of any portion of the Collateral to satisfy such tax or claim;

(c) statutory Liens of landlords, banks (and rights of set-off), carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Code or by ERISA), in each case incurred in the ordinary course of business (i) for amounts not yet overdue by more than 30 days, (ii) for amounts that are overdue by more than 30 days and that are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts or (iii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(d) Liens incurred (i) in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security laws and regulations, (ii) in the ordinary course of business to secure the performance of tenders, statutory obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (iii) pursuant to pledges and deposits of Cash or Cash Equivalents in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Issuer and its Restricted Subsidiaries;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not, in the aggregate, materially interfere with the ordinary conduct of the business of the Issuer, any other Parent Company and the Restricted Subsidiaries taken as a whole, or the use of the affected property for its intended purpose;

(f) any (i) interest or title of a lessor or sublessor under any lease of real estate permitted hereunder, (ii) landlord liens permitted by the terms of any lease, (iii) restrictions or encumbrances that the interest or title of such lessor or sublessor may be subject to or (iv) subordination of the interest of the lessee or sublessee under such lease to any restriction or encumbrance referred to in the preceding clause (iii);

(g) Liens solely on any Cash earnest money deposits made by the Issuer or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement with respect to any Investment permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property or consignment or bailee arrangements entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) Liens in connection with any zoning, building or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any or dimensions of real property or the structure thereon;

(k) Liens securing Indebtedness permitted pursuant to Section 4.03(p) (solely with respect to the permitted refinancing of Indebtedness permitted pursuant to Sections 4.03(n) and (q)); *provided* that (i) any such Lien does not extend to any asset not covered by the Lien securing the Indebtedness that is refinanced and (ii) if the Indebtedness being refinanced was subject to intercreditor arrangements, then any such refinancing Indebtedness shall be subject to intercreditor arrangements no less favorable, taken as a whole, than the intercreditor arrangements governing the Indebtedness that is refinanced;

(l) Liens existing on the Issue Date and any modifications, replacements, refinancings, renewals or extensions thereof; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 4.03 and (B) proceeds and products thereof and accessions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 4.03(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates) and (ii) the replacement, refinancing, renewal or extension of the obligations secured or benefited by such Liens is permitted by Section 4.03;

(m) Liens arising out of Sale and Lease-Back Transactions permitted under Section 4.10;

(n) Liens securing Indebtedness permitted pursuant to Section 4.03(m); *provided* that any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness and proceeds and products thereof, accessions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 4.03(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates);

(o) (i) Liens securing Indebtedness permitted pursuant to Section 4.03(n) on assets acquired or on the Capital Stock of any Person (to the extent such Capital Stock would not otherwise constitute Collateral) and assets of the newly acquired Restricted Subsidiary; *provided* that such Lien (x) does not extend to or cover any other assets (other than the proceeds or products thereof and accessions or additions thereto and improvements thereon) and (y) was not created in contemplation of the applicable acquisition of assets or Capital Stock; *provided, further*, that in the case of any Liens on

Collateral, such Indebtedness shall be secured on a junior basis with respect to the Securities pursuant to an intercreditor arrangement reasonably satisfactory to the Collateral Trustee and (ii) Liens securing Indebtedness incurred pursuant to Section 4.03(q); *provided* that in the case of any Liens on Collateral, such Indebtedness shall be secured on a junior basis with respect to the Securities pursuant to an intercreditor arrangement reasonably satisfactory to the Collateral Trustee;

(p) Liens that are contractual rights of setoff relating to (i) the establishment of depositary relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Issuer or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Issuer or any Restricted Subsidiary, (iii) relating to purchase orders and other agreements entered into with customers of the Issuer or any Restricted Subsidiary in the ordinary course of business, (iv) attaching to commodity trading or other brokerage accounts incurred in the ordinary course of business and (v) encumbering reasonable customary initial deposits and margin deposits;

(q) Liens on assets of Foreign Subsidiaries and other Restricted Subsidiaries that are not Notes Parties (including Capital Stock owned by such Persons) securing Indebtedness of Restricted Subsidiaries that are not Notes Parties permitted pursuant to Section 4.03

(r) Liens securing the Original Securities issued on the Issue Date and any PIK Securities, and Guarantees of such Securities;

(s) Liens disclosed in the final title insurance policies insuring mortgages delivered pursuant to Section 4.17 with respect to any mortgaged property;

(t) Liens securing obligations in respect of any Indebtedness permitted under Sections 4.03(b), (k) and/or (w); *provided* that in the case of any Liens on Collateral, Indebtedness incurred in reliance on (i) Section 4.03(b) shall be secured on a junior basis, and (ii) Sections 4.03(k) and (w) may be secured on a senior or pari passu basis, in each case with respect to the Securities pursuant to the applicable intercreditor arrangements explicitly contemplated hereunder (including, with respect to Indebtedness permitted under (x) Section 4.03(b), the ABL Intercreditor Agreement, and (y) Sections 4.03(k) and (w), any applicable Intercreditor Agreement);

(u) Liens on assets securing Indebtedness in an aggregate principal amount not to exceed $34,500,000; *provided* that, in the case of any Liens on Collateral, such Indebtedness shall be secured on a junior basis with respect to the Securities pursuant to an intercreditor arrangement reasonably satisfactory to the Collateral Trustee;

(v) Liens on assets securing judgments for the payment of money not constituting an Event of Default under Section 6.01(e):

(w) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of the Issuer and its Restricted Subsidiaries (other than an Immaterial Subsidiary), or

adversely affect in any material respect the value of any Collateral or adversely affect in any material respect or could reasonably be expected to adversely affect any of the material rights or remedies of the Collateral Trustee with respect to any Collateral or (ii) secure any Indebtedness;

(x) [Reserved];

(y) Liens securing obligations in respect of letters of credit permitted under Sections 4.03(e), (z) and (cc);

(z) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of any assets or property in the ordinary course of business and permitted by this Indenture;

(aa) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto; and

(bb) Liens on specific items of inventory or other goods and the proceeds thereof, on premises not owned, controlled or leased by any Notes Party, securing such Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods, in an aggregate outstanding amount not to exceed $11,500,000 at any time.

For purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness.

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

"**PIK Interest**" means the payment of interest on the Securities on an Interest Payment Date, which is paid, at the Company's election, in accordance with the terms hereof (including upon timely notice), by increasing the amount of outstanding Securities or, with respect to any Definitive Security, by issuing additional PIK Securities.

"**PIK Securities**" means any Securities issued in connection (including by way of increasing the amount of outstanding Securities) with the payment of PIK Interest.

"**Pledge and Security Agreement**" means that certain Pledge and Security Agreement, dated as of the Issue Date, between the loan parties under the ABL Credit Agreement and the administrative agent named therein, for the benefit of the administrative agent and the other secured parties party thereto.

"**Pro Forma Basis**" or "**pro forma effect**" means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Subject Transactions) in accordance with Section 1.05.

"**Public Company Costs**" means costs relating to compliance with the provisions of the Securities Act and the Exchange Act, in each case as applicable to companies with registered equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors' compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors' and officers' insurance, listing fees and all executive, legal and professional fees related to the foregoing.

"Qualified Capital Stock" of any Person means any Capital Stock of such Person that is not Disqualified Capital Stock.

"**Rating Agencies**" means Moody's and S&P or if Moody's or S&P or both shall not make a rating publicly available, a nationally recognized statistical rating agency or agencies, as the case may be.

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) in real property then owned by any Notes Party.

"**Recapitalization**" means the repayment, redemption, defeasance, discharge, refinancing or termination in full of, redemption, defeasance, discharge, refinancing or termination to the extent accompanied by any prepayments or deposits required to defease, terminate and satisfy in full such Indebtedness) (a) all amounts, if any, due or owing under the Existing Credit Agreement, and the termination of all commitments thereunder, (b) that certain Senior Secured Superpriority Debtor-In-Possession Term Loan Credit Agreement, dated as of January 19, 2023, among, inter alios, PC Intermediate, the borrowers named therein, the other guarantors party thereto from time to time, the financial institutions and other persons party thereto as the lenders and Ankura Trust Company, LLC, as administrative agent and collateral agent, (c) the 6.125% Senior Notes due 2023 issued by Party City Holdco Inc. in the aggregate principal amount equal to $350,000,000 (including any Registered Equivalent Notes), (d) the Senior Secured First Lien Floating Rate Notes due 2025 issued by Party City Holdco Inc. in the aggregate principal amount equal to $156,669,177 (including any Registered Equivalent Notes), (e) the 8.750% Senior Secured Notes due 2026 issued by Party City Holdings Inc. in the aggregate principal amount equal to $750,000,000 (including any Registered Equivalent Notes), (f) the 6.625% Senior Notes due 2026 issued by Party City Holdco Inc. in the aggregate principal amount equal to $500,000,000 (including any Registered Equivalent Notes) and (g) all amounts, if any, due or owing under that certain Term Loan Credit Agreement (as amended, restated, modified or otherwise supplemented from time to time prior to the Issue Date) dated as of August 19, 2015, among, inter alios, PC Intermediate, Party City Holdings Inc., as parent borrower, Party City Corporation, Deutsche Bank AG New York Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.

"**Registered Equivalent Notes**" means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

"**Registrar**" has the meaning set forth in the preamble.

"**Regulation S**" means Regulation S under the Securities Act.

"**Requirements of Law**" means, with respect to any Person, collectively, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Restricted Payment**" means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of the Capital Stock of the Parent Borrower now or hereafter outstanding, except a dividend payable solely in shares of that class of the Capital Stock to the holders of that class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of any shares of any class of the Capital Stock of the Parent Borrower now or hereafter outstanding and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of the Capital Stock of the Parent Borrower now or hereafter outstanding.

"**Restricted Subsidiary**" means, at any time, any direct or indirect Subsidiary of the Issuer (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; *provided*, *however*, that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of "Restricted Subsidiary."

"**Revolving Loans**" has the meaning assigned to "Revolving Loans" in the ABL Credit Agreement.

"**Rule 144A**" means Rule 144A under the Securities Act.

"**S&P**" means S&P Global Ratings and any successor to its rating agency business.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Secured Indebtedness**" means any Indebtedness of the Issuer or any of its Restricted Subsidiaries, as applicable, secured by a Lien.

"**Secured Parties**" has the meaning set forth in the Security Agreement.

"**Securities**" means the Original Securities and more particularly means any security authenticated and delivered under this Indenture. For all purposes of this Indenture, the term "Securities" shall also include any Additional Securities and

Securities to be issued or authenticated upon transfer, replacement or exchange of Securities and any Securities to be issued in connection with a PIK Payment.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Securities Custodian**" has the meaning set forth in Appendix A.

"**Security Agreement**" means that certain Second Lien Pledge and Security Agreement, dated as of the Issue Date, by and among the Issuer and the Guarantors, as grantors, and the Collateral Trustee, as amended, restated, amended and restated, supplemented, renewed, replaced, or otherwise modified, in whole or in part, from time to time, in accordance with its terms, the form of which is attached as Exhibit D hereto.

"**Security Documents**" means the Security Agreement, and any one or more additional security agreements, pledge agreements, intellectual property security agreements, collateral assignments, mortgages, deeds of covenants, assignments of earnings and insurances, share pledges, share charges, collateral agency agreements, deeds of trust or other grants or transfers for security executed and delivered by the Issuer or the Guarantors to be entered into on the Issue Date for such Issuer or Guarantor, creating, or purporting to create, a Lien upon all or a portion of the Collateral in favor of the Collateral Trustee for the benefit of the Secured Parties, in each case as amended, restated, amended and restated, supplemented, renewed, replaced or otherwise modified, in whole or part, from time to time, in accordance with its terms.

"**Security Register**" means the register of Securities, maintained by the Registrar, pursuant to Section 2.04.

"**Senior Lien Indebtedness**" means any Indebtedness that is Pari Passu Indebtedness and that is secured by a Lien on the Collateral that has senior priority in respect of the Liens securing the Securities and the Guarantees (and any other Pari Passu Indebtedness) with respect to the Collateral and is not secured by any other assets; *provided* that, in each case, an authorized representative of the holders of such Indebtedness (other than any Additional Securities and any PIK Securities issued in connection with the payment of interest or as otherwise set forth herein) shall have executed a joinder to the Security Documents, the ABL Intercreditor Agreement (if applicable) and a Subordinating Intercreditor Agreement.

"**Significant Subsidiary**" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date.

"**Store Exchange**" means the substantially concurrent purchase and sale or exchange of one or more stores, distribution centers and/or other locations (including any inventory, equipment and other assets used or useful at such location) or a combination of the foregoing and Cash and/or Cash Equivalents between any Notes Party and/or any other Restricted Subsidiary on the one hand, and any Person on the other hand.

"**Subject Transaction**" means, with respect to any period, (a) the Transactions, (b) any Permitted Acquisition or the making of other Investments permitted by this Indenture, (c) any disposition of all or substantially all of the assets or stock of a Restricted Subsidiary (or any business unit, line of business or division of the Issuer or a Restricted Subsidiary) permitted by this Indenture, (d) the designation of a subsidiary as an Unrestricted Subsidiary or an Unrestricted Subsidiary as a Subsidiary in accordance with the definition of "Unrestricted Subsidiary" and Section 4.08 or (e) any other event that by the terms of the Notes Documents requires pro forma compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a Pro Forma Basis.

"**Subordinated Indebtedness**" means, with respect to the Securities,

(1) any Indebtedness of the Issuer which is by its terms subordinated in right of payment to the Securities, and

(2) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Securities.

"**Subordinating Intercreditor Agreement**" means an intercreditor agreement which subordinates the Lien on the Collateral of the holders of the Original Securities and any Pari Passu Lien Indebtedness to the Lien on the Collateral of each of the holders of Senior Lien Indebtedness and the terms of which are consistent with market terms governing security arrangements for the subordination and sharing of Liens or arrangements relating to the distribution of payments, as applicable, at the time the intercreditor agreement is proposed to be established in light of the type of Indebtedness subject thereto.

"**Subsidiary**" means, with respect to any Person:

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof or is consolidated under GAAP with such Person at such time; and

(2) any partnership, joint venture, limited liability company or similar entity of which

(x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(y) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"**Term Loan Credit Agreement**" means that certain Term Loan Credit Agreement, dated as of August 19, 2015, among PC Intermediate, the Issuer, Party City Corporation, a Delaware corporation, the lenders from time to time party thereto, Deutsche Bank AG New York Branch, as administrative agent, and the other parties thereto, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time.

"**Test Period**" means a period of four consecutive Fiscal Quarters.

"**Total Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt as of the last day of such Test Period (net of the Unrestricted Cash Amount as of such date) to (b) Consolidated Adjusted EBITDA for such Test Period, in each case for the Issuer and its Restricted Subsidiaries.

"**Transaction Costs**" means fees, premiums, expenses and other transaction costs (including original issue discount) payable or otherwise borne by the Issuer and its Restricted Subsidiaries in connection with the Transactions and the transactions contemplated thereby.

"**Transactions**" means, collectively, (a) the execution, delivery and performance by the Notes Parties of the Notes Documents to which they are a party and the issuance of the Securities hereunder, (b) the Recapitalization and (c) the payment of the Transaction Costs.

"**Treasury Rate**" means, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 that has become publicly available at least two Business Days prior to the redemption date (or, if such Federal Reserve Statistical Release H.15 is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to the stated Maturity Date; *provided*, *however*, that if the period from the redemption date to the stated Maturity Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-77bbbb).

"**Trust Officer**" means:

(1) any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person's knowledge of and familiarity with the particular subject, and

(2) who shall have direct responsibility for the administration of this Indenture.

"**Trustee**" means the party named as such in the preamble until a successor replaces it and, thereafter, means the successor.

"**United States**" and "**U.S.**" means the United States of America.

"**Unrestricted Cash Amount**" means, as of any date of determination, the amount of (a) unrestricted Cash and Cash Equivalents of the Issuer and its Restricted Subsidiaries whether or not held in an account pledged to the Collateral Trustee and (b) Cash and Cash Equivalents restricted in favor of the ABL Facility (which may also include Cash and Cash Equivalents securing other Indebtedness secured by a Lien on the Collateral along with the ABL Facility); *provided* that the Unrestricted Cash Amount shall not exceed $86,250,000.

"**Unrestricted Subsidiary**" means:

(1) any Subsidiary of the Issuer which at the time of determination is an Unrestricted Subsidiary (as designated by the Issuer, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

As of the Issue Date, the Anagram Issuers and their Subsidiaries shall be Unrestricted Subsidiaries hereunder.

The Issuer may designate any Subsidiary of the Issuer (including any existing Restricted Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Issuer or any Subsidiary of the Issuer (other than solely any Subsidiary of the Subsidiary to be so designated); *provided* that

(1) any Unrestricted Subsidiary must be an entity of which the Equity Interests entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or Persons performing a similar function are owned, directly or indirectly, by the Issuer;

(2) such designation complies with and may be made using capacity under Section 4.08 (other than with respect to the Anagram Issuers and their Subsidiaries); and

(3) each of:

(a) the Subsidiary to be so designated; and

(b) its Subsidiaries

has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any

Indebtedness pursuant to which the lender has recourse to any of the assets of the Issuer or any Restricted Subsidiary.

The Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that, immediately after giving effect to such designation, (i) no Default shall have occurred and be continuing and (ii) the Issuer could incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test in Section 4.03(r).

Any such designation by the Issuer shall be notified by the Issuer to the Trustee by promptly filing with the Trustee a copy of the resolution of the board of directors of the Issuer or any committee thereof giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"**Voting Stock**" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then-outstanding principal amount of such Indebtedness.

"**Wholly-Owned Subsidiary**" of any Person means a Restricted Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors' qualifying shares and shares issued to foreign nationals as required under applicable law) shall at the time be directly or indirectly owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

Section 1.02. *Other Definitions*.

Term	Defined in Section
"Acceptable Commitment"	4.09(d)
"Appendix"	2.01
"Applicable Premium Deficit"	8.01(b)
"Asset Sale"	4.09(a)
"Asset Sale Offer"	4.09(f)
"Authenticating Agent"	2.03
"Authentication Order"	2.03
"Cash Equivalent Bank"	1.01 (definition of "Cash Equivalents")
"Change of Control Offer"	4.14(a)
"Change of Control Payment"	4.14(a)

Term	Defined in Section
“Change of Control Payment Date”	4.14(b)(ii)
“Collateral Trustee”	Preamble
“Company”	Preamble
“covenant defeasance option”	8.01
“Declined Excess Proceeds”	4.09(g)
“Definitive Security”	Appendix A
“Event of Default”	6.01
“Excess Proceeds”	4.09(f)
“Guaranteed Obligations”	10.01
“Indenture”	Preamble
“Issuer”	Preamble
“LCT Election”	1.06
“LCT Period”	1.06
“LCT Test Date”	1.06
“legal defeasance option”	8.01
“Offer Period”	4.09(i)
“Original Securities”	Recitals
“Paying Agent”	Preamble
“PIK Payment”	2.02
“Plan”	Recitals
“protected purchaser”	2.08
“Purchase Date”	4.09(i)
“Refinancing Indebtedness”	4.03(p)
“Refunding Capital Stock”	4.06(a)(vii)
“Registrar”	Preamble
“Restricted Debt Payments”	4.06(b)
“Securities”	Recitals
“Securities Register”	2.04
“Successor Company”	5.01(a)(i)
“Successor Person”	5.01(b)(i)
“Treasury Capital Stock”	4.06(a)(viii)
“Trustee	Preamble

Section 1.03. *Rules of Construction*. Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) “or” is not exclusive;

(d) “including” means including without limitation;

(e) words in the singular include the plural and words in the plural include the singular;

(f) unsecured Indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured Indebtedness, and senior Indebtedness shall not be deemed to be subordinate or junior to any other senior Indebtedness merely by virtue of its junior priority with respect to the same collateral;

(g) "$" and "U.S. dollars" each refer to United States dollars, or such other money of the United States that at the time of payment is legal tender for payment of public and private debts;

(h) "consolidated" means, with respect to any Person, such Person consolidated with its Restricted Subsidiaries, and shall not include any Unrestricted Subsidiary, but the interest of such Person in an Unrestricted Subsidiary shall be accounted for as an Investment;

(i) "will" shall be interpreted to express a command;

(j) provisions apply to successive events and transactions;

(k) unless the context otherwise requires, any reference to an "Appendix," "Article," "Section," "clause," "Schedule" or "Exhibit" refers to an Appendix, Article, Section, clause, Schedule or Exhibit, as the case may be, of this Indenture;

(l) the words "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision;

(m) references to sections of, or rules under the Securities Act, the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

(n) unless otherwise provided, references to agreements and other instruments shall be deemed to include all amendments and other modifications to such agreements or instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Indenture; and

(o) this Indenture is not qualified under the Trust Indenture Act, and the Trust Indenture Act shall not apply to or in any way govern the terms of this Indenture, including Section 316(b) thereof. No provisions of the Trust Indenture Act are incorporated into this Indenture, other than as referenced for the limited purpose set forth in Section 7.09 and Section 7.10.

Section 1.04. *Acts of Holders*. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when

such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 7.01) conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section 1.04.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgements of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the Securities Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Security.

(e) The Issuer may, at its option, set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders, but the Issuer shall have no obligation to do so.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including the Depositary, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and the Depositary may provide its proxy to the beneficial owners of interests in any such Global Security through such Depositary’s standing instructions and customary practices.

(h) The Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Security held by DTC entitled under the procedures of such Depositary to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders.If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date.

Section 1.05. *Pro Forma Basis*. (a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Total Leverage Ratio, the Fixed Charge Coverage Ratio or any test of availability under this Indenture and compliance with covenants determined by reference to Consolidated Adjusted EBITDA (including any component definitions thereof) or Consolidated Total Assets, shall be calculated in the manner prescribed by this Section 1.05; *provided* that notwithstanding anything to the contrary in clauses (b), (c), (d) or (e) of this Section 1.05, when calculating any such ratio or test for purposes of the incurrence of any Indebtedness, cash and Cash Equivalents resulting from the incurrence of any such Indebtedness shall be excluded from the pro forma calculation of any applicable ratio or test. In addition, whenever a financial ratio or test is to be calculated on a Pro Forma Basis, the reference to the "Test Period" for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements (which internal financial statements, for the avoidance of doubt, shall include an unaudited consolidated balance sheet, unaudited consolidated cash flow statement and unaudited consolidated statement of income of the Issuer and its Restricted Subsidiaries, to the extent such financial statements are applicable with respect to the calculation of such financial ratio or test) of the Issuer and its Restricted Subsidiaries are available (as determined in good faith by the Issuer).

(b) For purposes of calculating any financial ratio or test or compliance with any covenant determined by reference to Consolidated Adjusted EBITDA or Consolidated Total Assets, Subject Transactions (with any incurrence or repayment of any Indebtedness in connection therewith to be subject to clause (d) of this Section 1.05) that (i) have been made during the applicable Test Period or (ii) if applicable as described in clause (a) above, have been made subsequent to such Test Period and prior to or substantially concurrently with the event for which the calculation of any such ratio is made shall be calculated on a Pro Forma Basis assuming that all such Subject Transactions (and any increase or decrease in Consolidated Adjusted EBITDA, Consolidated Total Assets and the component financial definitions used therein attributable to any Subject Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Consolidated Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Issuer or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Subject Transaction that would have required adjustment pursuant to this Section 1.05, then such financial ratio or test (or

Consolidated Total Assets) shall be calculated to give pro forma effect thereto in accordance with this Section 1.05.

(c) Whenever pro forma effect is to be given to a Subject Transaction, the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Issuer and, in the case of any "Test Period" determined by reference to the financial statements most recently delivered pursuant to Section 4.02, as set forth in a certificate of a responsible financial or accounting officer of the Issuer (with supporting calculations), and may include, for the avoidance of doubt, the amount of "run-rate" cost savings, operating expense reductions and synergies resulting from or relating to, any Subject Transaction (including the Transactions) which is being given pro forma effect that have been realized or are projected in good faith to result (in the good faith determination of the Issuer) (calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and "run-rate" means the full recurring projected benefit (including any savings or other benefits expected to result from the elimination of a public target's Public Company Costs) net of the amount of actual savings or other benefits realized during such period from such actions, and any such adjustments shall be included in the initial pro forma calculations of any financial ratios or tests (and in respect of any subsequent pro forma calculations in which such Subject Transaction is given pro forma effect) and during any applicable subsequent Test Period in which the effects thereof are expected to be realized) relating to such Subject Transaction; *provided* that (A) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Issuer, (B) such amounts result from actions taken or actions with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Issuer) no later than eighteen (18) months after the date of such Subject Transaction, (C) no amounts shall be added pursuant to this clause (c) to the extent duplicative of any amounts that are otherwise added back in computing Consolidated Adjusted EBITDA (or any other components thereof), whether through a pro forma adjustment or otherwise, with respect to such period and (D) the aggregate amount of any such amounts added back pursuant to this clause (c) (other than in connection with any mergers, business combinations, acquisitions or divestures) shall not exceed, together with any amounts added back pursuant to clauses (x) and (xi) of the definition of Consolidated Adjusted EBITDA, 25.0% of Consolidated Adjusted EBITDA in any four-Fiscal Quarter period (calculated before giving effect to any such add-backs and adjustments).

(d) In the event that the Issuer or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by purchase, redemption, repayment, retirement or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid (other than any repayment from the proceeds of other Indebtedness) under any revolving credit facility unless such Indebtedness has been permanently repaid (and related commitments terminated) and not replaced), (i) during the applicable Test Period or (ii) subject to paragraph (a), subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving pro forma effect to such

incurrence (including the intended use of proceeds) or repayment of Indebtedness, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period.

(e) If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Fixed Charge Coverage Ratio is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness); provided, in the case of repayment of any Indebtedness, to the extent actual interest related thereto was included during all or any portion of the applicable Test Period, the actual interest may be used for the applicable portion of such Test Period.

Section 1.06. *Limited Condition Acquisitions*. When calculating the availability under any basket or ratio under this Indenture or compliance with any provision of this Indenture in connection with any Limited Condition Acquisition and any actions or transactions related thereto, in each case, at the option of the Issuer (the Issuer's election to exercise such option, an "**LCT Election**"), the date of determination for availability under any such basket or ratio and whether any such action or transaction is permitted (or any requirement or condition therefor is complied with or satisfied (including as to the absence of any continuing Default or Event of Default)) hereunder shall be deemed to be the date (the "**LCT Test Date**") the definitive agreements for such Limited Condition Acquisition are entered into, and if, after giving pro forma effect to the Limited Condition Acquisition and any actions or transactions related thereto (including any incurrence of Indebtedness and the use of proceeds thereof) and any related pro forma adjustments, Issuer or any of its Restricted Subsidiaries would have been permitted to take such actions or consummate such transactions on the relevant LCT Test Date in compliance with such ratio, test or basket (and any related requirements and conditions), such ratio, test or basket (and any related requirements and conditions) shall be deemed to have been complied with (or satisfied) for all purposes (in the case of Indebtedness, for example, whether such Indebtedness is committed, issued or incurred at the LCT Test Date or at any time thereafter); *provided* that any such Limited Condition Acquisition which is a Permitted Acquisition shall be consummated prior to the date which is 150 days following such LCT Test Date (each such period, a "**LCT Period**").

For the avoidance of doubt, if the Issuer has made an LCT Election, (1) if any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would at any time during the applicable LCT Period have been exceeded or otherwise failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated Adjusted EBITDA or Consolidated Total Assets of the Issuer or the Person subject to such Limited Condition Acquisition, such baskets, tests or ratios will not be deemed to have been exceeded or failed to have been complied with as a result of such fluctuations, (2) if any related requirements and conditions (including as to the absence of any continuing Default or Event of Default) for which compliance or satisfaction was determined or tested as of the LCT Test Date would at any time during the applicable LCT Period not have been complied with or satisfied (including due to the occurrence or continuation of an Default

or Event of Default), such requirements and conditions will not be deemed to have been failed to be complied with or satisfied (and such Default or Event of Default shall be deemed not to have occurred or be continuing, solely for purposes of determining whether the applicable Limited Condition Acquisition and any actions or transactions related thereto (including any incurrence of Indebtedness (other than Revolving Loans) and the use of proceeds thereof) are permitted hereunder) and (3) in calculating the availability under any ratio, test or basket in connection with any action or transaction unrelated to such Limited Condition Acquisition following the relevant LCT Test Date and prior to the date on which such Limited Condition Acquisition is consummated, any such ratio, test or basket shall be determined or tested giving pro forma effect to such Limited Condition Acquisition and any actions or transactions related thereto (including any incurrence of Indebtedness (other than Revolving Loans) and the use of proceeds thereof) and any related pro forma adjustments unless the definitive agreement (or notice) for such Limited Condition Acquisition is terminated or expires (or is rescinded) without consummation of such Limited Condition Acquisition; *provided* that, with respect to this clause (3), for the purposes of Sections 4.06 and 4.08 (other than Section 4.08(r)) only, Consolidated Net Income shall not include any Consolidated Net Income of or attributed to the target company or assets associated with any such Limited Condition Acquisition unless and until the closing of such Limited Condition Acquisition shall have actually occurred. Notwithstanding anything to the contrary herein, the Issuer may not make an LCT Election in connection with a Limited Condition Acquisition or any action or transaction related thereto if the applicable LCT Test Date would be prior to the date of delivery of the financial statements required by Section 4.15(a).

ARTICLE 2
THE SECURITIES

Section 2.01. *Amount of Securities*. The aggregate principal amount of Original Securities which may be authenticated and delivered under this Indenture on the Issue Date is $232,394,231.

The Issuer may from time to time after the Issue Date issue Additional Securities under this Indenture in an unlimited principal amount, so long as (i) the incurrence of the Indebtedness represented by such Additional Securities is at such time permitted by Section 4.03 and (ii) such Additional Securities are issued in compliance with the other applicable provisions of this Indenture. With respect to any Additional Securities issued after the Issue Date (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities pursuant to Section 2.07, 2.08, 2.09, 2.10, 3.06, 3.08, 4.14 or Appendix A (the "Appendix")), there shall be i) established in or pursuant to a resolution of the board of directors of the Issuer and ii) (i) set forth or determined in the manner provided in an Officer's Certificate or (ii) established in one or more indentures supplemental hereto, prior to the issuance of such Additional Securities:

(1) the aggregate principal amount of such Additional Securities to be authenticated and delivered under this Indenture;

(2) the issue price and issuance date of such Additional Securities, including the date from which interest on such Additional Securities shall accrue;

(3) the maturity date, interest rate and optional redemption provisions applicable to each series of Additional Securities, if different from the maturity date, interest rate and optional redemption provisions applicable to the Original Securities;

(4) the CUSIP or ISIN, if different than those assigned to the Original Securities; and

(5) if applicable, that such Additional Securities shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the respective depositaries for such Global Securities, the form of any legend or legends which shall be borne by such Global Securities in addition to or in lieu of those set forth in Exhibit A hereto and any circumstances in addition to or in lieu of those set forth in Section 2.2 of the Appendix in which any such Global Security may be exchanged in whole or in part for Additional Securities registered, or any transfer of such Global Security in whole or in part may be registered, in the name or names of Persons other than the Depositary for such Global Security or a nominee thereof.

If any of the terms of any Additional Securities are established by action taken pursuant to a resolution of the board of directors of the Issuer, a copy of an appropriate record of such action shall be certified by the Secretary or any Assistant Secretary of the Issuer and delivered to the Trustee at or prior to the delivery of the Officer's Certificate or the indenture supplemental hereto setting forth the terms of the Additional Securities.

The Issuer may designate the maturity date, interest rate and optional redemption provisions applicable to each series of Additional Securities, which may differ from the maturity date, interest rate and optional redemption provisions applicable to the Original Securities. Additional Securities that differ with respect to maturity date, interest rate, optional redemption provisions or otherwise from the Original Securities will constitute a different series of Securities from the Original Securities. Additional Securities that have the same maturity date, interest rate and optional redemption provisions as the Original Securities will be treated as the same series as the Original Securities unless otherwise designated by the Issuer.

The Securities, including any Additional Securities and any PIK Securities issued in connection with the payment of interest or as otherwise set forth herein, shall be treated as a single class for all purposes under this Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase; *provided, however*,

a separate CUSIP or ISIN will be issued for Additional Securities, unless the Original Securities and Additional Securities are fungible for U.S. federal income tax purposes.

Section 2.02. *Form and Dating; Terms*. Provisions relating to the Securities are set forth in Appendix A, which is hereby incorporated into and expressly made a part of this Indenture. The (i) Original Securities, (ii) the PIK Securities and (iii) any Additional Securities and any other notes issued under this Indenture shall each be substantially in the form of Exhibit A hereto, which is hereby incorporated in and expressly made a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Issuer or any Guarantor is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form acceptable to the Issuer). Each Security shall be dated the date of its authentication. Subject to the issuance of Additional Securities or the increase in the principal amount of the Global Securities in order to evidence PIK Interest (which Additional Securities or increased principal amount shall be in denominations of $1.00 and integral multiples of $1.00 in excess thereof), the Securities shall be issuable only in registered form without interest coupons and in minimum denominations of $1.00 and any integral multiples of $1.00 in excess thereof.

On any Interest Payment Date on which the Company pays interest in PIK Interest (a "**PIK Payment**") with respect to a Global Security, the Trustee shall (subject to the Company delivering to the Trustee and the Paying Agent (if other than the Trustee) written notification (which notification the Trustee and Paying Agent shall be entitled to solely rely upon without independent investigation or verification of the accuracy of the contents thereof), executed by an Officer of the Company, substantially in the form of Exhibit F hereto, setting forth the amount of PIK Interest to be paid on such Interest Payment Date and directing the Trustee and the Paying Agent (if other than the Trustee) to increase the principal amount of the Global Securities by an amount equal to the interest payable as PIK Interest, rounded up to the nearest whole dollar, for the relevant Interest Period on the principal amount of such Global Security as of the relevant record date for such Interest Payment Date, to the credit of the Holders of such Global Security on such record date, pro rata in accordance with their interests, and an adjustment shall be made on the books and records of the Trustee and Registrar with respect to such Global Security to reflect such increase. On any Interest Payment Date on which the Company pays PIK Interest with respect to a Definitive Security or otherwise issues definitive PIK Securities, the principal amount of any definitive PIK Securities issued to any Holder, for the relevant Interest Period on the principal amount of such Security as of the relevant record date for such Interest Payment Date, shall be rounded up to the nearest whole dollar.

For each of the Interest Periods, the Company may elect, no later than 15 days prior to the relevant Interest Payment Date, to pay interest in cash or in the form of PIK Interest and, if the Company elects to pay PIK Interest in respect of an Interest Period, the Company shall deliver to the Trustee and the Paying Agent written notification, executed by an Officer of the Company, substantially in the form of Exhibit E, setting forth such election no later than 15 days prior to the relevant Interest Payment Date (and the Trustee shall furnish a copy thereof to the Holders in accordance with the applicable procedures).

Section 2.03. *Execution and Authentication*. On the Issue Date, the Trustee shall authenticate and make available for delivery upon a written order of the Issuer signed by one Officer (an "**Authentication Order**") Original Securities for original issue on the Issue Date in an aggregate principal amount of $232,394,231. In addition, subject to the terms of this Indenture, the Trustee shall upon receipt of an Authentication Order authenticate and deliver (1) Additional Securities issued after the Issue Date in an aggregate principal amount to be determined at the time of issuance and specified therein and (2) PIK Securities issued in connection with a PIK Payment with respect to a Global Security. Such Authentication Order shall specify the amount of the Securities to be authenticated, the date on which the original issue of Securities is to be authenticated, and the registered holder of each of the Securities and delivery instructions. Notwithstanding anything to the contrary in this Indenture or the Appendix, any issuance of Additional Securities or any increase in the principal amount of the Global Securities in order to evidence PIK Interest after the Issue Date shall be in a principal amount of at least $1.00 and integral multiples of $1.00 in excess thereof. It is understood that, notwithstanding anything to the contrary in this Indenture, only an Authentication Order and an Officer's Certificate and not an Opinion of Counsel is required for the Trustee to authenticate Original Securities.

One Officer shall sign the Securities for the Issuer by manual, facsimile or PDF signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be entitled to any benefit under this Indenture or valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee may appoint one or more authenticating agents (an "**Authenticating Agent**") reasonably acceptable to the Issuer to authenticate the Securities. Unless limited by the terms of such appointment, an Authenticating Agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An Authenticating Agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

Section 2.04. *Registrar and Paying Agent*. (a) The Issuer shall maintain (i) an office or agency where Securities may be presented for registration of transfer or for exchange (the "**Registrar**") and (ii) a Paying Agent. The Registrar shall keep a register of the Securities and of their transfer and exchange (the "**Securities Register**") and, with respect to Global Securities, keep such Securities Register in accordance with the rules and procedures of DTC. The Issuer may have one or more co-registrars and one or more additional paying agents. The term "Registrar" includes the Registrar and any co-registrars. The term "Paying Agent" includes the Paying Agent and any additional paying agents. The Issuer initially appoints the Trustee as Registrar, Paying Agent and the

Securities Custodian with respect to the Global Securities. The Issuer initially appoints DTC to act as Depositary with respect to the Global Securities.

(b) The Issuer shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee in writing of the name and address of any such agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee may act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06.

(c) The Issuer may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent and to the Trustee and without prior notice to any Holder; *provided, however*, that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Issuer and such successor Registrar or Paying Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Registrar or Paying Agent may resign at any time upon written notice to the Issuer and the Trustee; *provided, however*, that the Trustee may resign as Paying Agent or Registrar only if the Trustee also resigns as Trustee in accordance with Section 7.07.

Section 2.05. *Paying Agent to Hold Money in Trust*. Prior to or on each due date of the principal of and interest on any Security, the Issuer shall deposit with a Paying Agent a sum sufficient to pay such principal and interest when so becoming due. The Issuer shall require each Paying Agent (other than the Trustee) to agree in writing that a Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by a Paying Agent for the payment of principal of and interest on the Securities, and shall notify the Trustee in writing of any Default by the Issuer in making any such payment. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section, a Paying Agent shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee shall serve as Paying Agent for the Securities. For the avoidance of doubt, the Paying Agent shall be held harmless and have no liability with respect to payments or disbursements to be made by the Paying Agent until the Paying Agent has confirmed receipt of funds sufficient to make such relevant payment.

Section 2.06. *Holder Lists*. The Registrar shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Issuer shall furnish, or cause the Registrar to furnish, to the Trustee, in writing at least five Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

Section 2.07. *Transfer and Exchange*. The Securities shall be issued in registered form and shall be transferable only upon the surrender of a Security for registration of transfer and in compliance with the Appendix. When a Security is presented to the Registrar with a request to register a transfer, the Registrar shall register the transfer as requested if its requirements therefor are met. When Securities are presented to the Registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit registration of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Securities at the Registrar's request. The Issuer may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges in connection with any transfer or exchange pursuant to this Section. The Issuer shall not be required to make, and the Registrar need not register, transfers or exchanges of any Securities (i) selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed) (ii) for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed or (iii) between a regular record date and the next succeeding interest payment date.

Prior to the due presentation for registration of transfer of any Security, the Issuer, the Guarantors, the Trustee, the Paying Agent and the Registrar may deem and treat the Person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Issuer, any Guarantor, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

Any Holder of a beneficial interest in a Global Security shall, by acceptance of such beneficial interest, agree that transfers of beneficial interests in such Global Security may be effected only through a book-entry system maintained by (a) the Holder of such Global Security (or its agent) or (b) any Holder of a beneficial interest in such Global Security, and that ownership of a beneficial interest in such Global Security shall be required to be reflected in a book entry.

All Securities issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

Section 2.08. *Replacement Securities*. If a mutilated Security is surrendered to the Registrar or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall authenticate a replacement Security if the requirements of Section 8-405 of the New York UCC are met, such that the Holder (a) satisfies the Issuer or the Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Issuer or the Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303 of the New York UCC (a "**protected purchaser**") and (c) satisfies any other reasonable requirements of the Trustee. Such Holder shall furnish an indemnity bond sufficient in the judgment of (i) the Trustee to protect the Trustee (in all

capacities hereunder) or (ii) the Issuer to protect the Issuer, the Trustee, the Paying Agent and the Registrar from any loss that any of them may suffer if a Security is replaced. The Issuer and the Trustee may charge the Holder for their expenses in replacing a Security (including without limitation, attorneys' fees and disbursements in replacing such Security). In the event any such mutilated, lost, destroyed or wrongfully taken Security has become or is about to become due and payable, the Issuer in its discretion may pay such Security instead of issuing a new Security in replacement thereof.

Every replacement Security is an additional obligation of the Issuer.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken Securities.

Section 2.09. *Outstanding Securities*. Securities outstanding at any time are all Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those paid pursuant to Section 2.08 and those described in this Section as not outstanding. Subject to Section 12.04, a Security does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Security.

If a Security is replaced pursuant to Section 2.08, it ceases to be outstanding unless the Trustee and the Issuer receive proof satisfactory to them that the replaced Security is held by a protected purchaser.

If a Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or Maturity Date or any date of purchase pursuant to an offer to purchase money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed, maturing or purchased, as the case may be, and no Paying Agent is prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

Section 2.10. *Temporary Securities*. In the event that Definitive Securities are to be issued under the terms of this Indenture, until such Definitive Securities are ready for delivery, the Issuer may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Issuer considers appropriate for temporary Securities. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate Definitive Securities and make them available for delivery in exchange for temporary Securities upon surrender of such temporary Securities at the office or agency of the Issuer, without charge to the Holder. Until such exchange, temporary Securities shall be entitled to the same rights, benefits and privileges as Definitive Securities.

Section 2.11. *Cancellation*. The Issuer at any time may deliver Securities to the Trustee for cancellation. The Registrar and each Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or

payment. The Trustee, or at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Securities surrendered for registration of transfer, exchange, payment or cancellation and shall dispose of canceled Securities in accordance with its customary procedures (subject to the record retention requirement of the Exchange Act). The Issuer may not issue new Securities to replace Securities it has redeemed, paid or delivered to the Trustee for cancellation. The Trustee shall not authenticate Securities in place of canceled Securities other than pursuant to the terms of this Indenture.

Section 2.12. Defaulted Interest. If the Issuer defaults in a payment of interest on the Securities, the Issuer shall pay the defaulted interest then borne by the Securities (*plus* interest on such defaulted interest to the extent lawful) in cash or in payment-in-kind and in any lawful manner. The Issuer may pay the defaulted interest to the Persons who are Holders on a subsequent special record date. The Issuer shall fix or cause to be fixed any such special record date and payment and shall promptly mail or cause to be sent, or otherwise deliver in accordance with the procedures of DTC, to each affected Holder and the Trustee a notice that states the special record date, the payment date and the amount of defaulted interest to be paid.

Section 2.13. *CUSIP Numbers, ISINs, etc.* The Issuer in issuing the Securities may use CUSIP numbers, ISINs and "Common Code" numbers (if then generally in use) and, if so, the Trustee shall use CUSIP numbers, ISINs and "Common Code" numbers in notices of redemption as a convenience to Holders; *provided, however*, that any such notice may state that no representation is made as to the correctness of such numbers, either as printed on the Securities or as contained in any notice of a redemption that reliance may be placed only on the other identification numbers printed on the Securities and that any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer shall promptly advise the Trustee in writing of any change in the CUSIP numbers, ISINs and "Common Code" numbers.

Section 2.14. *Calculation of Principal Amount of Securities.* The aggregate principal amount of the Securities, at any date of determination, shall be the principal amount of the Securities outstanding at such date of determination. With respect to any matter requiring consent, waiver, approval or other action of the Holders of a specified percentage of the principal amount of all the Securities, such percentage shall be calculated, on the relevant date of determination, by dividing (a) the principal amount, as of such date of determination, of Securities, the Holders of which have so consented (other than the Securities beneficially owned by the Issuer or any of its Restricted Subsidiaries), by (b) the aggregate principal amount, as of such date of determination, of the Securities then outstanding, in each case, as determined in accordance with the preceding sentence, Section 2.09 and Section 12.04 of this Indenture. Any such calculation made pursuant to this Section 2.14 shall be made by the Issuer and delivered to the Trustee pursuant to an Officer's Certificate.

Section 2.15. *Tax Treatment.* The Notes Parties intend to treat the Securities as indebtedness for U.S. federal, state and local income tax purposes in accordance with its form . Each of the Notes Parties and (by acquiring the Securities) each Holder agrees that

it will (a) treat the Securities as indebtedness for U.S. federal, state and local income tax purposes, (b) determine the issue price of the Original Securities under section 1274(a)(1) of the Code and treat the Securities as indebtedness that is not governed by the rules set out in Treasury Regulations section 1.1275-4 if (i) the Original Securities are issued in accordance with the Plan and (ii) (A) at least one of the Securities and the New Common Stock (as defined in the Plan), (B) the subscription rights (as described in the Plan) and (C) at least one of the DIP Claims, the Fixed Rate Notes Claims and the Floating Rate Notes Claims (each as defined in the Plan) are not, in each case, "publicly traded" as described in Treasury Regulations section 1.1273-2(f) during the 31-day period ending 15 days after the Issue Date and (c) take no position inconsistent with the foregoing, unless otherwise required by a final determination to the contrary within the meaning of Section 1313(a) of the Code.

ARTICLE 3
REDEMPTION

Section 3.01. *Redemption*. The Securities may be redeemed, in whole, or from time to time in part, subject to the conditions and at the redemption prices set forth in Section 3.09, together with accrued and unpaid interest to, but excluding, the redemption date.

Section 3.02. *Applicability of Article*. Redemption of Securities at the election of the Issuer or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article.

Section 3.03. *Notices to Trustee*. If the Issuer elects to redeem Securities pursuant to the optional redemption provisions of Section 3.09, it shall notify the Trustee in writing of (i) the paragraph or subparagraph of such Security and the Section of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Securities to be redeemed and (iv) the redemption price. The Issuer shall give notice to the Trustee provided for in this paragraph at least two (2) Business Days (or such shorter period as shall be acceptable to the Trustee) before notice of redemption is required to be delivered or mailed to Holders pursuant to Section 3.05 but not more than 60 days before a redemption date if the redemption is pursuant to Section 3.09; *provided*, that notice may be given more than 60 days prior to a redemption date if the notice is (x) issued in connection with Section 8.01 or (y) conditioned upon satisfaction (or waiver by the Issuer in its sole discretion) of one or more conditions precedent and any or all such conditions shall not have been satisfied (or waived by the Issuer in its sole discretion). Such notice shall be accompanied by an Officer's Certificate from the Issuer to the effect that such redemption will comply with the conditions herein. Any such notice may be canceled at any time prior to notice of such redemption being sent to any Holder and shall thereby be void and of no effect.

Section 3.04. *Selection of Securities to Be Redeemed*. In the case of any partial redemption or purchase of Global Securities, the Global Securities to be redeemed or purchased shall be selected on a pro rata pass-through distribution basis and otherwise in accordance with the procedures of DTC, and, in the case of any partial redemption or

purchase of Definitive Securities, the Trustee shall select the Definitive Securities to be redeemed or purchased on a pro rata basis, to the extent practicable or, to the extent that selection on a pro rata basis is not practicable, by lot or such other method as the Trustee shall deem fair and appropriate; *provided* that, in each case, no Securities of $1.00 or less shall be redeemed or purchased in part and all redemptions or purchases shall be made in increments of $1.00. The Trustee shall make the selection from outstanding Securities not previously called for redemption. The Trustee may select for redemption portions of the principal of Securities that have denominations larger than $1.00. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Issuer promptly of the Definitive Securities or portions of Definitive Securities to be redeemed.

After the redemption date, upon surrender of the Definitive Security to be redeemed in part only, a new Definitive Security or Securities in principal amount equal to the unredeemed portion of the original Security representing the same Indebtedness to the extent not redeemed shall be issued in the name of the Holder of the Definitive Securities upon cancellation of the Original Security (or appropriate book entries shall be made to reflect such partial redemption).

Section 3.05. *Notice of Optional Redemption*. (a) At least 10 days but not more than 60 days before a redemption date pursuant to the optional redemption provisions of Section 3.09, the Issuer shall send electronically, mail or cause to be mailed by first-class mail a notice of redemption to each Holder whose Securities are to be redeemed (except that such notice of redemption may be mailed more than 60 days prior to a redemption date if the notice is (i) issued in connection with Section 8.01 or (ii) conditioned upon satisfaction (or waiver by the Issuer in its sole discretion) of one or more conditions precedent and any or all such conditions shall not have been satisfied (or waived by the Issuer in its sole discretion)).

Any such notice shall identify the Securities to be redeemed and shall state:

(i) the redemption date;

(ii) the redemption price and the amount of accrued and unpaid interest to the redemption date;

(iii) the paragraph or subparagraph of the Securities and/or Section of this Indenture pursuant to which the Securities called for redemption are being redeemed;

(iv) the name and address of the Paying Agent;

(v) that Definitive Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price, *plus* accrued interest;

(vi) if fewer than all the outstanding Securities are to be redeemed, the principal amounts of the particular Securities to be redeemed, the aggregate principal amount of Securities to be redeemed and the aggregate

principal amount of Securities to be outstanding after such partial redemption;

(vii) any condition to such redemption;

(viii) that, unless the Issuer defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Securities (or portion thereof) called for redemption ceases to accrue on and after the redemption date;

(ix) the CUSIP number, ISIN and/or "Common Code" number, if any, printed on the Securities being redeemed; and

(x) that no representation is made as to the correctness or accuracy of the CUSIP number or ISIN and/or "Common Code" number, if any, listed in such notice or printed on the Securities.

(b) At the Issuer's written request, the Trustee shall give the notice of redemption in the Issuer's name and at the Issuer's expense. In such event, the Issuer shall provide the Trustee with the information required by this Section at least 2 Business Days (or such shorter period as shall be acceptable to the Trustee) prior to the date such notice is to be provided to Holders.

(c) Notice of any redemption of Securities described above may be given prior to such redemption, and any such redemption or notice may, at the Issuer's sole discretion, be subject to one or more conditions precedent, and any notice of redemption made in connection with a related transaction or event may, at the Issuer's discretion, be given prior to the completion or the occurrence thereof. Any such notice may provide that redemptions made pursuant to different provisions will have different redemption dates. In addition, if such redemption is subject to satisfaction of one or more conditions precedent, such notice shall state that, in the Issuer's sole discretion, the redemption date may be delayed until such time (including more than 60 days after the date the notice of redemption was mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied (or waived by the Issuer in its sole discretion), or that such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived, in the Issuer's sole discretion) by the redemption date, or by the redemption date as so delayed, or that such notice may be rescinded at any time in the Issuer's discretion if in the good faith judgment of the Issuer any or all of such conditions will not be satisfied. If any such condition precedent has not been satisfied, the Issuer shall provide written notice to the Trustee prior to the close of business on the Business Day immediately prior to the redemption date (or such shorter period as may be acceptable to the Trustee). Upon receipt of such notice, the notice of redemption shall be rescinded or delayed, and the redemption of the Securities shall be rescinded or delayed as provided in such notice. Upon receipt, the Trustee shall deliver such notice to each Holder. In addition, the Issuer may provide in such notice that payment of the redemption price and performance of the

Issuer's obligations with respect to such redemption may be performed by another Person.

Section 3.06. *Effect of Notice of Redemption*. Once notice of redemption is mailed or sent in accordance with Section 3.05, Securities called for redemption become due and payable on the redemption date and at the redemption price stated in the notice (except as described in Section 3.05). Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price stated in the notice, plus accrued interest, to, but not including, the redemption date; *provided, however*, that if the redemption date is after a regular record date and on or prior to the interest payment date, the accrued interest shall be payable to the Holder of the redeemed Securities registered on the relevant record date. The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

Section 3.07. *Deposit of Redemption Price*. With respect to any Securities, prior to 11:00 a.m., New York City time, on the redemption date, the Issuer shall deposit with the Paying Agent money sufficient to pay the redemption price of and accrued interest on all Securities or portions thereof to be redeemed on that date other than Securities or portions of Securities called for redemption that have been delivered by the Issuer to the Trustee for cancellation. On and after the redemption date, interest shall cease to accrue on Securities or portions thereof called for redemption so long as the Issuer has deposited with the Paying Agent funds sufficient to pay the principal of, *plus* accrued and unpaid interest on, the Securities to be redeemed, unless the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture or applicable law. If a Security is redeemed on or after a record date but on or prior to the related interest payment date, then any accrued and unpaid interest to the redemption date shall be paid on the relevant interest payment date to the Person in whose name such Security was registered at the close of business on such record date.

Section 3.08. *Securities Redeemed in Part*. Upon surrender of a Definitive Security that is redeemed in part, the Issuer shall execute and the Trustee shall authenticate for the Holder (at the Issuer's expense) a new Definitive Security equal in principal amount to the unredeemed portion of the Definitive Security surrendered; *provided* that no Securities of $1.00 or less shall be redeemed in part and all redemptions shall be made in increments of $1.00. It is understood that, notwithstanding anything in this Indenture to the contrary, only an Authentication Order and not an Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate such new Security.

Section 3.09. *Optional Redemption*.

(a) (i) On April 12, 2025 or thereafter, to the extent permitted by the terms of any Senior Lien Indebtedness (including the terms of any applicable Intercreditor

Agreement), the Issuer may, on any one or more occasions, redeem the Securities, in whole or in part, upon notice in accordance with Section 3.05 at the redemption price of 100% (expressed as a percentage of principal amount of the Securities to be redeemed) plus accrued and unpaid interest on the Securities, if any, to, but excluding, the applicable date of redemption subject to the right of the Holder of record on the relevant record date to receive interest due on the relevant interest payment date that is on or prior to the redemption date.

(ii) Any redemption pursuant to this Section 3.09(a) shall be made pursuant to the provisions of Sections 3.01 through 3.08.

(b) At any time prior to April 12, 2025, to the extent permitted by the terms of any Senior Lien Indebtedness (including the terms of any applicable Intercreditor Agreement),the Issuer may redeem all or a part of the Securities, at its option, at any time or from time to time, upon notice in accordance with Section 3.05 of this Indenture or otherwise delivered in accordance with the procedures of DTC, at a redemption price equal to 100% of the principal amount of the Securities redeemed plus the Applicable Premium as of, and accrued and unpaid interest to, but not including, the applicable redemption date (subject to the right of the Holders of record on the relevant record date to receive interest due on the relevant interest payment date that is on or prior to the redemption date).

(c) Notwithstanding the foregoing, to the extent permitted by the terms of any Senior Lien Indebtedness (including the terms of any applicable Intercreditor Agreement), in connection with any Change of Control Offer or other tender offer (to the extent such other tender offer is for all of the Securities), if Holders of not less than 90.0% in aggregate principal amount of the outstanding Securities validly tender and do not withdraw such Securities in such Change of Control Offer or other tender offer and the Company, or any other Person making such Change of Control Offer in lieu of the Company as described above, purchases all of the Securities validly tendered and not validly withdrawn by such Holders, the Company or such other Person will have the right, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase pursuant to the Change of Control Offer or other tender offer, as applicable, to redeem all Securities that remain outstanding following such purchase at a redemption price in cash equal to the applicable Change of Control Payment price or other tender offer price plus, to the extent not included in the Change of Control Offer or other tender offer payment, accrued and unpaid interest, if any, to, but not including, the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on an interest payment date that is on or prior to the redemption date).

ARTICLE 4
COVENANTS

Section 4.01. *Payment of Securities*. The Issuer shall promptly pay the principal of, premium, if any, and interest on the Securities on the dates and in the manner provided in the Securities and in this Indenture. An installment of principal or interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds as of 11:00 a.m., New York City time, money sufficient to pay all principal and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture.

The Issuer shall pay interest on overdue principal at the rate specified therefor in the Securities, and it shall pay interest on overdue installments of interest at the same rate borne by the Securities to the extent lawful.

Section 4.02. *Reports and Other Information*. (a) So long as any Securities are outstanding, the Issuer will furnish to the Trustee within 15 days after each of the periods set forth below:

(i) within 90 days after the end of each fiscal year or, solely in the case of the Fiscal Year ending December 31, 2023, on or before September 30, 2024 (but, in each case, no later than the date the following items are delivered or are required to be delivered to lenders and/or lender-representatives in connection with other Indebtedness), annual reports containing substantially all of the information that would have been required to be contained in an Annual Report on Form 10-K under the Exchange Act of the Issuer, or any successor or comparable form, containing the information required to be contained therein, or required in such successor or comparable form as if the Issuer had been a reporting company under the Exchange Act for such period, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" with respect to the periods presented and a report on the annual financial statements by the Issuer's independent registered public accounting firm;

(ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year (or 75 days in the case of the Fiscal Quarter ending September 30, 2023) commencing with the Fiscal Quarter ending September 30, 2023, quarterly reports containing substantially all of the information that would have been required to be contained in a Quarterly Report on Form 10-Q of the Issuer containing all quarterly information that would be required to be contained in Form 10-Q, or any successor or comparable form as if the Issuer had been a reporting company under the Exchange Act for such period, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations," subject to normal year-end adjustments and the absence of footnotes; and

(iii) promptly from time to time after the occurrence of an event required to be therein reported, such other reports on Form 8-K pursuant to Items 1, 2 and 4, Items 5.01, 5.02(a), (b) and (c) and Item 5.03 of Form 8-K, or any successor or comparable form as if the Issuer had been a reporting company under the Exchange Act for such period; *provided, however*, that no such report or information will be required to be so furnished if the Issuer determines in good faith that such event is not material to the Holders of the Securities or the business, assets, operations or financial condition of the Issuer and its Restricted Subsidiaries, taken as a whole; in each case, in a manner that complies in all material respects with the requirements specified in such form, *provided*, that such reports required pursuant to clauses (i), (ii) and (iii) above (a) shall not be required to comply with Section 302, Section 404 or 906 of the Sarbanes-Oxley Act of 2002, as amended, or related Items 307 and 308 of Regulation S-K promulgated by the SEC, Regulation G or Item 10(e) of Regulation S-K (with respect to any non-GAAP financial measures contained therein), (b) shall not be required to comply with Items 402, 403, 406 and 407 of Regulation S-K promulgated by the SEC, (c) shall not be required to comply with Rule 3-05, Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X promulgated by the SEC, (d) shall not be required to include any exhibits that would have been required to be filed pursuant to Item 601 of Regulation S-K promulgated by the SEC, (e) shall not be required to comply with any conflict minerals rules of the SEC or similar rules and regulations of any other government agency, (f) shall not be required to present compensation, employment arrangements, related party or beneficial ownership information, (g) shall not be required to contain any segment reporting, (h) shall not be required to disclose any trade secrets and other proprietary information and (i) shall not be required to include financial statements in interactive data format using the eXtensible Business Reporting Language.

(b) If the Issuer has designated any of its Subsidiaries as an Unrestricted Subsidiary and if any such Unrestricted Subsidiary or group of Unrestricted Subsidiaries, if taken together as one Subsidiary, would constitute a Significant Subsidiary of the Issuer, then the annual and quarterly information required above shall include a presentation of selected financial metrics (in the Issuer's sole discretion) of such Unrestricted Subsidiaries as a group in the "Management's Discussion and Analysis of Financial Condition and Results of Operations."

(c) In addition, to the extent not satisfied by the foregoing, the Issuer will agree that, for so long as any Securities are outstanding, it will furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(d) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates with respect thereto). The Trustee shall have no responsibility for the filing,

timeliness or content of such reports. The Trustee shall have no obligation whatsoever to determine whether or not any information has been posted. Additionally, the Trustee shall not be obligated to monitor or confirm, on a continuing basis or otherwise, the Issuer's compliance with the covenants or with respect to any reports or other documents filed with the SEC via the EDGAR (or a successor) filing system (if applicable) or any website or data site under this Indenture.

(e) The subsequent filing or making available of any materials required by Section 4.02(a) shall be deemed automatically to cure any Default or Event of Default resulting from the failure to file or make available such materials within the required time frame.

(f) The obligations in Section 4.02(a) may be satisfied by furnishing the information of the Issuer or any Parent Company of the Issuer, *provided* that to the extent such information relates to the Parent Company, the financial statements shall be shall be accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Parent Company, on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a standalone basis, on the other hand, which consolidating information may be unaudited.

(g) The Issuer will be deemed to have satisfied the reporting requirements of Section 4.02(a) if (i) at any time that the Issuer or any Parent Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or is a voluntary filer, the Issuer or any Parent Company has filed such reports containing such information with the SEC via the EDGAR (or a successor) filing system or (ii) at any time that the Issuer or any Parent Company does not file such reports with the SEC via the EDGAR (or a successor) filing system, the Issuer or any Parent Company posts such reports required by Section 4.02(a) on the Issuer's website (or a password protected online data system). Access to any such reports on the Issuer's website (or a password protected online data system) may be password protected; *provided* that the Issuer or the Parent Company makes reasonable efforts to notify the Trustee and provide the Trustee with access, and, upon request, provides to bona fide securities analysts and bona fide prospective investors, the password and other information required to access such reports on its website (or a password protected online data system). Any Person who requests such information from the Issuer will be required to represent to and agree with the Issuer (and by accepting such information, such Person will be deemed to have represented to and agreed with the Issuer) to the Issuer's good faith satisfaction that:

(i) it is a Holder, a bona fide prospective investor in the Securities, a bona fide market maker (or intended market maker) with respect to the Securities or a bona fide securities analyst, as applicable;

(ii) if it is a prospective purchaser of the Securities, it is (A) a "qualified institutional buyer," within the meaning of Rule 144A, (B) a non-U.S. person, within the meaning of Regulation S, or (C) an institutional "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act;

(iii) it will not use the information in violation of applicable securities laws or regulations;

(iv) it will not communicate the information to any Person and will keep the information confidential;

(v) it will use such information only in connection with evaluating an investment in the Securities (or, if it is a bona fide market maker or intended market maker, only in connection with making a market in the Securities or, if it is a bona fide securities analyst, for preparing analysis for Holders and prospective purchasers of the Securities that otherwise have access to the information in compliance with this covenant); and

(vi) (A) will not use such information in any manner intended to compete with the business of the Issuer and (B) is not a Person (which includes such Person's Affiliates, other than the Affiliates of a bona fide securities research analyst with whom such research analyst does not share such information) that is principally engaged in or derives a significant portion of its revenues from operating or owning a business which is substantially similar to the business engaged in by the Issuer and its Subsidiaries on the Issue Date.

Section 4.03. *Indebtedness*. The Issuer shall not, nor shall it permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or otherwise become or remain liable with respect to any Indebtedness, except:

(a) Indebtedness incurred pursuant to any ABL Facility by any "Borrower" under the ABL Credit Agreement; *provided* that immediately after giving effect to any such incurrence, the aggregate principal amount of Indebtedness consisting of loans made, and letters of credit issued, thereunder incurred under this clause (a) and then outstanding does not exceed the greater of (A) $662,110,550 and (B) the Borrowing Base (plus any protective advances contemplated by the ABL Credit Agreement (and expressly subject to Section 4.12));

(b) Indebtedness of any "Borrower" under the ABL Credit Agreement to any Restricted Subsidiary or the Issuer and of any Restricted Subsidiary to the Issuer or any Restricted Subsidiary; *provided* that in the case of any Indebtedness of a Restricted Subsidiary that is not a Guarantor owing to a Notes Party, such Indebtedness shall (x) be permitted as an Investment by Section 4.08 or (y) be of the type described in clause (ii) of the parenthetical under clause (c) of the definition of "Investment"; *provided, further*, that (A) all such Indebtedness shall be evidenced by an intercompany note or similar written agreement and shall be subject to a Second Priority Lien pursuant to the Security Agreement and (B) all such Indebtedness of any Notes Party to any Restricted Subsidiary that is not a Notes Party must be expressly subordinated to the Obligations of such Notes Party;

(c) the incurrence by the Issuer and any Guarantor of Indebtedness represented by the Securities (including any Guarantee), including any Indebtedness thereunder representing capitalized accrued interest, other than any Additional Securities;

(d) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price or similar obligations (including contingent earnout obligations) incurred in connection with asset sales or other sales or Permitted Acquisitions or other purchases of assets, or Indebtedness arising from guaranties, letters of credit, surety bonds or performance bonds securing the performance of the Issuer or any applicable Restricted Subsidiary pursuant to such agreements;

(e) Indebtedness which may be deemed to exist pursuant to any performance and completion guaranties or customs, stay, performance, bid, surety, statutory, appeal or other similar obligations incurred in the ordinary course of business or in respect of any letters of credit related thereto;

(f) Indebtedness in respect of Banking Services Obligations and other netting services, overdraft protections, automated clearing-house arrangements, employee credit card programs and similar arrangements and otherwise in connection with Cash management and Deposit Accounts;

(g) (x) guaranties of the obligations of suppliers, customers, franchisees and licensees in the ordinary course of business and consistent with past practice as in effect on the Issue Date and (y) Indebtedness incurred in the ordinary course of business in respect of obligations of any "Borrower" under the ABL Credit Agreement or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services;

(h) Guarantees by any "Borrower" under the ABL Credit Agreement or any Restricted Subsidiary of Indebtedness or other obligations of any "Borrower" under the ABL Credit Agreement or any Restricted Subsidiary with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 4.03 or obligations not prohibited by this Indenture; *provided* that (A) in the case of any Guarantees by a Guarantor of the obligations of a non-Guarantor the related Investment is permitted under Section 4.08, (B) no Guarantee by any Restricted Subsidiary of any Indebtedness permitted under Sections 4.03(a) and (w) shall be permitted unless the guaranteeing party shall have also provided a Guarantee of the Guaranteed Obligations on the terms set forth herein, (C) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Obligations on terms at least as favorable (as reasonably determined by the Parent Borrower) to the Holders as those contained in the subordination of such Indebtedness and (D) any Guarantee by a Restricted Subsidiary that is not a Guarantor of any Indebtedness permitted under Sections 4.03(r) shall only be permitted if such Guarantee meets the requirements of such Sections;

(i) Indebtedness existing on the Issue Date; *provided* that, in the case of Indebtedness of any "Borrower" under the ABL Credit Agreement to any Restricted Subsidiary and of any Restricted Subsidiary to any "Borrower" under the ABL Credit

Agreement or any other Restricted Subsidiary, (A) all such Indebtedness owed to a Guarantor shall be evidenced by an intercompany note or similar written agreement and such Guarantor's interest therein shall be subject to a Second Priority Lien pursuant to the Security Agreement (and all such Indebtedness of any Guarantor owed to any Restricted Subsidiary that is not a Guarantor must be expressly subordinated to the Obligations of such Guarantor on the terms set forth therein);

(j) Indebtedness of Restricted Subsidiaries that are not Guarantors; *provided* that the aggregate outstanding principal amount of such Indebtedness at any time outstanding shall not exceed $57,500,000 or, after the date that the audited financial statements have been received by the Trustee pursuant to Section 4.02(a), if greater, 3.45% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements most recently have been delivered pursuant to Section 4.02;

(k) Indebtedness of the Parent Borrower or any Restricted Subsidiary at any time outstanding in an aggregate principal amount not to exceed $86,250,000; *provided* that (i) no Event of Default then exists or would result therefrom, (ii) any such Indebtedness shall not mature or require any scheduled amortization or scheduled payments of principal and is not subject to mandatory redemption, repurchase, repayment or sinking fund obligation (other than AHYDO payments, customary offers to repurchase on a change of control, asset sale or casualty event and customary acceleration rights after an event of default), in each case, prior to the date that is 91 days after the Maturity Date, (iii) the terms of such Indebtedness (excluding pricing, fees, rate floors, optional prepayment or redemption terms (and, if applicable, subordination terms)), are not, taken as a whole (as reasonably determined by the Parent Borrower), materially more favorable to the lenders providing such Indebtedness than those applicable to this Indenture (other than any covenants or any other provisions applicable only to periods after the Maturity Date), (iv) the Parent Borrower shall have delivered a certificate of a Financial Officer of the Parent Borrower to the Trustee certifying as to compliance with the requirements of clauses (i) through (iii) of this clause (k) and (v) such Indebtedness shall be subject to an applicable Intercreditor Agreement;

(l) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(m) Indebtedness of the Parent Borrower or any Restricted Subsidiary with respect to Capital Leases and purchase money Indebtedness incurred prior to or within 270 days of the acquisition or lease or completion of construction, repair of, improvement to or installation of the assets acquired in connection with the incurrence of such Indebtedness in an aggregate principal amount at any time outstanding not to exceed $40,250,000 or, after the date that the audited financial statements have been received by the Trustee pursuant to Section 4.02, if greater, 2.30% of Consolidated Total Assets as of the last day of the last Test Period for which financial statements most recently have been delivered pursuant to Section 4.02;

(n) Indebtedness of a Person that becomes a Restricted Subsidiary or Indebtedness assumed in connection with an acquisition permitted hereunder after the Issue Date; *provided* that (i) such Indebtedness existed at the time such Person became a Restricted Subsidiary or the assets subject to such Indebtedness were acquired and was not created in anticipation thereof, (ii) no Event of Default then exists or would result therefrom, (iii) the Fixed Charge Coverage Ratio is at least 1.00 to 1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 4.02, (iv) the Total Leverage Ratio would not exceed 6.90:1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 4.02 (*provided* that, for purposes of calculating the Total Leverage Ratio under this clause (n), in no event shall the Unrestricted Cash Amount include the proceeds of such Indebtedness being incurred), (v) such Indebtedness was not incurred in contemplation of such acquisition, (vi) any such Indebtedness shall not mature or require any scheduled amortization or scheduled payments of principal and is not subject to mandatory redemption, repurchase, repayment or sinking fund obligation (other than AHYDO payments, customary offers to repurchase on a change of control, asset sale or casualty event and customary acceleration rights after an event of default), in each case, prior to the date that is 91 days after the stated Maturity Date, (vii) the terms of such Indebtedness (excluding pricing, fees, rate floors, optional prepayment or redemption terms (and, if applicable, subordination terms)), are not, taken as a whole (as reasonably determined by the Parent Borrower), materially more favorable to the lenders providing such Indebtedness than those applicable to the Securities (other than any covenants or any other provisions applicable only to periods after the Maturity Date) and (viii) the Parent Borrower shall have delivered an Officer's Certificate of the Parent Borrower to the Trustee certifying as to compliance with the requirements of clauses (i) through (vii) of this clause (n);

(o) Indebtedness consisting of unsecured subordinated promissory notes, issued by any "Borrower" under the ABL Credit Agreement to any stockholders of any Parent Company or any current or former directors, officers, employees, members of management or consultants of any Parent Company, any "Borrower" under the ABL Credit Agreement or any Restricted Subsidiary (or their Immediate Family Members), to finance the purchase or redemption of Capital Stock of any Parent Company permitted by Section 4.06(a);

(p) The Parent Borrower and its Restricted Subsidiaries may become and remain liable for any Indebtedness replacing, refunding or refinancing any Indebtedness permitted under clauses (c), (i), (n), (q), (r) and (gg) of this Section 4.03 and any subsequent refinancing Indebtedness in respect thereof (in any case, "**Refinancing Indebtedness**"); *provided* that (i) the principal amount of such Indebtedness does not exceed the principal amount of the Indebtedness being refinanced, refunded or replaced, except by an amount equal to unpaid accrued interest and premiums (including tender premiums) thereon plus other reasonable and customary fees and expenses (including upfront fees and original issue discount) reasonably incurred in connection with such refinancing or replacement, (ii) such Indebtedness has a final maturity on or later than (and, in the case of any revolving Indebtedness, shall not require mandatory commitment

reductions prior to) the final maturity of the Indebtedness being refinanced, refunded or replaced and, other than with respect to any revolving Indebtedness, a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being refinanced, refunded or replaced, (iii) the terms of such Indebtedness (excluding pricing, fees, premiums, rate floors, optional prepayment or redemption terms (and, if applicable, subordination terms) and, with respect to clauses (q) (if applicable), security), are not, taken as a whole (as reasonably determined by the Parent Borrower), more favorable to the lenders providing such indebtedness than those applicable to the Indebtedness being refinanced, refunded or replaced (other than any covenants or any other provisions applicable only to periods after the stated Maturity Date), (iv) such Indebtedness is secured only by the same collateral (or assets required to become collateral) and by Permitted Liens of the same or lower priority and by the same collateral (or assets required to become collateral) as the Liens securing the Indebtedness being refinanced, refunded or replaced at the time of such refinancing, refunding or replacement (it being understood, however, that such Indebtedness may go from being secured to being unsecured), (v) such Indebtedness is incurred by any "Borrower" under the ABL Credit Agreement or its Restricted Subsidiary that is the obligor on the Indebtedness being refinanced, refunded or replaced, except to the extent otherwise permitted pursuant to Section 4.03 and Section 4.08, (vi) if the Indebtedness being refinanced, refunded or replaced was originally contractually subordinated to the Obligations in right of payment (or the Liens on any Collateral securing such Indebtedness were originally contractually subordinated to the Liens on such Collateral securing the Securities), such Indebtedness is contractually subordinated to the Obligations in right of payment (or the Liens on such Collateral securing such Indebtedness shall be subordinated to the Liens on such Collateral securing the Securities) on terms not less favorable to the Holders than those applicable to the Indebtedness (or Liens, as applicable) being refinanced, refunded or replaced, taken as a whole, (vii) Indebtedness of any "Borrower" under the ABL Credit Agreement or any Restricted Subsidiary shall not refinance Indebtedness of an Unrestricted Subsidiary, (viii) as of the date of incurring such Indebtedness and after giving effect thereto, no Event of Default shall exist or have occurred and be continuing and (ix) if such Indebtedness being refinanced, refunded or replaced is guaranteed, the applicable Refinancing Indebtedness shall not be guaranteed by any Person that is not a Notes Party other than persons who guaranteed the Indebtedness being refinanced, refunded or replaced;

(q) Indebtedness incurred by the Parent Borrower or any Restricted Subsidiary to finance an acquisition permitted hereunder after the Issue Date; *provided* that (i) no Event of Default then exists or would result therefrom, (ii) such Indebtedness shall not mature or require any payment of principal, in each case, prior to the date which is 91 days after the Maturity Date, (iii) the Fixed Charge Coverage Ratio is at least 1.00 to 1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 4.02, (iv) the Total Leverage Ratio would not exceed 6.90:1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 4.02 (*provided* that, for purposes of calculating the Total Leverage Ratio under this clause (q), in no event shall the Unrestricted Cash

Amount include the proceeds of such Indebtedness being incurred), (v) any such Indebtedness shall not mature or require any scheduled amortization or scheduled payments of principal and is not subject to mandatory redemption, repurchase, repayment or sinking fund obligation (other than AHYDO payments, customary offers to repurchase on a change of control, asset sale or casualty event and customary acceleration rights after an event of default), in each case, prior to the date that is 91 days after the stated Maturity Date, (vi) the terms of such Indebtedness (excluding pricing, fees, rate floors, optional prepayment or redemption terms (and, if applicable, subordination terms)), are not, taken as a whole (as reasonably determined by the Parent Borrower), materially more favorable to the lenders providing such Indebtedness than those applicable to the Securities (other than any covenants or any other provisions applicable only to periods after the stated Maturity Date) and (vii) the Parent Borrower shall have delivered an Officer's Certificate of the Parent Borrower to the Trustee certifying as to compliance with the requirements of clauses (i) through (vi) of this clause (q);

(r) senior or subordinated unsecured Indebtedness of the Parent Borrower or any Restricted Subsidiary, so long as, after giving effect thereto, (A) no Default or Event of Default has occurred and is continuing at the time of the incurrence thereof, (B) the Total Leverage Ratio would not exceed 6.90:1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 4.02 (*provided* that, for purposes of calculating the Total Leverage Ratio under this clause (r), in no event shall the Unrestricted Cash Amount include the proceeds of such Indebtedness being incurred), (C) the Fixed Charge Coverage Ratio is at least 1.00 to 1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 4.02 and (D) the Parent Borrower shall have delivered an Officer's Certificate of the Parent Borrower to the Trustee certifying as to compliance with the requirements of clauses (A) through (C) of this clause (r); *provided* that (x) any such Indebtedness shall not mature or require any scheduled amortization or scheduled payments of principal and is not subject to mandatory redemption, repurchase, repayment or sinking fund obligation (other than AHYDO payments, customary offers to repurchase on a change of control, asset sale or casualty event and customary acceleration rights after an event of default), in each case, prior to the date that is 91 days after the stated Maturity Date, (y) the terms of such Indebtedness (excluding pricing, fees, rate floors, optional prepayment or redemption terms (and, if applicable, subordination terms)), are not, taken as a whole (as reasonably determined by the Parent Borrower), materially more favorable to the lenders providing such Indebtedness than those applicable to the Holders (other than any covenants or any other provisions applicable only to periods after the stated Maturity Date) and (z) with respect to Indebtedness incurred under this clause (r) by a non-Notes Party, the aggregate outstanding principal amount of such Indebtedness of Restricted Subsidiaries that are not Notes Parties shall not exceed, $57,500,000 or, after the date that the latest audited financial statements have been received by the Trustee pursuant to Section 4.02, if greater, 3.45% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 4.02;

(s) Indebtedness incurred by the Parent Borrower or any Restricted Subsidiary under any Derivative Transaction entered into for the purpose of hedging risks associated with the Issuer's and its Restricted Subsidiaries' operations and not for speculative purposes;

(t) contingent obligations incurred by the Parent Borrower or any Restricted Subsidiary in respect of corporate leases assigned, sold or otherwise transferred (i) as set forth on Schedule 4.03(t) or (ii) incurred or created after the Issue Date in connection with the sale of retail stores; *provided* that in the case of clause (ii) above all such contingent obligations shall be unsecured and shall not permit a cross-default to this Indenture;

(u) Indebtedness incurred by the Parent Borrower or any Restricted Subsidiary at any time outstanding in an aggregate principal amount not to exceed $57,500,000 or, after the date that the audited financial statements have been received by the Trustee pursuant to Section 4.02, if greater, 3.45% of Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 4.02 at such time;

(v) [Reserved];

(w) Indebtedness incurred in exchange for, and in order to discharge obligations under, Indebtedness existing on the Issue Date pursuant to notes issued by Anagram International, Inc. and Anagram Holdings, LLC and in an aggregate principal amount not to exceed $230,000,000; *provided* that (i) the terms of such Indebtedness shall not be materially more restrictive than the terms of this Indenture, (ii) no Event of Default then exists or would result therefrom, (iii) Anagram International, Inc., Anagram Holdings, LLC and the Subsidiaries thereof (other than any of the immediately foregoing entities that would be classified as an Excluded Subsidiary (unless such entity is a "Notes Party" (or the functional equivalent thereof) for the purpose of any Indebtedness constituting Material Indebtedness) until such time as such entity ceases to be an Excluded Subsidiary) shall become Guarantors of the Securities, (iv) such Indebtedness shall not mature prior to the Maturity Date and (v) such Indebtedness shall be subject to an Intercreditor Agreement on customary terms acceptable to the Collateral Trustee, and to which the Collateral Trustee shall be party;

(x) Indebtedness incurred by the Parent Borrower or any Restricted Subsidiary in connection with Sale and Lease-Back Transactions permitted pursuant to Section 4.10;

(y) [Reserved];

(z) Indebtedness (including obligations in respect of letters of credit or bank guarantees or similar instruments with respect to such Indebtedness) incurred in respect of workers compensation claims, unemployment insurance (including premiums related thereto), other types of social security, pension obligations, vacation pay, health, disability or other employee benefits;

(aa) [Reserved];

(bb) Indebtedness representing (i) deferred compensation to directors, officers, employees, members of management and consultants of the Issuer, any other Parent Company or any Restricted Subsidiary in the ordinary course of business and (ii) deferred compensation or other similar arrangements in connection with the Transactions, any Permitted Acquisition or any Investment permitted hereby;

(cc) [Reserved];

(dd) [Reserved];

(ee) unfunded pension fund and other employee benefit plan obligations and liabilities incurred in the ordinary course of business;

(ff) without duplications of any other Indebtedness, all premiums (if any), interest (including post-petition interest and payment in kind interest), accretion or amortization of original issue discount, fees, expenses and charges with respect to Indebtedness hereunder; and

(gg) the Mudrick Promissory Note.

Notwithstanding anything to the contrary herein, no Indebtedness shall be incurred by the Issuer, any other Parent Company or any Restricted Subsidiary (x) in exchange for, (y) in order to discharge obligations under and/or (z) that otherwise refinances or replaces, in each case, Indebtedness pursuant to notes issued by Anagram International, Inc. and Anagram Holdings, LLC other than as permitted under Section 4.03(w).

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including original issue discount) incurred in connection with such refinancing.

Section 4.04. *Liens*. The Parent Borrower and the Guarantors shall not, nor shall they permit any of their Restricted Subsidiaries to, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document

or instrument in respect of goods or accounts receivable) owned by it, whether now owned or hereafter acquired, or any income or profits therefrom, except Permitted Liens.

Section 4.05. *No Further Negative Pledges*. The Issuer and the Guarantors shall not, nor shall they permit any of their Restricted Subsidiaries to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, except with respect to:

(a) specific property to be sold pursuant to an Asset Sale permitted by Section 4.09;

(b) restrictions contained in any agreement with respect to Indebtedness permitted by Section 4.03(m) or Section 4.03(n) that is secured by a Permitted Lien, but only if such agreement applies solely to the specific asset or assets to which such Permitted Lien applies;

(c) restrictions contained in the ABL Credit Agreement and the documentation governing Indebtedness permitted by clauses (q), (r), (u) and (w) of Section 4.03;

(d) restrictions by reason of customary provisions restricting assignments, subletting or other transfers (including the granting of any Lien) contained in leases, subleases, licenses, sublicenses and similar agreements entered into in the ordinary course of business (*provided* that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, subleases, licenses, sublicenses or similar agreements, as the case may be);

(e) Permitted Liens and restrictions in the agreements relating thereto that limit the right of the Parent Borrower or any of its Restricted Subsidiaries to dispose of or transfer the assets subject to such Liens;

(f) provisions limiting the disposition or distribution of assets or property in joint venture agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, which limitation is applicable only to the assets that are the subject of such agreements;

(g) any encumbrance or restriction assumed in connection with an acquisition of property or new Restricted Subsidiaries, so long as such encumbrance or restriction relates solely to the property so acquired and was not created in connection with or in anticipation of such acquisition;

(h) restrictions imposed by customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements that restrict the transfer of ownership interests in such partnership, limited liability company, joint venture or similar Person;

(i) restrictions on Cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;

(j) restrictions set forth in documents which exist on the Issue Date; and

(k) restrictions or encumbrances imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (j) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Issuer, no more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 4.06. *Restricted Payments; Certain Payments of Indebtedness*. (a) The Parent Borrower shall not pay or make, directly or indirectly, any Restricted Payment, except that:

(i) the Parent Borrower may make Restricted Payments to the extent necessary to permit any Parent Company;

(A) to pay (x) general administrative costs and expenses (including corporate overhead, legal or similar expenses) and franchise fees and taxes and similar fees, taxes and expenses required to maintain the organizational existence of such Parent Company, in each case, which are reasonable and customary and incurred in the ordinary course of business, plus any reasonable and customary indemnification claims made by directors, officers, members of management or employees of any Parent Company, in each case, to the extent attributable to the ownership or operations of any of PC Intermediate, any "Borrower" under the ABL Credit Agreement and the Restricted Subsidiaries and (y) without duplication of preceding clause (x), any Public Company Costs;

(B) to discharge, when and as due, tax liabilities of Issuer, or of any person that is a member of any consolidated, combined or similar income tax group of which Issuer is a member;

(C) to pay audit and other accounting and reporting expenses at such Parent Company to the extent relating to the ownership or operations of any "Borrower" under the ABL Credit Agreement and the Restricted Subsidiaries;

(D) for the payment of insurance premiums to the extent relating to the ownership or operations of any "Borrower" under the ABL Credit Agreement and the Restricted Subsidiaries;

(E) pay fees and expenses related to debt or equity offerings, investments or acquisitions permitted by this Indenture (whether or not consummated);

(F) to pay the consideration to finance any Investment permitted under Section 4.08 (*provided* that (x) such Restricted Payments under this clause (a)(i)(F) shall be made substantially concurrently with the closing of such Investment and (y) such Parent Company shall, promptly following the closing thereof, cause all such property acquired to be contributed to any "Borrower" under the ABL Credit Agreement or one of the Restricted Subsidiaries, or the merger or amalgamation of the Person formed or acquired into any "Borrower" under the ABL Credit Agreement or one of the Restricted Subsidiaries, in order to consummate such Investment in a manner that causes such Investment to comply with the applicable requirements of Section 4.08 as if undertaken as a direct Investment by such Person or such Restricted Subsidiary); and

(G) without duplication of clause (A)(y) above, to pay customary salary, bonus and other benefits payable to directors, officers, members of management or employees of any Parent Company to the extent such salary, bonuses and other benefits are directly attributable and reasonably allocated to the operations of any "Borrower" under the ABL Credit Agreement and the Restricted Subsidiaries, in each case, so long as such Parent Company applies the amount of any such Restricted Payment for such purpose;

(ii) the Parent Borrower may pay (or make Restricted Payments to allow any Parent Company to pay) for the repurchase, redemption, retirement or other acquisition or retirement for value of Capital Stock of any Parent Company held by any future, present or former employee, director, member of management, officer, manager or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company, any "Borrower" under the ABL Credit Agreement or any Restricted Subsidiary;

(A) in exchange for notes issued pursuant to Section 4.03(o), so long as the aggregate amount of all cash payments made in respect of such notes, together with the aggregate amount of Restricted Payments made (x) pursuant to clause (D) of this clause (ii) below and (y) pursuant to Section 4.06(a)(iv), does not exceed $5,750,000 in any Fiscal Year, which, if not used in any Fiscal Year, may be carried forward to the next subsequent Fiscal Year;

(B) [Reserved];

(C) in exchange for net proceeds of any key-man life insurance policies received during such fiscal year; or

(D) in exchange for Cash and Cash Equivalents in an amount not to exceed, together with (x) the aggregate amount of all cash payments made in respect of notes issued pursuant to Section 4.03(o) and (y) the aggregate amount of Restricted Payments made pursuant to

Section 4.06(a)(iv), $5,750,000 in any Fiscal Year, which, if not used in any Fiscal Year, may be carried forward to the next subsequent Fiscal Year;

(iii) the Parent Borrower may make Restricted Payments; *provided* that at the time they are paid by the Parent Borrower, before and after giving effect to such Restricted Payments under this clause (iii), the Payment Conditions are satisfied;

(iv) the Parent Borrower may make Restricted Payments to any Parent Company to enable such Parent Company to make Cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of such Parent Company in an amount not to exceed, together with (x) the aggregate amount of all cash payments made in respect of notes issued pursuant to Section 4.03(o) and (y) the aggregate amount of all Restricted Payments made pursuant to Section 4.06(a)(ii)(D), $5,750,000 in any Fiscal Year, which, if not used in any Fiscal Year, may be carried forward to the next subsequent Fiscal Year;

(v) [reserved];

(vi) [reserved];

(vii) the Parent Borrower may make Restricted Payments to the Issuer to the extent necessary to permit the Issuer to pay interest, fees, principal and expenses on (1) the Securities and (2) any other permitted Indebtedness of Issuer, in each case, to the extent such payments of interest, fees, principal and expenses are not prohibited under Section 4.06(b);

(viii) the Parent Borrower may make Restricted Payments to (i) redeem, repurchase, retire or otherwise acquire (A) any Capital Stock ("**Treasury Capital Stock**") of the Parent Borrower or any Restricted Subsidiary or (B) Capital Stock of any Parent Company, in the case of each of subclauses (A) and (B) in exchange for, or out of the proceeds of the substantially concurrent sale (other than to the Parent Borrower or a Restricted Subsidiary) of, Capital Stock of the Parent Borrower or any Parent Company to the extent contributed as a common equity contribution to the capital of the Parent Borrower or any Restricted Subsidiary (in each case, other than Disqualified Capital Stock) ("**Refunding Capital Stock**") and (ii) declare and pay dividends on the Treasury Capital Stock out of the proceeds of the substantially concurrent sale (other than to the Parent Borrower or a Restricted Subsidiary) of the Refunding Capital Stock; and

Notwithstanding anything to the contrary herein, in no event shall the Issuer, PC Intermediate or the Parent Borrower pay or make, directly or indirectly, any Restricted Payment in reliance on sections 4.06(a)(i)(E) or (iii) unless all FILO Loans have been paid in full.

(b) The Issuer and the Guarantors shall not, nor shall they permit any Restricted Subsidiary to, make, directly or indirectly, any payment or other distribution (whether in Cash, securities or other property) on or in respect of principal of or interest on Indebtedness permitted under Sections 4.03(k) or (w) (or Refinancing Indebtedness in respect of either of the foregoing if permitted hereunder) or any Junior Indebtedness or (without duplication) Indebtedness permitted under Section 4.03(r), or any payment or other distribution (whether in Cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of Indebtedness permitted under Sections 4.03(k) or (w) (or Refinancing Indebtedness in respect of either of the foregoing if permitted hereunder) or any Junior Indebtedness, in each case prior to the scheduled maturity of such Indebtedness (collectively, "**Restricted Debt Payments**"), except:

(i) the defeasance, redemption, repurchase or other acquisition or retirement of Indebtedness permitted under Sections 4.03(k) or (w) (or Refinancing Indebtedness in respect of either of the foregoing if permitted hereunder) or Junior Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent incurrence of, Refinancing Indebtedness permitted by Section 4.03;

(ii) payments as part of an "applicable high yield discount obligation" catch-up payment, so long as no Event of Default shall have occurred and be continuing;

(iii) payments of regularly scheduled principal with respect to any (A) Indebtedness incurred under Section 4.03(m), (B) Indebtedness of the type described in Section 4.03(m) to the extent incurred under Section 4.03(u) and (C) Indebtedness incurred under Section 4.03(gg);

(iv) payments of regularly scheduled principal and interest, fees, expenses and indemnification obligations as and when due in respect of any Indebtedness (solely with respect to such interest, other than the Indebtedness permitted under Section 4.03(k), (n), (q), (r) or (w) and payments with respect to Subordinated Indebtedness prohibited by the subordination provisions thereof);

(v) payments with respect to intercompany Indebtedness permitted under Section 4.03, subject to the subordination provisions applicable thereto;

(vi) [reserved];

(vii) (A) payments of any Indebtedness under any Indebtedness permitted under Sections 4.03(k) and/or (w) and/or any Junior Indebtedness in exchange for, or with proceeds of any substantially contemporaneous issuance of Qualified Capital Stock of any Parent Company or the Parent Borrower, and any substantially contemporaneous capital contribution in respect of Qualified Capital Stock of the Parent Borrower, (B) payments of Indebtedness by the conversion of all or any portion thereof into Qualified Capital Stock of any Parent Company or

the Parent Borrower and (C) payments of interest in respect of Indebtedness in the form of payment-in-kind interest with respect to such Indebtedness permitted under Section 4.03; and

(viii) Restricted Debt Payments; *provided* that as of the date of any such payment and after giving effect thereto, the Payment Conditions are satisfied (*provided* that in the case of an irrevocable notice required under the terms of the applicable agreements or instruments to be given in respect of a Restricted Debt Payment prior to the date of the making of such payment, the Payment Conditions with respect to such Restricted Debt Payment shall be satisfied at the time of the giving of such irrevocable notice and on the date of the making of such payment).

Notwithstanding anything to the contrary herein, in no event shall any Restricted Debt Payment be permitted under Sections 4.06(b)(viii) unless all FILO Loans have been paid in full.

Section 4.07. *Restrictions on Subsidiary Distributions*. Except as provided herein or in any other Notes Document, in the ABL Credit Agreement, in agreements governing Indebtedness permitted under Section 4.03(w), or in agreements with respect to refinancings, renewals or replacements of such Indebtedness permitted by Section 4.03, so long as such refinancing, renewal or replacement does not expand the scope of such contractual obligation, none of the Issuer, any other Parent Company and the other Guarantors shall, nor shall they permit any of their Restricted Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Restricted Subsidiary of the Issuer to:

(a) pay dividends or make any other distributions on any of such Restricted Subsidiary's Capital Stock owned by any Notes Party or any other Restricted Subsidiary;

(b) repay or prepay any Indebtedness owed by such Restricted Subsidiary to the Issuer or any Restricted Subsidiary;

(c) make loans or advances to the Issuer or any Restricted Subsidiary of the Issuer; or

(d) transfer any of its property or assets to the Issuer or any Restricted Subsidiary other than restrictions:

(i) in any agreement evidencing (x) Indebtedness of a Restricted Subsidiary other than a Notes Party permitted by Section 4.03, (y) Indebtedness permitted by Section 4.03 that is secured by a Permitted Lien if such encumbrances or restrictions apply only to the Person obligated under such Indebtedness and its Restricted Subsidiaries or the property or assets intended to secure such Indebtedness and (z) Indebtedness permitted pursuant to clauses (p) (as it relates to Indebtedness in respect of clauses (q), (r) and (w) of Section 4.03), (q), (r) and (w) of Section 4.03;

(ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, subleases, licenses, sublicenses, joint venture agreements and similar agreements entered into in the ordinary course of business;

(iii) that are or were created by virtue of any Lien granted upon, transfer of, agreement to transfer or grant of any option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Indenture;

(iv) assumed in connection with an acquisition of property or new Restricted Subsidiaries, so long as such encumbrance or restriction relates solely to the property so acquired and was not created in connection with or in anticipation of such acquisition;

(v) in any agreement for the sale or other disposition of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending the sale or other disposition;

(vi) in provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any class of Capital Stock of a Person other than on a pro rata basis;

(vii) imposed by customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements that restrict the transfer of ownership interests in such partnership, limited liability company, joint venture or similar Person;

(viii) on Cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;

(ix) set forth in documents which exist on the Issue Date; and

(x) of the types referred to in clauses (a) through (d) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (ix) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Parent Borrower, no more restrictive with respect to such restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 4.08. *Investments*. The Issuer and the Guarantors shall not, nor shall they permit any of their Restricted Subsidiaries to make or own any Investment in any Person except:

(a) Cash or Cash Equivalents;

(b) (i) equity Investments owned as of the Issue Date in any Restricted Subsidiary, (ii) Investments made after the Issue Date in Restricted Subsidiaries that are Notes Parties and (iii) equity Investments by a Notes Party in a non-Notes Party consisting of the Capital Stock of any Person which is not a Notes Party;

(c) Investments (i) constituting deposits, prepayments and other credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts and (iii) in the form of advances made to distributors, suppliers, licensors and licensees, in each case, in the ordinary course of business;

(d) Investments (i) by any Restricted Subsidiary that is not a Notes Party in any other Restricted Subsidiary that is not a Notes Party and (ii) subject to Section 4.19(c), by the Issuer or any other Notes Party in any Restricted Subsidiary that is not a Notes Party so long as, in the case of this clause (ii), the aggregate amount of any such Investments outstanding at any time does not exceed $57,500,000 or, after the date that the audited financial statements have been received by the Trustee pursuant to Section 4.15, if greater, 3.45% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 4.02;

(e) (i) Permitted Acquisitions and (ii) Investments in any Restricted Subsidiary that is not a Notes Party in an amount required to permit such Restricted Subsidiary to consummate a Permitted Acquisition (so long as the consideration for such Permitted Acquisition shall be included for the purposes of calculating any amount available for Permitted Acquisitions pursuant to clause (d) of the proviso to the definition of "Permitted Acquisition" (without regard to the proviso contained in such clause (d)));

(f) Investments existing on, or contractually committed to as of, the Issue Date and any modification, replacement, renewal or extension thereof so long as any such modification, renewal or extension thereof does not increase the amount of such Investment except by the terms thereof or as otherwise permitted by this Section 4.08;

(g) Investments received in lieu of Cash in connection with any Asset Sale permitted by Section 4.09;

(h) loans or advances to officers, directors, employees, consultants or independent contractors of the Issuer, any other Parent Company, or any of its Restricted Subsidiaries to the extent permitted by Requirements of Law, in connection with such Person's purchase of Capital Stock of any Parent Company or the Parent Borrower, in an aggregate principal amount not to exceed $11,500,000 at any one time outstanding;

(i) 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;

(j) Investments consisting of Indebtedness permitted under Section 4.03 (other than Indebtedness permitted under Sections 4.03(b) and (h)), Permitted Liens, Restricted

Payments permitted under Section 4.06 (other than Section 4.06(a)(i)), Restricted Debt Payments permitted by Section 4.06 and mergers, consolidations or Asset Sales or dispositions permitted by Section 4.09;

(k) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers;

(l) Investments (including debt obligations and Capital Stock) received (i) in connection with the bankruptcy or reorganization of any Person, (ii) in settlement of delinquent obligations of, or other disputes with, customers, suppliers and other financially troubled account debtors arising in the ordinary course of business and/or (iii) upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) loans and advances of payroll payments or other compensation to employees, officers, directors, consultants or independent contractors of the Issuer, any other Parent Company or any Restricted Subsidiary in the ordinary course of business, in an aggregate principal amount not to exceed $2,875,000 at any one time outstanding;

(n) Investments to the extent that payment for such Investments is made solely with Capital Stock (other than Disqualified Capital Stock) of PC Intermediate or of any Parent Company in each case, to the extent not resulting in a Change of Control;

(o) Investments of any Person acquired by, or merged into or consolidated or amalgamated with, any "Borrower" under the ABL Credit Agreement or any Restricted Subsidiary pursuant to an Investment otherwise permitted by this Section 4.08 after the Issue Date to the extent that such Investments of such Person were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation and any modification, replacement, renewal or extension thereof so long as any such modification, renewal or extension thereof does not increase the amount of such Investment except as otherwise permitted by this Section 4.08 (it being understood that the "grandfathering" of Investments pursuant to this clause (o) is not intended to limit the application of clause (d) of the definition of "Permitted Acquisition" to existing Investments in non-Notes Parties acquired pursuant to a Permitted Acquisition);

(p) the Transactions;

(q) Investments made after the Issue Date by, subject to Section 4.19(c), the Issuer and its Restricted Subsidiaries in an aggregate principal amount at any time outstanding not to exceed $28,750,000 or, after the date that the audited financial statements have been received by the Trustee pursuant to Section 4.15(a), if greater, 1.725% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 4.02;

(r) Investments made after the Issue Date by, subject to Section 4.19(c), the Issuer and its Restricted Subsidiaries (other than any acquisition); *provided* that as of the

date of such Investment and after giving effect thereto, as to any such Investment, the Payment Conditions are satisfied;

(s) Guarantees of leases (other than Capital Leases) or of other obligations not constituting Indebtedness, in each case in the ordinary course of business;

(t) Investments in the Issuer or PC Intermediate in amounts and for purposes for which Restricted Payments to the Issuer or PC Intermediate are permitted under Section 4.06(a); *provided* that any such Investments made as provided above in lieu of such Restricted Payments shall reduce availability under any applicable Restricted Payment basket under Section 4.06(a);

(u) [reserved];

(v) Investments under any Derivative Transactions permitted to be entered into under Section 4.03; and

(w) loans or advances in favor of franchisees of any "Borrower" under the ABL Credit Agreement and its Restricted Subsidiaries made in the ordinary course of business in an aggregate principal amount not to exceed $17,250,000 at any one time outstanding.

(x) Notwithstanding anything in this Section 4.08 or in any other Notes Document to the contrary, from and after the Issue Date, neither the Issuer, any other Parent Company, nor any Restricted Subsidiary shall exclusively license any Material Intellectual Property to any Unrestricted Subsidiary or other Affiliate, or transfer (including, for the avoidance of doubt, by way of Investment or designation of a Restricted Subsidiary as an Unrestricted Subsidiary), assign, sell, or otherwise dispose of ownership of any Material Intellectual Property to any Unrestricted Subsidiary or other Affiliate; *provided* that nothing contained in this paragraph shall restrict or prohibit (i) any license or other arrangement existing on the Issue Date and, solely with respect to any Material Intellectual Property subject to such license or other arrangement as of the Issue Date, any amendments, modifications, restatements, renewals, or replacements of such license or other arrangement in the ordinary course of business that do not materially expand the scope of such Unrestricted Subsidiary's or other Person's, as applicable, rights in such Material Intellectual Property (ii) any jointly held intellectual property licenses from third parties existing on the Issue Date or any transfer, assignment, sale or other disposition of any rights with respect thereto, in any such case, for a bona fide business purpose.

Section 4.09. *Asset Sales*.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to convey, sell, lease or sublease (as lessor or sublessor), license or sublicense (as lessor or licensor), transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its (or their) business, assets or property of any kind whatsoever (other than as contemplated in Section 5.01), whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired (each such transaction, an "**Asset Sale**"), other than an Excluded Asset Sale, unless:

(i) the Issuer or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value (as determined in good faith by the Issuer) of the assets sold or otherwise disposed of; and

(ii) at least 75% of the consideration therefor received by the Issuer or such Restricted Subsidiary, as the case may be, calculated on a cumulative basis, is in the form of Cash or Cash Equivalents; *provided* that the amount of:

(A) any liabilities (as shown on the Issuer's or such Restricted Subsidiary's most recent balance sheet or in the footnotes thereto or, if incurred or increased subsequent to the date of such balance sheet, such liabilities that would have been shown on the Issuer's or such Restricted Subsidiary's balance sheet or in the footnotes thereto if such incurrence or increase had taken place on or prior to the date of such balance sheet, as determined by the Issuer), contingent or otherwise, of the Issuer or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Securities, that are assumed by the transferee of any such assets or that are otherwise cancelled or terminated in connection with the transaction with such transferee and for which the Issuer and all of its Restricted Subsidiaries have been validly released by all creditors in writing,

(B) any securities, notes or other obligations or assets received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into Cash Equivalents (to the extent of the Cash Equivalents received) or by their terms are required to be satisfied for Cash Equivalents within 180 days following the closing of such Asset Sale, and

(C) [reserved],

(b) shall be deemed to be Cash Equivalents for the purposes of this Section 4.09(a).

(c) Within 365 days after the receipt of any Net Proceeds of any Asset Sale, the Issuer or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale:

(i) to repurchase the Securities on a pro rata basis pursuant to an offer to all Holders at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to, but excluding, the date of purchase, or pursuant to a notice of redemption issued in compliance with Section 3.09 of this Indenture;

(ii) in respect of any Asset Sale involving Collateral or Equity Interests of a Restricted Subsidiary that owns, directly or indirectly, any Collateral, to repurchase, prepay, redeem or repay Indebtedness under the ABL Facility (or any

other Senior Lien Indebtedness) and to reduce commitments thereunder (including, for the avoidance of doubt, any Refinancing Indebtedness in respect thereof);

(iii) in respect of any Asset Sale involving Collateral or Equity Interests of a Restricted Subsidiary that owns, directly or indirectly, any Collateral, to make (a) an Investment in any one or more businesses; *provided* that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Issuer or any of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) capital expenditures or (c) acquisitions of other properties or assets that, in the case of (a), (b) or (c), constitute assets which replace the businesses, properties and/or other assets that are the subject of such Asset Sale and are thereupon with their acquisition added to the Collateral securing the Securities;

(iv) in respect of any Asset Sale not involving Collateral or Equity Interests of a Restricted Subsidiary that owns, directly or indirectly, any Collateral, to repurchase, prepay, redeem or repay Indebtedness of a Restricted Subsidiary which is not a Guarantor, including Indebtedness guaranteed by such Restricted Subsidiary (other than Indebtedness owed to the Company or a Restricted Subsidiary) or Indebtedness of the Issuer or any Guarantor that is secured by a Lien or that is senior unsecured Indebtedness;

(v) in respect of any Asset Sale not involving Collateral or Equity Interests of a Restricted Subsidiary that owns, directly or indirectly, any Collateral, to make (a) an Investment in any one or more businesses; *provided* that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Issuer or any of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) capital expenditures or (c) acquisitions of other properties or assets that, in the case of each of (a) and (c), replace the businesses, properties and/or other assets that are the subject of such Asset Sale; or

(vi) any combination of the foregoing;

(d) *provided* that, in the case of clauses (iii) and (v) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Issuer or such other Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds will be applied to satisfy such commitment within the later of such 365th day and 180 days of such commitment (an "**Acceptable Commitment**"); *provided*, *further*, that if an Acceptable Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied and after such 365th day, then such Net Proceeds shall constitute Excess Proceeds (as defined below).

(e) If an Event of Default has occurred and is continuing, the Company or the applicable Guarantor shall, pending the final application of any Net Proceeds, deposit such Net Proceeds in a Deposit Account or security account in which the Collateral Trustee (subject to the terms of the Intercreditor Agreements) has a perfected security interest for the benefit of the Secured Parties in accordance with the applicable Lien priorities described in the Intercreditor Agreements.

(f) Any Net Proceeds from any Asset Sale that are not invested or applied as provided and within the time period set forth in Section 4.09(b) (it being understood that any portion of such Net Proceeds used to make an offer to purchase Securities, as described in clause (i) of Section 4.09(b), shall be deemed to have been invested or applied whether or not such offer is accepted) will be deemed to constitute "**Excess Proceeds**." When the aggregate amount of Excess Proceeds exceeds $50.0 million, and to the extent permitted by the terms of any Senior Lien Indebtedness (including the terms of any applicable Intercreditor Agreement), the Issuer shall make an offer (an "**Asset Sale Offer**") to all Holders of the Securities and, at the option of the Issuer, to (i) in the case of Excess Proceeds of an Asset Sale involving Collateral or Equity Interests of a Restricted Subsidiary that owns, directly or indirectly, any Collateral, any holders of Pari Passu Lien Indebtedness and (ii) in the case of Excess Proceeds of an Asset Sale not involving Collateral or Equity Interests of a Restricted Subsidiary that owns, directly or indirectly, any Collateral, any holders of Pari Passu Indebtedness, in each case to purchase the maximum aggregate principal amount of the Securities that is at least $1.00 and an integral multiple of $1.00 in excess thereof and any Pari Passu Lien Indebtedness or Pari Passu Indebtedness, as the case may be, that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, or 100% of the accreted value thereof, if less, plus accrued and unpaid interest (or, in respect of any such Pari Passu Lien Indebtedness or Pari Passu Indebtedness, as the case may be, such lesser price, if any, as may be provided for by the terms of such Indebtedness) to, but not including, the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture. The Issuer will commence an Asset Sale Offer with respect to Excess Proceeds within thirty Business Days after the date that Excess Proceeds exceed $50.0 million by mailing the notice required pursuant to the terms of this Indenture, with a copy to the Trustee, or otherwise delivered in accordance with the procedures of DTC.

(g) To the extent that the aggregate amount of Securities and Pari Passu Lien Indebtedness or Pari Passu Indebtedness, as the case may be, tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds used to make such Asset Sale Offer, the Issuer may use any remaining Excess Proceeds for general corporate purposes, subject to compliance with other covenants contained in this Indenture (any such remaining Excess Proceeds amount, "**Declined Excess Proceeds**"). If the aggregate principal amount of Securities and Pari Passu Lien Indebtedness or Pari Passu Indebtedness, as the case may be, surrendered in an Asset Sale Offer exceeds the amount of Excess Proceeds, the Trustee shall select the Securities to be purchased in the manner described in Section 3.04. Selection of such Pari Passu Lien Indebtedness or Pari Passu Indebtedness will be made pursuant to the terms of such Indebtedness. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds used to make such Asset Sale Offer shall be

reset to zero (regardless of whether there are any remaining Excess Proceeds upon such completion).

(h) Pending the final application of any Net Proceeds pursuant to this Section 4.09, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Proceeds in any manner not prohibited by this Indenture.

(i) An Asset Sale Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "**Offer Period**"). No later than five Business Days after the termination of the Offer Period (the "**Purchase Date**"), the Issuer shall apply the applicable Excess Proceeds to the purchase of the Securities. Payment for any Securities so purchased shall be made in the same manner as interest payments are made.

(j) Upon the commencement of an Asset Sale Offer the Issuer shall send, electronically or by first-class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Securities pursuant to an Asset Sale Offer. An Asset Sale Offer shall be made to all Holders and, if required or permitted by the terms thereof, holders of Pari Passu Lien Indebtedness and holders of Pari Passu Indebtedness. The notice, which shall govern the terms of an Asset Sale Offer, shall state:

(i) that an Asset Sale Offer is being made pursuant to this Section 4.09 and the length of time an Asset Sale Offer shall remain open;

(ii) the amount of the Asset Sale Offer, the purchase price and the Purchase Date;

(iii) that any Security not tendered or accepted for payment shall continue to accrue interest;

(iv) that, unless the Issuer defaults in making such payment, any Security accepted for payment pursuant to an Asset Sale Offer shall cease to accrue interest on and after the Purchase Date;

(v) that any Holder electing to have less than all of the aggregate principal amount of its Securities purchased pursuant to an Asset Sale Offer may elect to have Securities purchased in minimum principal amounts of $1.00 and integral multiples of $1.00;

(vi) that Holders electing to have a Security purchased pursuant to an Asset Sale Offer shall be required to surrender the Security, with the form entitled "Option of Holder to Elect Purchase" attached to the Security completed, or transfer such Security by book-entry transfer, to the Issuer, the applicable Depositary, if appointed by the Issuer, or a Paying Agent at the address specified in the notice at least two Business Days before the Purchase Date;

(vii) that Holders shall be entitled to withdraw their election if the Issuer, the applicable Depositary or the applicable Paying Agent, as the case may be, receives, not later than the close of business on the tenth Business Day prior to the expiration date of the Offer Period, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security the Holder delivered for purchase and a statement that such Holder is withdrawing their election to have such Security purchased; and

(viii) that Holders whose certificated Securities were purchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered (or transferred by book-entry transfer) representing the same indebtedness to the extent not repurchased; *provided* that new Securities will only be issued in denominations of $1.00 and in integral multiples of $1.00 in excess thereof.

The notice, if delivered electronically or mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. If (i) the notice is delivered or mailed in a manner herein provided and (ii) any Holder fails to receive such notice or a Holder receives such notice but it is defective, such Holder's failure to receive such notice or such defect shall not affect the validity of the proceedings for the purchase of the Notes as to all other Holders that properly received such notice without defect.

If the Securities are in global form and the Issuer makes an offer to purchase the Securities pursuant to an Asset Sale Offer, a Holder may exercise its option to elect for the purchase of the Securities or withdraw such election through the facilities of DTC, subject to its rules and regulations.

(k) The Issuer, the applicable Depositary or the applicable Paying Agent, as the case may be, shall promptly mail or deliver to each tendering Holder an amount equal to the purchase price of the Securities properly tendered by such Holder and accepted by the Issuer for purchase, and the Issuer shall promptly issue a new Security, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver (or cause to be transferred by book-entry) such new Security to such Holder (it being understood that, notwithstanding anything in this Indenture to the contrary, only an Officer's Certificate and not an Opinion of Counsel is required for the Trustee to authenticate and mail or deliver such new Security) in a principal amount equal to any unpurchased portion of the Security surrendered representing the same indebtedness to the extent not repurchased; *provided*, that each such new Security shall be in a principal amount of $1.00 or an integral multiple of $1.00 in excess thereof. Any Security not so accepted shall be promptly mailed or delivered by the Issuer to the Holder thereof. The Issuer shall announce the results of an Asset Sale Offer on or as soon as practicable after the Purchase Date on the website or online data system maintain pursuant to Section 4.02(g).

(l) Prior to 11:00 a.m. (New York City time) on the Purchase Date, with respect to the Securities, the Issuer shall deposit with the Trustee or with the applicable Paying Agent money sufficient to pay the purchase price of and accrued and unpaid

interest on all Securities to be purchased on that Purchase Date. The Trustee or the applicable Paying Agent shall promptly return to the Issuer any money deposited with the Trustee or the applicable Paying Agent by the Issuer in excess of the amounts necessary to pay the purchase price of, and accrued and unpaid interest on, all Securities to be redeemed.

(m) The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Securities pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in this Indenture by virtue thereof. Notwithstanding the foregoing, the Issuer may rely on any no-action letters issued by the SEC indicating that the staff of the SEC will not recommend enforcement action in the event a tender offer satisfies certain conditions.

(n) Notwithstanding any other provisions of this Section 4.09, to the extent that any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary is (x) prohibited or delayed by applicable local law, (y) restricted by applicable organizational documents or any agreement or (z) subject to other onerous organizational or administrative impediments from being repatriated to the United States, the portion of such Net Proceeds so affected will not be required to be applied in compliance with this covenant, and such amounts may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the Issuer or a Guarantor (the Issuer hereby agreeing to use commercially reasonable efforts (as determined in the Issuer's reasonable business judgment) to otherwise cause the Foreign Subsidiary to within one year following the date on which the respective payment would otherwise have been required, promptly take all actions reasonably required by the applicable local law to permit such repatriation to the Issuer or a Guarantor), and if within one year following the date on which the respective payment would otherwise have been required, such repatriation of any of such affected Net Proceeds is permitted under the applicable local law, an amount equal to such amount of Net Proceeds so permitted to be repatriated will be promptly (and in any event no later than ten (10) Business Days after such repatriation is permitted) applied (net of any taxes, costs or expenses that would be payable or reserved against if such amounts were actually repatriated whether or not they are repatriated) in compliance with this covenant. The non-application of any prepayment amounts as a consequence of the foregoing provisions will not, for the avoidance of doubt, constitute a Default or an Event of Default. For the avoidance of doubt, nothing in this Indenture shall be construed to require any Subsidiary to repatriate cash.

Section 4.10. *Sales and Lease-Backs*. The Issuer and the Guarantors shall not, nor shall they permit any of their Restricted Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Person (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Issuer or any of its Restricted Subsidiaries) and (b) intends to use

for substantially the same purpose as the property which has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary (as applicable) to any Person (other than the Issuer or any of its Restricted Subsidiaries) in connection with such lease (such a transaction described herein, a "**Sale and Lease-Back Transaction**"); *provided* that Sale and Lease-Back Transactions shall be permitted in respect of the real properties owned by any "Borrower" under the ABL Credit Agreement and/or the Guarantors and located at (i) 47 Elizabeth Drive, Chester, New York, (ii) 7700 Anagram Drive, Eden Prairie, Hennepin County, MN 55344 and (iii) 2800 Purple Sage Road NW, Village of Los Lunas, New Mexico, in each case, so long as (x) [reserved], (y) [reserved] and (z) the Issuer shall use commercially reasonable efforts to deliver to the Collateral Trustee a Collateral Access Agreement from the purchaser or transferee of each of the foregoing real properties on terms and conditions reasonably satisfactory to the Collateral Trustee.

Section 4.11. *Transactions with Affiliates*. The Issuer and the Guarantors shall not, nor shall they permit any of their Restricted Subsidiaries to enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any of their Affiliates on terms that are less favorable to the Issuer or such Restricted Subsidiary, as the case may be, than those that might be obtained at the time in a comparable arm's-length transaction from a Person who is not an Affiliate; *provided* that the foregoing restriction shall not apply to:

(a) to the extent permitted or not restricted by this Indenture, (i) any transaction between or among any Notes Parties or (ii) any transactions between or among Restricted Subsidiaries (none of which is a Notes Party);

(b) reasonable and customary fees, indemnities and reasonable out-of-pocket expenses paid to members of the board of directors (or similar governing body) of the Issuer, any other Parent Company, and the Restricted Subsidiaries in the ordinary course of business and, in the case of payments to any Parent Company, to the extent attributable to the operations of the Parent Borrower and the Restricted Subsidiaries;

(c) (i) any employment, severance agreements or compensatory (including profit sharing) arrangements entered into by any "Borrower" under the ABL Credit Agreement or any of the Restricted Subsidiaries with their respective current or former officers, directors, members of management, employees, consultants or independent contractors in the ordinary course of business, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Capital Stock pursuant to put/call rights or similar rights with current or former officers, directors, members of management, employees, consultants or independent contractors and (iii) transactions pursuant to any employee compensation, benefit plan, stock option plan or arrangement, any health, disability or similar insurance plan which covers employees or any employment contract or arrangement;

(d) (x) transactions permitted by Sections 4.03(d), (o) and (bb), 4.06 (excluding transactions permitted under section 4.06(a)(ii)(D) and 4.08(h) and (m)) and (y) issuances of Capital Stock and debt securities not restricted by this Indenture;

(e) the transactions in existence on the Issue Date and any amendment thereto to the extent such amendment is not adverse to the Holders in any material respect;

(f) [reserved];

(g) [reserved];

(h) [reserved];

(i) Guarantees permitted by Section 4.03 in accordance with the terms of Section 4.03 and Section 4.08;

(j) loans and other transactions among the Issuer, PC Intermediate and any other Notes Party to the extent permitted under this Article 4;

(k) the payment of customary fees, reasonable out-of-pocket costs to and indemnities provided on behalf of, directors, officers, employees, members of management, consultants and independent contractors of the Parent Borrower and the Restricted Subsidiaries in the ordinary course of business and, in the case of payments to any Parent Company, to the extent attributable to the operations of the Parent Borrower and the Restricted Subsidiaries;

(l) transactions with customers, clients, suppliers or joint ventures for the purchase or sale of goods and services entered into in the ordinary course of business, which are fair to the Parent Borrower and the Restricted Subsidiaries, in the reasonable determination of the board of directors of the Parent Borrower or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(m) [reserved]; and

(n) the payment of reasonable out-of-pocket costs and expenses related to registration rights and customary indemnities provided to shareholders under any shareholder agreement.

Section 4.12. *Amendments of or Waivers with Respect to Certain Indebtedness*. The Issuer and the Guarantors shall not, nor shall they permit any of their Restricted Subsidiaries to, amend or otherwise change (a) the terms of the ABL Credit Agreement, Indebtedness permitted under Sections 4.03(w) (or Refinancing Indebtedness in respect of either of the foregoing if permitted hereunder) or Junior Indebtedness (or the documentation governing the foregoing (including, for the avoidance of doubt, Indebtedness permitted under Sections 4.03(r) and (gg))) or (b) the subordination provisions of any Subordinated Indebtedness (and the component definitions as used therein), in each case, if the effect of such amendment or change, together with all other amendments or changes made, is materially adverse to the interests of the Holders.

Section 4.13. *Fiscal Year*. The Issuer and the Guarantors shall not, nor shall they permit any of their Restricted Subsidiaries to, change its Fiscal Year-end to a date other than December 31 or the Saturday closest to December 31.

Section 4.14. *Change of Control*. (a) Upon the occurrence of a Change of Control after the Issue Date, unless the Issuer has previously or concurrently sent a redemption notice with respect to all the outstanding Securities as described in Article 3 hereto, the Issuer will make an offer to purchase all of the Securities pursuant to the offer described below (the "**Change of Control Offer**") at a price in cash (the "**Change of Control Payment**") equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest to, but not including, the date of purchase, subject to the right of Holders of record of the Securities on the relevant record date to receive interest due on the relevant interest payment date.

(b) Within 60 days following any Change of Control, the Issuer will send notice of such Change of Control Offer electronically or by first-class mail, with a copy to the Trustee, to each Holder of Securities to the registered address of such Holder or otherwise in accordance with the procedures of DTC, with the following information:

(i) that a Change of Control Offer is being made pursuant to this Section 4.14, and that all Securities properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuer at a repurchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest to, but not including, the date of repurchase, subject to the right of Holders of record of the Securities on the relevant record date to receive interest due on the relevant interest payment date;

(ii) the purchase price and the purchase date, which shall be no earlier than 10 days nor later than 60 days from the date such notice is mailed or otherwise delivered (the "**Change of Control Payment Date**"), subject to the extension (in the case where such notice was mailed or otherwise delivered prior to the occurrence of the Change of Control) in the event that occurrence of the Change of Control is delayed;

(iii) that any Security not properly tendered will remain outstanding and continue to accrue interest;

(iv) that unless the Issuer defaults in the payment of the Change of Control Payment, all Securities accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(v) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control;

(vi) that Holders electing to have any Securities purchased pursuant to a Change of Control Offer will be required to surrender such Securities, with the

form entitled “Option of Holder to Elect Purchase” on the reverse of such Securities completed, to the Paying Agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(vii) that Holders will be entitled to withdraw their tendered Securities and their election to require the Issuer to purchase such Securities; *provided* that the Paying Agent receives, not later than the close of business on the second Business Day prior to the Change of Control Payment Date, a facsimile transmission or letter setting forth the name of the Holder of the Securities, the principal amount of Securities tendered for purchase, and a statement that such Securities is withdrawing its tendered Securities and its election to have such Securities purchased;

(viii) that if the Issuer is redeeming less than all of the Securities, the Holders of the remaining Securities will be issued new Securities and such new Securities will be equal in principal amount to the unpurchased portion of the Securities surrendered. The unpurchased portion of the Securities must be equal to $1.00 or an integral multiple of $1.00 in excess of $1.00;

(ix) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control and shall describe each such condition, and, if applicable, shall state that, in the Issuer’s discretion, the Change of Control Payment Date may be delayed until such time as any or all such conditions shall be satisfied, or that such repurchase may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the Change of Control Payment Date, or by the Change of Control Payment Date as so delayed; and

(x) the other instructions, as determined by the Issuer, consistent with this Section 4.14, that a Holder must follow.

Securities repurchased by the Issuer pursuant to a Change of Control Offer will have the status of Securities issued but not outstanding or will be retired and cancelled at the option of the Issuer. Securities purchased by a third party pursuant to the preceding paragraph will have the status of Securities issued and outstanding.

The notice, if electronically delivered or mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. If (a) the notice is electronically delivered or mailed in a manner herein provided and (b) any Holder fails to receive such notice or a Holder receives such notice but it is defective, such Holder’s failure to receive such notice or such defect shall not affect the validity of the proceedings for the purchase of the Securities as to all other Holders that properly received such notice without defect.

If the Securities are in global form and the Issuer makes an offer to purchase all of the Securities pursuant to the Change of Control Offer, a Holder may exercise its option to elect for the purchase of the Securities or withdraw such election through the facilities of DTC, subject to its rules and regulations.

The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase by the Issuer of Securities pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuer will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in this Indenture by virtue thereof. Notwithstanding the foregoing, the Issuer may rely on any no-action letters issued by the SEC indicating that the staff of the SEC will not recommend enforcement action in the event a tender offer satisfies certain conditions.

(c) On the Change of Control Payment Date, the Issuer shall, to the extent permitted by law,

(i) accept for payment all Securities issued by it or portions thereof properly tendered pursuant to the Change of Control Offer;

(ii) deposit with the Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Securities or portions thereof so tendered; and

(iii) deliver, or cause to be delivered, to the Trustee for cancellation the Securities so accepted together with an Officer's Certificate to the Trustee stating that such Securities or portions thereof have been tendered to and purchased by the Issuer.

(d) The Issuer shall not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Securities validly tendered and not withdrawn under such Change of Control Offer. Notwithstanding anything to the contrary herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(e) Notwithstanding anything to the contrary herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control.

(f) A Change of Control Offer may be made at the same time as consents are solicited with respect to an amendment, supplement or waiver of this Indenture, the Securities, Guarantees and/or Security Documents (but the Change of Control Offer may not condition tenders on the delivery of such consents).

(g) Other than as specifically provided in this Section 4.14, any purchase pursuant to this Section 4.14 shall be made pursuant to the provisions of Sections 3.04, 3.07 and 3.08.

(h) The Issuer's obligations to make an offer to repurchase the Securities as a result of a Change of Control under this Section 4.14 may be waived or modified with the written consent of the Holders of a majority in principal amount of the Securities.

Section 4.15. *Post-Closing Items*. (a) Provided that the Issuer has not filed an Annual Report on Form 10-K for the Fiscal Year ended December 31, 2022 with the SEC, as soon as available, and in any event no later than December 31, 2024 (but no later than the date the following items are delivered to the ABL Administrative Agent or any ABL Lender in connection with the ABL Facility), the Trustee shall have received (for delivery to each Holder) (i) the audited consolidated balance sheet of the Issuer and its Restricted Subsidiaries as at the end of Fiscal Year 2022 and the related statements of income, stockholders' equity and cash flows of the Issuer and its Restricted Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto, (ii) with respect to such financial statements, a report thereon of BDO USA, P.A. or other independent certified public accountants of recognized national standing (which report shall be unqualified as to "going concern" and scope of audit (except for qualifications pertaining to debt maturities occurring within 12 months of such audit), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Issuer and its Restricted Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with GAAP) and (iii) together with the delivery of financial statements required by Section 4.15(a)(i), the compliance certificate required to be delivered pursuant to Section 4.16(a).

(b) The Notes Parties shall take all necessary actions to satisfy the items described on Schedule 4.15(b) within the applicable periods of time specified in such Schedule (or such longer periods as the administrative agent under the ABL Credit Agreement may have agreed in its sole discretion, as set forth in an Officer's Certificate provided to the Trustee). The Issuer shall post the Officer's Certificate provided to the Trustee under this Section 4.15(b) on the Issuer's website or a password protected online data system) where the Issuer posts the reports required under Section 4.02.

Section 4.16. *Compliance Certificate*. (a) The Issuer shall deliver to the Trustee within 120 days after the end of each fiscal year of the Issuer, beginning with the fiscal year ending on or about December 31, 2023, a certificate (the signer of which shall be the

principal executive officer, the principal financial officer or the principal accounting officer of the Issuer) stating that in the course of the performance by the signer of the signer's duties as an Officer of the Issuer the signer would normally have knowledge of any Default and whether or not the signer knows of any Default that occurred during such period. If the signer does, the certificate shall describe the Default, its status and the action the Issuer is taking or proposes to take with respect thereto.

(b) Together with the delivery of each officer's certificate delivered pursuant to Section 4.16(a), the Issuer shall deliver to the Collateral Trustee a Perfection Certificate Supplement, either confirming that there has been no change in the information contained in the Perfection Certificate delivered on the Issue Date, or the date on which the most recent Perfection Certificate Supplement was delivered to the Collateral Trustee, or identifying changes to such information previously disclosed.

(c) The Issuer shall deliver to the Trustee, within 20 Business Days after any Officer of the Issuer becomes aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Issuer is taking or propose to take with respect thereto.

Section 4.17. *Limitation on Guarantees of Indebtedness by Restricted Subsidiaries*. The Issuer shall not permit any of its Wholly-Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiaries guarantee the ABL Obligations and/or Capital Markets Indebtedness of the Issuer or any Guarantor), other than a Guarantor or an Excluded Subsidiary, to guarantee the payment of (i) any Indebtedness (including, for the avoidance of doubt, commitments in respect thereof) of the Issuer or any other Guarantor under the ABL Facility or (ii) Capital Markets Indebtedness of the Issuer or any Guarantor having an aggregate principal amount outstanding in excess of $10.0 million unless:

(a) such Restricted Subsidiary within 45 days executes and delivers a supplemental indenture to this Indenture, the form of which is attached as Exhibit C hereto, providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Issuer or any Guarantor, if such Indebtedness is by its express terms subordinated in right of payment to the Securities or such Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Securities; and

(b) such Restricted Subsidiary waives and shall not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Issuer or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee, *provided* that this Section 4.17 shall not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary.

Each Guarantee will be limited, to the extent enforceable, to an amount not to exceed the maximum amount that can be guaranteed by that Restricted Subsidiary without rendering the Guarantee, as it relates to such Restricted Subsidiary, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

The Issuer may elect, in its sole discretion, to cause any Restricted Subsidiary that is not otherwise required to be a Guarantor to become a Guarantor, in which case, such Restricted Subsidiary will not be required to comply with clause (i) or (ii) of this Section 4.17 and such Guarantee may be released at any time in the Issuer's sole discretion; *provided* that at the time of such release, no Default or Event of Default shall have occurred and be continuing or would occur as consequences thereof.

Each Guarantee shall be released in accordance with Section 10.02(b) or (c), as applicable.

Section 4.18. *Further Instruments and Acts.* Upon request of the Trustee, the Issuer shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

Section 4.19. *Permitted Activities of Parent Companies*. None of the Issuer, PC Intermediate or any other Person of which the Parent Borrower is an indirect Wholly Owned Subsidiary (to the extent such Person is a Notes Party) shall (notwithstanding anything to the contrary contained herein) (a) incur, directly or indirectly, any Indebtedness other than (i) the Indebtedness under the Notes Documents, Indebtedness described in Section 4.03(c), Section 4.03(w), Section 4.03(gg) or otherwise in connection with the Transactions (it being understood that Indebtedness of any Parent Company of the Parent Borrower to any Restricted Subsidiary shall not be permitted under this clause (a)) and (ii) Guarantees of Indebtedness of any "Borrower" under the ABL Credit Agreement and the Restricted Subsidiaries permitted hereunder; (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than (i) the Liens created under the Security Documents, (ii) subject to the applicable intercreditor arrangements explicitly contemplated hereunder (including, with respect to the ABL Obligations, the ABL Intercreditor Agreement), Liens securing the Original Securities issued on the Issue Date and any PIK Securities, Indebtedness described in Section 4.03(w) and, in each case, permitted guarantees thereof, in each case, to the extent such Liens would be permitted under Section 4.04 if incurred by the Parent Borrower or (iii) any other Lien created in connection with the Transactions (it being understood that no Lien shall be permitted under this clause (iii) other than a Lien on the property or assets of the Issuer or PC Intermediate that would be a Permitted Lien but for the subject property or assets not being property or assets of the Parent Borrower); (c) engage in any business activity or own any material assets other than (i) holding 100.0% of the Capital Stock (and any amount of Subordinated Indebtedness issued by) of, in the case of the Issuer, PC Intermediate, in the case of PC Intermediate, the Parent Borrower and, indirectly, any other Subsidiary; *provided* that any such Subordinated Indebtedness shall be evidenced by an intercompany note and shall be subject to a

Second Priority Lien pursuant to the Security Agreement, (ii) performing its obligations under the Notes Documents and other Indebtedness, Liens (including the granting of Liens) and Guarantees permitted hereunder, (iii) issuing its own Capital Stock, (iv) filing tax reports and paying taxes in the ordinary course (and contesting any taxes); (v) preparing reports to Governmental Authorities and to its shareholders; (vi) holding director and shareholder meetings, preparing corporate records and other corporate activities required to maintain its separate corporate structure or to comply with applicable Requirements of Law; (vii) [reserved]; (viii) holding Cash and other assets received in connection with Restricted Payments or Investments made by the Parent Borrower or any other borrower under the ABL Facilities and the Restricted Subsidiaries or contributions to, or proceeds from the issuance of, issuances of Capital Stock of PC Intermediate, in each case, pending the application thereof in a manner not prohibited by this Indenture; (ix) providing indemnification for its officers, directors or members of management; (x) participating in tax, accounting and other administrative matters; (xi) the performance of its obligations under the other documents, agreements and Investments contemplated by the Transactions and (xii) activities incidental to the foregoing; (d) liquidate, wind up or dissolve itself or consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person; *provided* that so long as no Default or Event of Default exists or would result therefrom, PC Intermediate may merge with any other Person (other than the Parent Borrower and any of the Restricted Subsidiaries) so long as (i) PC Intermediate shall be the continuing or surviving Person or (ii) if the Person formed by or surviving any such merger or consolidation is not PC Intermediate, (A) the successor to PC Intermediate shall expressly assume all the obligations of PC Intermediate under this Indenture and the other Notes Documents to which PC Intermediate is a party pursuant to a supplement hereto or thereto in a form reasonably satisfactory to the Trustee and/or the Collateral Trustee; (B) such successor shall be an entity organized under the laws of the United States, any state thereof or the District of Columbia and (C) the Parent Borrower shall deliver a certificate of a responsible officer with respect to the satisfaction of the conditions under clauses (A) and (B) hereof; *provided, further*, that if the conditions set forth in the preceding proviso are satisfied, the successor to PC Intermediate will succeed to, and be substituted for, PC Intermediate under this Indenture; or (e) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

ARTICLE 5
SUCCESSOR COMPANY

Section 5.01. *Merger, Consolidation or Sale of All or Substantially All Assets*.

(a) The Issuer shall not consolidate or merge with or into or wind up into (whether or not the Issuer is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i) the Issuer is the surviving Person or the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have

been made is a corporation, partnership or limited liability company organized or existing under the laws of the jurisdiction of organization of the Issuer or the laws of the United States, any state thereof, the District of Columbia (the Issuer or such Person, as the case may be, being herein called the "**Successor Company**"); *provided* that in the case where the Successor Company is not a corporation, a co-obligor of the Securities is a corporation;

(ii) the Successor Company, if other than the Issuer, expressly assumes all the obligations of the Issuer under this Indenture, the Securities, the Security Documents and the Intercreditor Agreements pursuant to supplemental indentures or other documents or instruments;

(iii) immediately after such transaction, no Default shall have occurred and be continuing;

(iv) immediately after giving pro forma effect to such transaction and any related financing transactions, as if such transactions had occurred at the beginning of the applicable four-quarter period, either:

(A) the Successor Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.03(r); or

(B) the Fixed Charge Coverage Ratio for the Successor Company and its Restricted Subsidiaries would be equal to or greater than the Fixed Charge Coverage Ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction;

(v) each Guarantor, unless it is the other party to the transactions described above, in which case Section 5.01(b)(i)(B) shall apply, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person's obligations under this Indenture and the Securities; and

(vi) the Successor Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this Indenture.

The Successor Company (if other than the Issuer) shall succeed to, and be substituted for the Issuer, as the case may be, under this Indenture and the Securities, and in such event the Issuer will automatically be released and discharged from its obligation under this Indenture and the Securities. Notwithstanding the foregoing clauses (iii), (iv) and (vi) of Section 5.01(a) (which shall not apply to the following): (A) any Restricted Subsidiary may consolidate with or merge with or into or wind up into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to the Issuer, and (B) the Issuer may consolidate with or merge with or into or wind up into an Affiliate of the Issuer solely for the purpose of reincorporating the Issuer in a State of the

United States, so long as the amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby.

(b) No Guarantor shall, and the Issuer shall not permit any Guarantor to, consolidate or merge with or into or wind up into (whether or not the Issuer or Guarantor is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) (A) such Guarantor is the surviving Person or the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership or limited liability company organized or existing under the laws of the jurisdiction of organization of such Guarantor, as the case may be, or the laws of the United States, any state thereof, the District of Columbia or any territory thereof (such Guarantor or such Person, as the case may be, being herein called the "**Successor Person**"), (B) the Successor Person (if other than such Guarantor) expressly assumes all the obligations of such Guarantor under this Indenture and such Guarantor's Guarantee pursuant to a supplemental indenture or other documents or instruments, (C) immediately after such transaction, no Default exists, and (D) the Successor Person shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this Indenture; or

(ii) the transaction is otherwise permitted by this Indenture, including in compliance with clauses (i) and (ii) of Section 4.09(a).

Except as otherwise provided in this Indenture, the Successor Person (if other than such Guarantor) will succeed to, and be substituted for, such Guarantor under this Indenture and such Guarantor's Guarantee, and such Guarantor will automatically be released and discharged from its obligations under this Indenture and such Guarantor's Guarantee. Notwithstanding the foregoing, (1) a Guarantor may consolidate with or merge with or into or wind up into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to another Guarantor or the Issuer and (2) a Guarantor may consolidate with or merge with or into or wind up or convert into an Affiliate incorporated solely for the purpose of reincorporating such Guarantor in another state of the United States or the District of Columbia so long as the amount of Indebtedness of the Guarantor is not increased thereby.

(c) Clauses (iii) and (iv) of Section 5.01(a) shall not apply to a sale, assignment, transfer, conveyance or other disposition of assets between or among the Issuer and the Restricted Subsidiaries.

Section 5.02. *Successor Corporation Substituted*.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Issuer in accordance with Section 5.01, the successor corporation formed by such consolidation or into or with which the Issuer is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the Issuer shall refer instead to the successor corporation and not to the Issuer), and may exercise every right and power of the Issuer under this Indenture with the same effect as if such Successor Person had been named as the Issuer herein; *provided* that the predecessor Issuer shall not be relieved from the obligation to pay the principal of and interest on the Securities except in the case of a sale, assignment, transfer, lease, conveyance or other disposition of all of the Issuer's assets that meets the requirements of Section 5.01.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01. *Events of Default*. An "**Event of Default**" with respect to the Securities occurs if:

(a) there is a default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Securities;

(b) there is a default for 30 days or more in the payment when due of interest on or with respect to the Securities;

(c) Issuer or any Guarantor fails for 30 days after receipt of written notice given by the Trustee or the Holders of not less than 30% in principal amount of the Securities (with a copy to the Trustee) to comply with any of its obligations, covenants or agreements (other than a default referred to in clauses (a) and (b) above) contained in this Indenture, the Securities, the Security Documents, or the ABL Intercreditor Agreement (or any other applicable intercreditor agreement);

(d) there is a default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Issuer or any of its Restricted Subsidiaries or the payment of which is guaranteed by the Issuer or any of its Restricted Subsidiaries, other than Indebtedness owed to the Issuer or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Securities, if both:

(i) such default either results from the failure to pay any principal of such Indebtedness at its stated maturity (after giving effect to any applicable grace periods) or relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity; and

(ii) the principal amount of such Indebtedness, together with the principal amount of any other such indebtedness in default for failure to pay any principal at its stated maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate $28,750,000 or more at any one time outstanding;

(e) Issuer or any Significant Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, fails to pay final judgments aggregating in excess of $28,750,000 (net of amounts covered by insurance policies issued by insurance companies), which final judgments remain unpaid, undischarged, unwaived and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(f) the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case;

(ii) consents to the entry of an order for relief against it in an involuntary case;

(iii) consents to the appointment of a custodian of it or for all or substantially all of its property; or

(iv) makes a general assignment for the benefit of its creditors or takes any comparable action under any foreign laws relating to insolvency;

(g) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, in a proceeding in which the Issuer or any such Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, is to be adjudicated bankrupt or insolvent;

(ii) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, or for all or substantially all of the property of

the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary; or

(iii) orders the winding up or liquidation of the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days;

(h) the Guarantee of any Significant Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, shall for any reason cease to be in full force and effect (except as contemplated by the terms thereof) or any responsible officer of any Guarantor that is a Significant Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, as the case may be, denies that it has any further liability under its or their Guarantee(s) or gives notice to such effect, other than by reason of the termination of this Indenture or the release of any such Guarantee in accordance with this Indenture; or

(i) except (a) as expressly permitted by this Indenture, the Intercreditor Agreements and the applicable Security Documents, (b) for the satisfaction in full of all obligations under this Indenture or the release of any such security interest in accordance with the terms of this Indenture, the Intercreditor Agreements or the applicable Security Documents, (c) to the extent that any loss of perfection or priority results from the failure of the Collateral Trustee to maintain possession of certificates actually delivered to it representing securities pledged under the Security Documents or to authorize any Guarantor or the Issuer to file Uniform Commercial Code amendments relating to any Guarantor's or Issuer's change of name or jurisdiction of formation after having received prior written notice by the Issuer of the same, if any material provision of the Security Documents or the Guarantees shall for any reason cease to be in full force and effect and such default continues for 30 days or the Issuer shall so assert, or any security interest created, or purported to be created, by any of the Security Documents shall cease to be enforceable with respect to any material portion of the Collateral covered or purported to be covered thereby and such default continues for 30 days.

In the event of any Event of Default specified in clause 6.01(d) above, such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Securities) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 30 days after such Event of Default arose:

(1) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged; or

(2) the requisite number of holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or

(3) the default that is the basis for such Event of Default has been cured, waived or is no longer continuing.

Section 6.02. *Acceleration*. Following the ABL Payoff Date, if any Event of Default (other than an Event of Default specified in clause (f) or (g) of Section 6.01 with respect to the Issuer) occurs and is continuing under this Indenture, the Trustee or the Holders of at least 30% in principal amount of the then total outstanding Securities by notice to the Issuer (with a copy to the Trustee if from the Holders) may declare the principal, premium, if any, and accrued but unpaid interest and any other monetary obligations on all the then outstanding Securities to be due and payable immediately. Upon the effectiveness of such declaration, such principal and interest shall be due and payable immediately.

Notwithstanding the foregoing, if an Event of Default specified in Section 6.01(f) or (g) with respect to the Issuer occurs, the principal of, premium, if any, and accrued but unpaid interest on all Securities will *ipso facto* become due and payable immediately without any declaration or other act on the part of the Trustee or any Holders.

The Holders of a majority in aggregate principal amount of the then outstanding Securities by written notice to the Trustee (with a copy to the Issuer, *provided* that any rescission under this Section 6.02 shall be valid and binding notwithstanding the failure to provide a copy of such notice to the Issuer) may on behalf of all of the Holders rescind an acceleration and its consequences:

(a) if the rescission would not conflict with any judgment or decree;

(b) if all existing Events of Default have been cured, waived, annulled or rescinded except nonpayment of principal or interest that has become due solely because of the acceleration;

(c) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and

(d) if the Issuer has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN THE EVENT THE SECURITIES ARE ACCELERATED OR OTHERWISE BECOME DUE AND PAYABLE AS A RESULT OF, OR FOLLOWING, AN EVENT OF DEFAULT, THE APPLICABLE PREMIUM WILL ALSO BE DUE AND PAYABLE AND SHALL CONSTITUTE PART OF THE OBLIGATIONS UNDER THE SECURITIES IN VIEW OF THE IMPRACTICABILITY AND EXTREME DIFFICULTY OF ASCERTAINING ACTUAL DAMAGES AND BY MUTUAL AGREEMENT OF THE PARTIES AS TO

A REASONABLE CALCULATION OF EACH HOLDER'S LOST PROFITS AS A RESULT THEREOF. ANY PREMIUM (INCLUDING THE APPLICABLE PREMIUM) PAYABLE ABOVE SHALL BE THE LIQUIDATED DAMAGES SUSTAINED BY EACH HOLDER AS THE RESULT OF THE EARLY REDEMPTION AND THE ISSUER AGREES THAT IT IS REASONABLE UNDER THE CIRCUMSTANCES CURRENTLY EXISTING. THE PREMIUM (INCLUDING THE APPLICABLE PREMIUM) SHALL ALSO BE PAYABLE IN THE EVENT THE SECURITIES (AND/OR THIS INDENTURE) ARE SATISFIED OR RELEASED BY FORECLOSURE (WHETHER BY POWER OF JUDICIAL PROCEEDING), DEED IN LIEU OF FORECLOSURE, EXERCISE OF REMEDIES AND/OR SALE OF COLLATERAL FOLLOWING EVENTS OF DEFAULT OR ANY SALE OF COLLATERAL IN AN INSOLVENCY PROCEEDING, ANY RESTRUCTURING, REORGANIZATION OR COMPROMISE OF THE OBLIGATIONS UNDER THE SECURITIES OR OTHER OBLIGATIONS UNDER THIS INDENTURE OR ANY OTHER TERMINATION OF THIS INDENTURE OR SECURITIES AS A RESULT OF ANY SUCH EVENTS.

Section 6.03. *Other Remedies*. If an Event of Default with respect to the Securities occurs and is continuing, the Trustee may pursue any available remedy at law or in equity to collect the payment of principal of or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. To the extent permitted by law, all available remedies are cumulative.

Section 6.04. *Waiver of Past Defaults*. The Holders of not less than a majority in principal amount of the then outstanding Securities by written notice to the Trustee (with a copy to the Issuer, *provided* that any waiver under this Section 6.04 shall be valid and binding notwithstanding the failure to provide a copy of such notice to the Issuer) may on the behalf of all Holders waive an existing Default or Event of Default and its consequences except a continuing Default or Event of Default in the payment of interest on, premium, if any, or the principal of any Security held by a non-consenting Holder. When a Default or Event of Default is so waived, it is deemed cured and the Issuer, the Trustee and the Holders will be restored to their former positions and rights under this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

Section 6.05. *Control by Majority*. The Holders of a majority in principal amount of the then outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of any other Holder (it being

understood that the Trustee does not have an affirmative duty to ascertain whether or not such directions are unduly prejudicial to such Holder) or that would involve the Trustee in personal liability. Prior to taking any action under this Indenture, the Trustee shall be entitled to indemnification and/or security satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

Section 6.06. *Limitation on Suits*. (a) Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Securities unless:

(i) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(ii) Holders of at least 30% in principal amount of the total outstanding Securities have requested the Trustee, in writing, to pursue the remedy;

(iii) Holders of the Securities have offered the Trustee security and/or indemnity reasonably satisfactory to it against any loss, liability or expense;

(iv) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security and/or indemnity; and

(v) Holders of a majority in principal amount of the total outstanding Securities have not given the Trustee a written direction inconsistent with such request within such 60-day period.

(b) A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

Section 6.07. *Rights of the Holders to Receive Payment*. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and interest on the Securities held by such Holder, on or after the respective due dates expressed or provided for in the Securities, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08. *Collection Suit by Trustee*. If an Event of Default specified in Section 6.01(a) or (b) occurs and is continuing with respect to Securities, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer or any other obligor on the Securities for the whole amount then due and owing (together

with interest on overdue principal and (to the extent lawful) on any unpaid interest at the rate provided for in such Securities) and the amounts provided for in Section 7.06.

Section 6.09. *Trustee May File Proofs of Claim*. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation, expenses disbursements and advances of the Trustee (including counsel, accountants, experts or such other professionals as the Trustee deems necessary, advisable or appropriate)) and the Holders of Securities then outstanding allowed in any judicial proceedings relative to the Issuer or any Guarantor, its creditors or its property, shall be entitled to participate as a member, voting or otherwise, of any official committee of creditors appointed in such matters and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.06.

Section 6.10. *Priorities*. If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

FIRST: to the Trustee (acting in any capacity hereunder) and Collateral Trustee, and their respective agents and attorneys, for amounts due under Section 7.06;

SECOND: to the Holders for amounts due and unpaid on the Securities for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

THIRD: to the Issuer or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

The Trustee may fix a record date and payment date for any payment to the Holders pursuant to this Section. At least 15 days before such record date, the Trustee shall send to each Holder and the Issuer a notice that states the record date, the payment date and amount to be paid.

Section 6.11. *Undertaking for Costs*. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a

suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the Securities.

Section 6.12. *Waiver of Stay or Extension Laws*. Neither the Issuer nor any Guarantor (to the extent it may lawfully do so) shall at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer and each Guarantor (to the extent that it may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 7
TRUSTEE

Section 7.01. *Duties of Trustee*. (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee (it being agreed that the permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty); and

(ii) in the absence of negligence, willful misconduct or bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee shall be under no duty to make any investigation as to any statement contained in any such instance, but may accept the same as conclusive evidence of the truth and accuracy of such statement or the correctness of such opinions. However, in the case of certificates or opinions required by any provision hereof to be provided to it, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05; and

(iv) no provision of this Indenture, the Securities, the Intercreditor Agreements or the Security Documents shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section.

(e) The Trustee shall not be liable for interest or investment income on any money received by it except as the Trustee may agree in writing with the Issuer.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

(h) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer or any Guarantor will be sufficient if signed by an Officer of the Issuer.

Section 7.02. *Rights of Trustee*. (a) The Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers conferred upon it by this Indenture; *provided, however*, that the Trustee's conduct does not constitute gross negligence, willful misconduct or bad faith as determined by a non-appealable order of a court of competent jurisdiction.

(e) The Trustee may consult with counsel of its own selection and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other paper or document unless requested in writing to do so by the Holders of not less than a majority in principal amount of the Securities at the time outstanding, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney, at the expense of the Issuer and shall incur no liability of any kind by reason of such inquiry or investigation.

(g) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security and/or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified and/or secured, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(i) The Trustee shall not be liable for any action taken or omitted by it in good faith at the direction of the Holders of not less than a majority in principal amount of the outstanding Securities as to the time, method and place of conducting any proceedings for any remedy available to the Trustee or the exercising of any power conferred by this Indenture.

(j) Any action taken, or omitted to be taken, by the Trustee in good faith pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent, is the Holder of any Security shall be conclusive and binding upon future Holders of Securities and upon Securities executed and delivered in exchange therefor or in place thereof.

(k) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(l) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(m) The Trustee may request that the Issuer deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to any Notes Document.

(n) The Trustee shall not be deemed to have knowledge of any fact or matter unless such fact or matter is actually known to a Trust Officer of the Trustee.

(o) The permissive rights of the Trustee under any Notes Documents shall not be construed as obligations or duties.

(p) In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders, each representing less than a majority in the aggregate principal amount of the Notes then outstanding, pursuant to the provisions of this Indenture, the Trustee, in its sole discretion, may determine what action, if any, will be taken and the Trustee shall be entitled not to take any action until such instructions have been resolved or clarified to its satisfaction and the Trustee shall not be or become liability in any way or person for any failure to comply with any conflicting, unclear or equivocal instructions.

(q) The Trustee shall not have any obligation or duty to monitor, determine or inquire as to compliance, and shall not be responsible or liable for compliance with restrictions on transfer, exchange, redemption, purchase or repurchase, as applicable, of minimum denominations imposed under this Indenture or under applicable law or regulation with respect to any transfer, exchange, redemption, purchase or repurchase, as applicable, of any interest in any Notes.

(r) The Trustee shall have no duty (A) to see any recording, filing, or depositing of this Indenture or any Security Document, or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of such recording or filing or depositing, or to any re-recording, refiling, or redepositing of any thereof, or otherwise monitoring the perfection, continuation of perfection, or the sufficiency or validity of any security interest in or related to any Collateral or (B) to see to the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Collateral.

(s) The Trustee may assume without inquiry in the absence of actual knowledge that the Issuer and each of the Restricted Subsidiaries is duly complying with their obligations contained in any Notes Document required to be performed and observed by them, and that no Default or Event of Default or other event which would require repayment of the Notes has occurred.

(t) The Trustee shall have no obligation whatsoever to assure that the Collateral exists or is owned by any security provider or is cared for, protected, insured or has been encumbered, or that any Liens on the Collateral have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether the property constituting

collateral intending to be subject to the interest and the interest of the Security Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title thereto.

(u) The Trustee shall have no duty to monitor the performance or actions of the Collateral Trustee. The Trustee shall have no responsibility or liability for the actions or omissions of the Collateral Trustee. In each case that the Trustee is requested hereunder or under any of the Security Documents to give direction or provide any consent or approval to the Collateral Trustee, the Issuer or to any other party, the Trustee may seek direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. If the Trustee requests direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes with respect to giving any direction to the Collateral Trustee, the Trustee shall be entitled to refrain from giving such direction unless and until the Trustee shall have received direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes, and the Trustee shall not incur liability to any Person by reason of so refraining.

(v) At any time that the security granted pursuant to the Security Documents has become enforceable and the Holders have given a direction to the Trustee to enforce such security, the Trustee is not required to give any direction to the Collateral Trustee with respect thereto unless it has been indemnified and/or secured in accordance with Section 7.02(h). In any event, in connection with any enforcement of such security, the Trustee is not responsible for:

(i) any failure of the Collateral Trustee to enforce such security within a reasonable time or at all;

(ii) any failure of the Collateral Trustee to pay over the proceeds of enforcement of the Collateral;

(iii) any failure of the Collateral Trustee to realize such security for the best price obtainable;

(iv) monitoring the activities of the Collateral Trustee in relation to such enforcement;

(v) taking any enforcement action itself in relation to such security;

(vi) agreeing to any proposed course of action by the Collateral Trustee which could result in the Trustee incurring any liability for its own account; or

(vii) paying any fees, costs or expenses of the Collateral Trustee.

(w) No provision of this Indenture or of the Notes Documents shall require the Trustee to indemnify the Collateral Trustee, and the Collateral Trustee shall be required to waive any claim it may otherwise have by operation of law in any jurisdiction to be indemnified by the Trustee acting as principal vis-à-vis its agent, the Collateral Trustee (but this shall not prejudice the Collateral Trustee’s rights to bring any claim or suit

against the Trustee (including for damages in the case of gross negligence or willful misconduct of the Trustee)).

(x) The Trustee shall be under no obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by the Issuer or any Grantor, or to report, or make or file claims or proof of loss for, any loss or damage insured against it that may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment be made.

(y) Each of the above described rights (a) through (x) shall inure to the benefit of and be enforceable by the Collateral Trustee hereunder and under the Intercreditor Agreements and the Security Documents.

Section 7.03. *Individual Rights of Trustee*. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Issuer or their Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent or Registrar may do the same with like rights. However, the Trustee must comply with Sections 7.09 and 7.10.

Section 7.04. *Trustee's Disclaimer*. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, any Guarantee or other Security Documents or the Securities, it shall not be accountable for the Issuer's use of the proceeds from the Securities, and it shall not be responsible for any statement of the Issuer or any Guarantor in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's or its agent's certificate of authentication. The Trustee shall not be charged with knowledge of any Default or Event of Default unless either (a) a Trust Officer shall have actual knowledge thereof or (b) the Trustee shall have received written notice thereof in accordance with Section 12.01 from the Issuer, any Guarantor or any Holder. In accepting the trust hereby created, the Trustee acts solely as Trustee for the Holders and not in its individual capacity and all persons, including without limitation the Holders of Securities and the Issuer having any claim against the Trustee arising from this Indenture shall look only to the funds and accounts held by the Trustee hereunder for payment.

Section 7.05. *Notice of Defaults*. If a Default occurs and is continuing and if it is actually known to a Trust Officer of the Trustee, the Trustee shall send to each Holder notice of the Default within the earlier of 90 days after it occurs or 30 days after it is actually known to a Trust Officer or written notice of it is received by the Trustee, or promptly after discovery or obtaining notice if such discovery is made or notice is received more than 90 days after the Default occurs. Except in the case of a Default in the payment of principal of, premium (if any) or interest on any Security, the Trustee may withhold the notice if and so long as it in good faith determines that withholding the notice is in the interests of the Holders.

Section 7.06. *Compensation and Indemnity*. The Issuer and each Guarantor, jointly and severally, shall pay to the Trustee (acting in any capacity hereunder) and the

Collateral Trustee from time to time such compensation for its services as shall be agreed in writing between the Issuer and the Trustee and the Collateral Trustee. The Trustee and the Collateral Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer and the Guarantor, jointly and severally, shall reimburse the Trustee and the Collateral Trustee, as applicable, upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services, except any such disbursements, advances or expenses as may be attributable to its own respective gross negligence, willful misconduct or bad faith as determined by a final nonappealable order of a court of competent jurisdiction. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee and the Collateral Trustee's agents, counsel, accountants and experts. The Issuer and each Guarantor, jointly and severally, shall indemnify the Trustee (acting in any capacity hereunder) and the Collateral Trustee against any and all loss, liability, claim, damage or expense (including reasonable attorneys' fees and expenses) incurred by it arising out of or in connection with the acceptance or administration of this trust and the performance of its duties under this Indenture, including the costs and expenses of enforcing this Indenture or Guarantee against the Issuer or a Guarantor (including this Section 7.06) and defending itself against or investigating any claim (whether asserted by the Issuer, any Guarantor, any Holder or any other Person). The obligation to pay such amounts shall survive the payment in full or defeasance or discharge of the Securities or the removal or resignation of the Trustee or the Collateral Trustee. The Trustee and the Collateral Trustee shall notify the Issuer of any claim for which they may seek indemnity promptly upon obtaining actual knowledge thereof; *provided, however*, that any failure to so notify the Issuer shall not relieve the Issuer or any Guarantor of its indemnity obligations hereunder. The Issuer shall defend the claim and the indemnified party shall provide reasonable cooperation at the Issuer's expense in the defense. Such indemnified parties may have separate counsel and the Issuer and the Guarantors, as applicable, shall pay the fees and expenses of such counsel; *provided, however*, that the Issuer shall not be required to pay such fees and expenses if the Issuer assumes such indemnified parties' defense and, in such indemnified parties' reasonable judgment, there is no conflict of interest between the Issuer and the Guarantors, as applicable, and such parties in connection with such defense; *provided, further*, that the Issuer shall be required to pay the reasonable fees and expenses of such counsel in evaluating such conflict. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by an indemnified party through such party's own willful misconduct, gross negligence or bad faith as finally determined by a final nonappealable order of a court of competent jurisdiction.

(a) To secure the Issuer's and the Guarantors' payment obligations in this Section, the Trustee and the Collateral Trustee shall have a Lien prior to the Securities on all money or property held or collected by the Trustee and the Collateral Trustee other than money or property held in trust to pay principal of and interest on particular Securities pursuant to Article 8 or otherwise.

(b) The Issuer's and the Guarantors' payment obligations pursuant to this Section shall survive the satisfaction or discharge of this Indenture, any rejection or termination of this Indenture under any Bankruptcy Law or the resignation or removal of

the Trustee or the Collateral Trustee. Without prejudice to any other rights available to the Trustee or the Collateral Trustee under applicable law, when the Trustee or the Collateral Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(f) or (g) with respect to the Issuer, the expenses are intended to constitute expenses of administration under the Bankruptcy Law.

(c) No provision of this Indenture shall require the Trustee or the Collateral Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if adequate indemnity against such risk or liability is not assured to its satisfaction.

Section 7.07. *Replacement of Trustee or Collateral Trustee*. (a) A resignation or removal of the Trustee or Collateral Trustee and appointment of a successor Trustee or Collateral Trustee, as applicable will become effective only upon the applicable successor Trustee or Collateral Trustee's acceptance of appointment as provided in this Section 7.07

(b) The Trustee or Collateral Trustee, as applicable, may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuer. The Holders of a majority in aggregate principal amount of the then outstanding Securities may remove the Trustee or Collateral Trustee, as applicable, by so notifying the Trustee or Collateral Trustee, as applicable, and the Issuer in writing, and may appoint a successor Trustee or Collateral Trustee, as applicable. The Issuer shall remove the Trustee or Collateral Trustee if:

(i) the Trustee or Collateral Trustee, as applicable, fails to comply with Section 7.09;

(ii) the Trustee or Collateral Trustee, as applicable, is adjudged bankrupt or insolvent, or an order for relief is entered with respect to the Trustee or Collateral Trustee under any Bankruptcy Law;

(iii) a receiver or other public officer takes charge of the Trustee or Collateral Trustee, as applicable, or its property; or

(iv) the Trustee or Collateral Trustee, as applicable, otherwise becomes incapable of acting.

(c) If the Trustee or Collateral Trustee resigns, is removed by the Issuer or by the Holders of a majority in principal amount of the Securities and such Holders do not reasonably promptly appoint a successor Trustee or Collateral Trustee, as applicable, or if a vacancy exists in the office of Trustee or Collateral Trustee, as applicable, for any reason (the Trustee or Collateral Trustee, as applicable, in any such event being referred to herein as the retiring Trustee or retiring Collateral Trustee, as applicable), the Issuer shall promptly appoint a successor Trustee or Collateral Trustee, as applicable.

(d) A successor Trustee or Collateral Trustee, as applicable, shall deliver a written acceptance of its appointment to the retiring Trustee or Collateral Trustee, as applicable, and to the Issuer. Thereupon the resignation or removal of the retiring Trustee or Collateral Trustee, as applicable, shall become effective, and the successor Trustee or Collateral Trustee, as applicable, shall have all the rights, powers and duties of the Trustee or Collateral Trustee, as applicable, under this Indenture. The successor Trustee or Collateral Trustee, as applicable, shall mail a notice of its succession to the Holders. The retiring Trustee or Collateral Trustee, as applicable, shall promptly transfer all property held by it as Trustee or Collateral Trustee, as applicable, to the successor Trustee or Collateral Trustee, as applicable, subject to the Lien provided for in Section 7.06 and *provided* that all sums owing to the Trustee hereunder have been paid. The retiring Trustee or Collateral Trustee, as applicable, shall have no responsibility or liability for any action or inaction of a successor Trustee.

(e) If a successor Trustee or Collateral Trustee, as applicable, does not take office within 60 days after the retiring Trustee or Collateral Trustee, as applicable, resigns or is removed, the retiring Trustee or Collateral Trustee, as applicable, or the Holders of at least 10% in aggregate principal amount of the then outstanding Securities may petition at the expense of the Issuer any court of competent jurisdiction for the appointment of a successor Trustee or Collateral Trustee, as applicable.

(f) If the Trustee or Collateral Trustee, as applicable, fails to comply with Section 7.09, any Holder who has been a bona fide holder of a Security for at least six months may petition any court of competent jurisdiction for the removal of the Trustee or Collateral Trustee, as applicable, and the appointment of a successor Trustee or Collateral Trustee, as applicable.

(g) Notwithstanding the replacement of the Trustee or Collateral Trustee, as applicable, pursuant to this Section, the Issuer's obligations under Section 7.06 shall continue for the benefit of the retiring Trustee or retiring Collateral Trustee, as applicable.

Section 7.08. *Successor Trustee or Collateral Trustee by Merger*. If the Trustee or Collateral Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation, limited liability company or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee or Collateral Trustee, as applicable.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture and any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force

which it is anywhere in the Securities or in this Indenture *provided* that the certificate of the Trustee shall have.

Section 7.09. *Eligibility; Disqualification*. There will at all times be a Trustee hereunder that is an entity organized and doing business under the laws of the United States of America or any other state thereof that is authorized under such laws to exercise corporate trust powers, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50.0 million as set forth in its most recent published annual report.

Section 7.10. *Preferential Collection of Claims Against the Issuer*. The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent indicated.

ARTICLE 8
DISCHARGE OF INDENTURE; DEFEASANCE

Section 8.01. *Discharge of Liability on Securities; Defeasance*. 1. This Indenture shall be discharged and shall cease to be of further effect as to all outstanding Securities when either:

(a) all Securities theretofore authenticated and delivered, except lost, stolen or destroyed Securities which have been replaced or paid and Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from trust, have been delivered to the Trustee for cancellation; or

(b) (i) all Securities not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer and the Issuer or any Guarantor have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Securities, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness as determined by the Issuer on the Securities not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to, but not including, the date of maturity or redemption; (ii) the Issuer and/or the Guarantors have paid or caused to be paid all sums payable by it under this Indenture; and (iii) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Securities at maturity or the redemption date, as the case may be; *provided* that upon any redemption that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the

Applicable Premium calculated as of the date of deposit, with any deficit as of the date of redemption (any such amount, the "**Applicable Premium Deficit**") only required to be deposited with the Trustee on or prior to the date of redemption. Any Applicable Premium Deficit shall be set forth in an Officer's Certificate delivered to the Trustee simultaneously with the deposit of such Applicable Premium Deficit that confirms that such Applicable Premium Deficit shall be applied toward such redemption;

(c) In addition, the Issuer must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

2. Subject to Section 8.02, the Issuer may, at its option and at any time, elect to discharge (1) all of its obligations under the Securities and this Indenture ("**legal defeasance option**") or (2) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.09, 4.10, 4.11 4.12, 4.15, 4.16, 4.17, 4.18 and 4.19 for the benefit of the Holders and the operation of Section 5.01 and Sections 6.01(c), 6.01(d), 6.01(e), 6.01(f) (with respect to Significant Subsidiaries of the Issuer only), 6.01(g) (with respect to Significant Subsidiaries of the Issuer only), 6.01(h) and 6.01(i) ("**covenant defeasance option**") for the benefit of the Holders. The Issuer may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. In the event that the Issuer terminates all of its obligations under the Securities and this Indenture by exercising its legal defeasance option or its covenant defeasance option, the obligations of each Guarantor under its Guarantee of the Securities shall be terminated simultaneously with the termination of such obligations so long as no Securities are then outstanding.

3. If the Issuer exercises its legal defeasance option, payment of the Securities so defeased may not be accelerated because of an Event of Default. If the Issuer exercises its covenant defeasance option, payment of the Securities so defeased may not be accelerated because of an Event of Default specified in Sections 6.01(c), 6.01(d), 6.01(e), 6.01(f) (with respect to Significant Subsidiaries of the Issuer only), 6.01(g) (with respect to Significant Subsidiaries of the Issuer only), 6.01(h) and 6.01(i) or because of the failure of the Issuer to comply with Section 5.01.

4. Upon satisfaction of the conditions set forth herein and upon request of the Issuer, the Trustee shall acknowledge in writing the discharge of those obligations that the Issuer terminates.

5. Notwithstanding clause 2.(i) above, the Issuer's obligations in Sections 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 2.10, 2.15, 4.01, 4.13, 7.06, 7.07 and in this Article 8 shall survive until the Securities have been paid in full. Thereafter, the Issuer's obligations in Sections 7.06, 8.06 and 8.06 shall survive such satisfaction and discharge.

Section 8.02. *Conditions to Defeasance*. (a) The Issuer may exercise its legal defeasance option or its covenant defeasance option, in each case, with respect to the Securities only if:

(i) the Issuer shall irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Securities, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, investment bank or appraisal firm, to pay the principal of, premium, if any, and interest due on the Securities on the stated Maturity Date or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such Securities (*provided* that if such redemption is made as provided under Paragraph 5 of the form of Securities set forth in Exhibit A hereto, (x) the amount of cash in U.S. dollars, Government Securities, or a combination thereof, that the Issuer must irrevocably deposit or cause to be deposited will be determined using an assumed Applicable Premium calculated as of the date of such deposit and (y) the Issuer must irrevocably deposit or cause to be deposited additional money in trust on the redemption date as necessary to pay the Applicable Premium as determined on such date), and the Issuer must specify whether such Securities are being defeased to maturity or to a particular redemption date;

(ii) in the case of the exercise of a legal defeasance option, the Issuer shall have delivered to the Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions, (a) the Issuer has received from, or there has been published by, the United States Internal Revenue Service a ruling, or (b) since the issuance of the Securities, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the beneficial owners of the Securities will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such exercise of a legal defeasance option and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such exercise of a legal defeasance option had not occurred;

(iii) in the case of exercise of a covenant defeasance option, the Issuer shall have delivered to the Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions, the beneficial owners of the Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such exercise of a covenant defeasance option and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such exercise of a covenant defeasance option had not occurred;

(iv) no Default (other than that resulting from borrowing funds to be applied to make such deposit and the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;

(v) such exercise of a legal defeasance option or exercise of a covenant defeasance option shall not result in a breach or violation of, or constitute a default under the ABL Credit Agreement or any other material

agreement or instrument (other than this Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make the deposit required to effect such exercise of a legal defeasance option or exercise of a covenant defeasance option and any similar and simultaneous deposit relating to other Indebtedness, and, in each case, the granting of Liens in connection therewith);

(vi) the Issuer shall have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or any Guarantor or others; and

(vii) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the exercise of a legal defeasance option or the exercise of a covenant defeasance option, as the case may be, have been complied with.

Notwithstanding the foregoing, an Opinion of Counsel required by the immediately preceding paragraph with respect to legal defeasance need not be delivered if all of the Securities not theretofore delivered to the Trustee for cancellation (x) have become due and payable or (y) will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer.

(b) Before or after a deposit, the Issuer may make arrangements satisfactory to the Trustee for the redemption of such Securities at a future date in accordance with Article 3.

Section 8.03. *Application of Trust Money*. The Trustee shall hold in trust money or Government Securities (including proceeds thereof) deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from Government Securities through each Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities so discharged or defeased.

Section 8.04. *Repayment to Issuer*. Each of the Trustee and each Paying Agent shall promptly turn over to the Issuer upon written request any money or Government Securities held by it as provided in this Article 8 which, in the written opinion of a nationally recognized firm of independent public accountants delivered to the Trustee (which delivery shall only be required if Government Securities have been so deposited), are in excess of the amount thereof which would then be required to be deposited to effect an equivalent discharge or defeasance in accordance with this Article 8.

Subject to any applicable abandoned property law, the Trustee and each Paying Agent shall pay to the Issuer upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the Issuer for payment as general creditors, and the Trustee and each Paying Agent shall have no further liability with respect to such monies.

Section 8.05. *Indemnity for Government Securities*. The Issuer shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited Government Securities or the principal and interest received on such Government Securities.

Section 8.06. *Reinstatement*. If the Trustee or any Paying Agent is unable to apply any money or Government Securities in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's obligations under this Indenture and the Securities so discharged or defeased shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or any Paying Agent is permitted to apply all such money or Government Securities in accordance with this Article 8; *provided, however,* that, if the Issuer has made any payment of principal of or interest on, any such Securities because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Securities held by the Trustee or any Paying Agent.

ARTICLE 9
AMENDMENTS AND WAIVERS

Section 9.01. *Without Consent of the Holders*. The Issuer, the Guarantors (with respect to a Guarantee or this Indenture to which it is a party), the Trustee and/or the Collateral Trustee may amend or supplement this Indenture, any Guarantee, the Securities, the Intercreditor Agreements and any Security Document without the consent of any Holder:

(i) to cure any ambiguity, omission, mistake, defect or inconsistency, as provided to the Trustee in an Officer's Certificate;

(ii) to provide for uncertificated Securities of such series in addition to or in place of certificated Securities;

(iii) to comply with the covenant relating to mergers, consolidations and sales of assets;

(iv) to provide for the assumption of the Issuer's or any Guarantor's obligations to the Holders in a transaction that complies with this Indenture;

(v) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under this Indenture of any such Holder in any material respect;

(vi) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or any Guarantor;

(vii) to evidence and provide for the acceptance and appointment under this Indenture or the Intercreditor Agreements of a successor Trustee or successor Collateral Trustee thereunder pursuant to the requirements thereof or to provide for the accession by the Trustee or the Collateral Trustee, as applicable, to this Indenture, the Intercreditor Agreements or any Security Document;

(viii) to allow any Restricted Subsidiary to provide a Guarantee and execute a supplemental indenture and/or to release a Guarantor in accordance with the terms of this Indenture, the Intercreditor Agreements or the Security Documents;

(ix) to make certain changes to this Indenture to provide for the issuance of Additional Securities;

(x) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Securities as permitted by this Indenture, including, without limitation to facilitate the issuance and administration of the Securities; provided, *however*, that (i) compliance with this Indenture as so amended would not result in Securities being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Securities;

(xi) (A) to enter into additional or supplemental Security Documents or otherwise add additional parties or Collateral to further secure the Securities or any Guarantees or any other Obligations under this Indenture or (B) to make, complete or confirm any grant of Collateral permitted or required by this Indenture or any of the Security Documents or any release, termination or discharge of Collateral that becomes effective as set forth in this Indenture or any of the Security Documents;

(xii) to confirm and evidence the release of the Collateral from the Lien, or the subordination of Liens with respect to the Collateral, pursuant to this Indenture, the Security Documents, the Intercreditor Agreements when permitted or required by the Security Documents, this Indenture or the Intercreditor Agreements, as the case may be;

(xiii) in the case of the Security Documents, to mortgage, pledge, hypothecate or grant a security interest in favor of the Collateral Trustee for the benefit of the Secured Parties or in favor of the ABL Lenders, in any property which is required by the Security Documents or the ABL Credit Agreement or the other ABL Facility Documents (each, as in effect on the Issue Date) to be

mortgaged, pledged or hypothecated, or in which a Lien is required to be granted to the Collateral Trustee, or to the extent necessary to grant a security interest in the Collateral for the benefit of any Person; *provided* that the granting of such security interest is not prohibited by this Indenture or the Intercreditor Agreements; or

(xiv) to add any Pari Passu Lien Indebtedness and/or Senior Lien Indebtedness, to the extent permitted under this Indenture, the Intercreditor Agreements or the Security Documents on the terms set forth therein and in accordance with the terms of this Indenture.

After an amendment under this Section 9.01 becomes effective, the Issuer shall mail or otherwise send in accordance with the procedures of the Depositary to the Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.01.

Section 9.02. *With Consent of the Holders*. Notwithstanding Section 9.01 of this Indenture, the Issuer, the Guarantors, the Trustee and the Collateral Trustee may amend or supplement this Indenture, the Securities, the Guarantees, the Intercreditor Agreements and any Security Document with the written consent of the Holders of at least a majority in principal amount of the Securities then outstanding voting as a single class (including consents obtained in connection with a purchase of, tender offer or exchange offer for, the Securities), and, subject to Sections 6.04 and 6.07, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Securities, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Securities, the Security Documents, the Intercreditor Agreements or the Guarantees, the Intercreditor Agreements and any other Security Document may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Securities (including Additional Securities, if any) voting as a single class (including consents obtained in connection with the purchase of, or tender offer or exchange offer for, Securities), other than the Securities beneficially owned by the Issuer or any of its Subsidiaries. Section 2.09 and Section 12.04 shall determine which Securities are considered to be "outstanding" for the purposes of this Section 9.02. However, without the consent of each Holder of an outstanding Security affected, an amendment or waiver may not, with respect to any Securities held by a non-consenting Holder:

(i) reduce the principal amount of such Securities whose Holders must consent to an amendment, supplement or waiver;

(ii) reduce the principal of or change the fixed final maturity of any such Security or alter or waive the provisions with respect to the redemption of such Securities (other than provisions relating to Sections 4.09 and 4.14); *provided*, that any amendment to the notice requirements may be made with the

consent of the Holders of a majority in aggregate principal amount of then outstanding Securities prior to giving of any notice;

(iii) reduce the rate of or change the time for payment of interest on any Security;

(iv) waive a Default in the payment of principal of or premium, if any, or interest on the Securities, except a rescission of acceleration of the Securities by the Holders of at least a majority in aggregate principal amount of the Securities and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this Indenture or any Guarantee which cannot be amended or modified without the consent of all affected Holders;

(v) make any Security payable in money other than that stated in such Security;

(vi) make any change in the provisions of this Indenture relating to waivers of past Defaults;

(vii) make any change to this Section 9.02 that is materially adverse to the Holders;

(viii) impair the contractual right under this Indenture of any Holder to receive payment of principal of, premium, if any, and interest on such Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities;

(ix) make any change to or modify the ranking of the Securities that would adversely affect the Holders; or

(x) except as expressly permitted by this Indenture, modify the Guarantees of any Significant Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Issuer), would constitute a Significant Subsidiary, in any manner adverse to the Holders.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the Issuer shall promptly mail or otherwise send in accordance with the procedures of the Depositary to the Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

Notwithstanding anything herein to the contrary, without the consent of the Holders of at least 66 2/3% in principal amount of the Securities then outstanding, no amendment, supplement or waiver may release all or substantially all of the Collateral other than in accordance with this Indenture, the Intercreditor Agreements and the Security Documents.

Section 9.03. *Revocation and Effect of Consents and Waivers*. (a) A consent to an amendment or a waiver by a Holder of a Security shall bind the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent or waiver is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Security or portion of the Security if the Trustee receives written notice of revocation delivered in accordance with Section 12.01 before the date on which the Trustee receives an Officer's Certificate from the Issuer certifying that the requisite principal amount of Securities have consented. After an amendment or waiver becomes effective, it shall bind every Holder. An amendment or waiver becomes effective upon the (i) receipt by the Issuer or the Trustee of consents by the Holders of the requisite principal amount of Securities, (ii) satisfaction of conditions to effectiveness as set forth in this Indenture and any indenture supplemental hereto containing such amendment or waiver and (iii) execution of such amendment or waiver (or supplemental indenture) by the Issuer and the Trustee.

(b) The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

Section 9.04. *Notation on or Exchange of Securities*. If an amendment, supplement or waiver changes the terms of a Security, the Issuer may require the Holder to deliver it to the Trustee. The Trustee may place a notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the Issuer so determines, the Issuer in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make a notation or to issue a new Security shall not affect the validity of such amendment, supplement or waiver.

Section 9.05. *Trustee to Sign Amendments*. The Trustee or the Collateral Trustee, as applicable, shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee or the Collateral Trustee, as the case may be. If it does, the Trustee or the Collateral Trustee, as the case may be, may but need not sign it. In signing such amendment, the Trustee or the Collateral Trustee, as applicable shall be entitled to receive indemnity reasonably satisfactory to it and shall be provided with, and

(subject to Section 7.01) shall be fully protected in conclusively relying upon, an Officer's Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuer and the Guarantors, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof. Notwithstanding the foregoing, no Opinion of Counsel shall be required for the Trustee or the Collateral Trustee, as applicable, to execute any supplement to this Indenture, the form of which is attached as Exhibit C hereto, solely to add a new Guarantor under this Indenture, or the Grantor Supplement.

Section 9.06. *Payment for Consent*. Neither the Issuer nor any Affiliate of the Issuer shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Securities unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement; *provided* that this covenant shall not be breached if consents, waivers or amendments are sought in connection with an exchange offer for all of the Securities where participation in such exchange offer is limited to holders who are "qualified institutional buyers," within the meaning of Rule 144A, or non-U.S. persons, within the meaning of Regulation S.

Section 9.07. *Additional Voting Terms; Calculation of Principal Amount*. Except as otherwise set forth herein, all Securities issued under this Indenture shall vote and consent separately on all matters as to which any of such Securities may vote. Determinations as to whether Holders of the requisite aggregate principal amount of Securities have concurred in any direction, waiver or consent shall be made in accordance with this Article 9 and Section 2.14.

ARTICLE 10
GUARANTEES

Section 10.01. *Guarantees*. (a) Each Guarantor hereby jointly and severally, irrevocably and unconditionally guarantees on a senior secured basis, as a primary obligor and not merely as a surety, to each Holder and the Trustee (acting in any capacity hereunder) and their successors and assigns (i) the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of all obligations of the Issuer under this Indenture (including obligations to the Trustee) and the Securities, whether for payment of principal of, premium, if any, or interest on the Securities and all other monetary obligations of the Issuer under this Indenture and the Securities and (ii) the full and punctual performance within applicable grace periods of all other obligations of the Issuer whether for fees, expenses, indemnification or otherwise under this Indenture and the Securities, on the terms set forth in this Indenture by executing this Indenture.

On the Issue Date, the Guarantors will jointly and severally irrevocably and unconditionally guarantee on a senior basis the Securities ("**Guaranteed Obligations**") by executing this Indenture. Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from each such Guarantor, and that each such Guarantor shall remain bound under this Article 10 notwithstanding any extension or renewal of any Guaranteed Obligation.

(b) Each Guarantor waives presentation to, demand of payment from and protest to the Issuer of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Guarantor waives notice of any default under the Securities or the Guaranteed Obligations.

(c) Each Guarantor further agrees that its Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder or the Trustee to any security held for payment of the Guaranteed Obligations.

(d) Except as expressly set forth in Sections 8.01(2), 10.01 and 10.06, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise.

(e) Subject to Section 10.02, each Guarantor agrees that its Guarantee shall remain in full force and effect until payment in full of all the Guaranteed Obligations. Each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder or the Trustee upon the bankruptcy or reorganization of the Issuer or otherwise.

(f) In furtherance of the foregoing and not in limitation of any other right which any Holder or the Trustee has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Issuer to pay the principal of or interest on any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Trustee an amount equal to the sum of (i) the unpaid principal amount of such Guaranteed Obligations, (ii) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by applicable law) and (iii) all other monetary obligations of the Issuer to the Trustee.

(g) Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Trustee in respect of any Guaranteed Obligations guaranteed hereby until payment in full of all Guaranteed Obligations. Each Guarantor further agrees that, as between it, on the one hand, and the Trustee, on the other hand, (i)

the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in Article 6 for the purposes of any Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purposes of this Section 10.01.

(h) Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee or any Holder in enforcing any rights under this Section 10.01.

Upon request of the Trustee, each Guarantor shall promptly execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

Section 10.02. *Limitation on Liability*. (a) Each Guarantor, and by its acceptance of Securities, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that, any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any Guarantor shall not exceed the maximum amount that can be hereby guaranteed without rendering this Indenture, as it relates to such Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. Each Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all Guaranteed Obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's *pro rata* portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

(b) A Guarantee as to any Guarantor shall be automatically and unconditionally released and discharged upon:

(i) (a) any sale, exchange, disposition or transfer (including through consolidation, merger or otherwise) of (x) the Capital Stock of such Guarantor, after which the applicable Guarantor is no longer a Restricted Subsidiary, or (y) all or substantially all the assets of such Guarantor, which sale, exchange, disposition or transfer in each case is made in compliance with Section 5.01; (b) the permitted designation of any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary; (c) upon the consolidation or merger of any Guarantor with and into the Issuer or another Guarantor that is the surviving Person in such consolidation or merger, or upon the liquidation of such Guarantor following the transfer of all of its assets to the Issuer or another Guarantor; or (d) the Issuer

exercising its legal defeasance option or covenant defeasance option as described under Article 8 or the Issuer's obligations under this Indenture, including the Securities being discharged in accordance with the terms of this Indenture (including pursuant to a satisfaction and discharge under Article 8); and

(ii) the Issuer delivering to the Trustee an Officer's Certificate of such Guarantor or the Issuer and an Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

(c) The Issuer will have the right, upon delivery of an Officer's Certificate to the Trustee, to cause any Guarantor that has not guaranteed any Indebtedness of the Issuer or any Guarantor, and is not otherwise required by the applicable terms of this Indenture to provide a Guarantee (all as certified pursuant to such Officer's Certificate), to be unconditionally released and discharged from all obligations under its Guarantee, and such Guarantee will thereupon automatically and unconditionally terminate and be discharged and of no further force or effect; *provided* that at the time of such release, no Event of Default shall have occurred and be continuing or would occur as consequences thereof (as certified pursuant to such Officer's Certificate).

Section 10.03. *Successors and Assigns*. This Article 10 shall be binding upon each Guarantor and its successors and assigns and shall inure to the benefit of the successors and assigns of the Trustee and the Holders and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges conferred upon that party in this Indenture and in the Securities shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

Section 10.04. *No Waiver*. Neither a failure nor a delay on the part of either the Trustee or the Holders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 10 at law, in equity, by statute or otherwise.

Section 10.05. *Modification*. No modification, amendment or waiver of any provision of this Article 10, nor the consent to any departure by any Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Guarantor in any case shall entitle such Guarantor to any other or further notice or demand in the same, similar or other circumstances.

Section 10.06. *Execution of Supplemental Indenture for Future Guarantors*. Each Subsidiary and other Person which is required to become a Guarantor pursuant to Section 4.17 or the first sentence of Section 10.01(a) after the Issue Date shall promptly (i)

execute and deliver to the Trustee a supplemental indenture in the form of Exhibit C hereto pursuant to which such Subsidiary or other Person shall become a Guarantor under this Article 10 and shall guarantee the Guaranteed Obligations and (ii) execute and deliver to the Collateral Trustee a Grantor Supplement pursuant to which such Guarantor shall, subject to applicable legal limitations, be subject to the terms of the applicable Security Documents. Concurrently with the execution and delivery of such supplemental indenture, the Issuer shall deliver to the Trustee an Officer's Certificate to the effect that such supplemental indenture has been duly authorized, executed and delivered by such Subsidiary or other Person and that, subject to the application of bankruptcy, insolvency, moratorium, fraudulent conveyance or transfer and other similar laws relating to creditors' rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, the Guarantee of such Guarantor is a valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms.

Section 10.07. *Evidence of Guarantee*. To evidence its Guarantee set forth in this Article 10, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by an Officer or person holding an equivalent title. Each Guarantor hereby agrees that its Guarantee set forth in this Article 10 shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Securities. If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Security, the Guarantees shall be valid nevertheless. The delivery of any Security by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

Section 10.08. *Benefits Acknowledged*. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

ARTICLE 11
SECURITY

Section 11.01. *Security Interests*. The due and punctual payment of the principal of, premium (if any), and interest on, the Securities and the Guarantees when and as the same shall be due and payable, whether on an interest payment date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium (if any), and interest on, the Securities and performance of all other Securities (as defined in the Security Agreement) of the Issuer and the Guarantors, according to the terms hereunder, the Guarantees and under the Security Documents, are secured by the security interests granted in the Collateral as provided in the applicable Security Documents. Each Holder, by its acceptance of any Securities, consents and agrees (1) to the terms of the Security Documents and the Intercreditor Agreements (including, in each case, without limitation, the provisions providing for foreclosure and release of Collateral), as the same may be in effect or may be amended from time to time in accordance with their terms, (2) to the ranking of the Liens provided for in the

Intercreditor Agreements, and that it will take no actions contrary to the provisions of the Intercreditor Agreements and (3) to the appointment of Wilmington Savings Fund Society, FSB as Trustee, Collateral Trustee, Paying Agent and Registrar under this Indenture. Each Holder and the Trustee authorizes and directs the Collateral Trustee to enter into the Intercreditor Agreements and each Security Document, as collateral trustee for the Secured Parties, and to perform its respective obligations and exercise its rights thereunder in accordance therewith. The Issuer and the Guarantors consent and agree to be bound by the terms of the applicable Security Documents, as the same may be in effect from time to time, and agree to perform their respective obligations thereunder in accordance therewith. The Issuer will deliver to the Trustee copies of all documents delivered to the Collateral Trustee pursuant to the Security Documents, and will do or cause to be done, at the Issuer's sole cost and expense, all such acts and things as may be required by the provisions of the Intercreditor Agreements and the Security Documents, to assure and confirm to the Collateral Trustee the security interest in the Collateral contemplated by the Security Documents and the Intercreditor Agreements or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Secured Parties according to the intent and purposes herein expressed. The Issuer hereby agrees that the Collateral Trustee shall hold the Collateral in trust for the benefit of all Secured Parties pursuant to the Security Documents.

Section 11.02. *Intercreditor Agreements*. Notwithstanding anything herein to the contrary, the priority of the lien and security interest granted to the Collateral Trustee pursuant to the applicable Security Documents and the exercise of any right or remedy by the Trustee or Collateral Trustee hereunder and thereunder with respect to the Collateral are subject to the provisions of the Intercreditor Agreements. The Issuer and each Guarantor consents to, and agrees to be bound by, the terms of the Intercreditor Agreements, to the extent it is a party thereto, as the same may be in effect from time to time. In the event of any conflict between the terms of the Intercreditor Agreements on the one hand and this Indenture on the other, with respect to lien priority or rights and remedies in connection with the Collateral, the terms of the applicable Intercreditor Agreement(s) shall govern.

Section 11.03. *Further Assurances*. The Issuer and the Guarantors shall promptly execute and deliver, or cause to be promptly executed and delivered, to the Collateral Trustee such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements and continuations thereof, termination statements, notices of assignments, fixture filings, mortgages, deeds of trust, security agreements and other documents or instruments and such other actions or deliveries of the type required pursuant to the Security Documents), as may be required by the Security Documents or any applicable law or which the Collateral Trustee may, from time to time, reasonably request to carry out the terms and conditions of this Indenture and the Security Documents and to ensure perfection and priority of the Liens created or intended to be created by the Security Documents (to the extent required herein or therein), all at the expense of the Issuer and the Guarantors.

Section 11.04. *Impairment of Security Interests*. Neither the Issuer nor any of its Restricted Subsidiaries will (i) take or omit to take any action which would materially adversely affect or impair the Liens granted in favor of the Secured Parties with respect to the Collateral (it being understood that the incurrence of Permitted Liens shall under no circumstances be deemed to materially impair the Liens with respect to the Collateral), except that (x) the Issuer and its Restricted Subsidiaries may amend, restate, supplement or otherwise modify any Security Documents for the purposes of granting Permitted Liens, or (y) the Collateral may be discharged and released in accordance with this Indenture, the applicable Security Documents or the applicable Intercreditor Agreement(s), (ii) grant any Person, or permit any Person to retain (other than the Collateral Trustee or any agent of a Secured Party), any Liens on the Collateral, other than Permitted Liens or (iii) enter into any agreement that requires the proceeds received from any sale of Collateral to be applied to repay, redeem, defease or otherwise acquire or retire any Indebtedness of any Person in a manner that conflicts with this Indenture, the Guarantees, the Intercreditor Agreements or the Security Documents, as applicable.

Section 11.05. *Maintenance of Collateral; Collateral Trustee Obligations*. (a) The Collateral Trustee shall have no obligation whatsoever to the Trustee or any of the Holders to assure that the Issuer and the Guarantors comply with their obligations under this Section 11.05. In addition, the Collateral Trustee shall have no obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by any Issuer or Guarantor or is cared for, protected, or insured or has been encumbered, the Collateral Trustee's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all of the property constituting Collateral intended to be subject to the Lien and security interest of the Security Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care (other than the duty to use reasonable care with respect to any Collateral in its possession), disclosure, or to continue exercising, any of the rights, authorities, and powers granted or available to the Collateral Trustee pursuant to this Indenture, any Security Document or the Intercreditor Agreements other than pursuant to the instructions of the Holders of a majority in aggregate principal amount of the Securities or as otherwise provided in the Security Documents. The Collateral Trustee shall have the right at any time to seek instructions from the Holders with respect to the administration of this Indenture, the Security Documents, and the Intercreditor Agreements.

(b) The parties hereto and the Holders hereby agree and acknowledge that neither the Collateral Trustee nor the Trustee shall assume, be responsible for or otherwise be obligated for any liabilities, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including but not limited to, any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, pursuant to any environmental law as a result of this Indenture, the Intercreditor Agreements, the other

Security Documents or any actions taken pursuant hereto or thereto. Further, the parties hereto and the Holders hereby agree and acknowledge that in the exercise of its rights under this Indenture, the Intercreditor Agreements, if any, and the other Security Documents, the Collateral Trustee may hold or obtain indicia of ownership primarily to protect the security interest of the Collateral Trustee in the Collateral and that any such actions taken by the Collateral Trustee shall not be construed as or otherwise constitute any participation in the management of such Collateral.

Section 11.06. *Release of Liens in Respect of the Obligations*. (a) The Collateral Trustee's Liens upon the Collateral will no longer secure the Obligations under this Indenture, and the right of the Holders of Securities and such Obligations to the benefits and proceeds of the Collateral Trustee's Liens on the Collateral will terminate and be automatically released upon the occurrence of any of the following:

(1) [reserved];

(2) the Issuer's obligations under this Indenture, including the Securities being discharged in accordance with the terms of this Indenture (including pursuant to a satisfaction and discharge under Article 8);

(3) in whole or in part, with the consent of the Holders of the requisite percentage of Securities in accordance with the provisions of Article 9;

(4) the sale, transfer or other disposition of Collateral permitted under Section 4.09;

(5) in the case of a Guarantor that is released from its Guarantee hereunder pursuant to the terms of this Indenture, the release of the property and assets, and Equity Interests, of such Guarantor;

(6) the property or asset is or becomes Excluded Assets (as defined in the Security Agreement);

(7) a legal defeasance or covenant defeasance under Article 8;

(8) automatically without any action by the Collateral Trustee, if the Lien granted in favor of the Indebtedness that gave rise to the obligation to grant the Lien over such Collateral is released;

(9) in the event that the owner thereof is properly designated as an Unrestricted Subsidiary in accordance with the terms hereof;

(10) as otherwise permitted in accordance with this Indenture;

(11) in the case of any lease or other agreement or contract that is Collateral, upon termination of such lease, agreement or contract; and

(12) with respect to Collateral that is Capital Stock, upon the dissolution or liquidation of the issuer of that Capital Stock in a transaction that is not prohibited by this Indenture.

(b) The Collateral Trustee shall execute, upon request and at the Issuer's expense, any documents, instruments, agreements or filings reasonably requested by the Issuer or any Guarantor to evidence such release of such Collateral; *provided* that if the Collateral Trustee is required to execute any such documents, instruments, agreements or filings, the Collateral Trustee shall be fully protected in relying upon an Officer's Certificate and Opinion of Counsel in connection with any such release each stating that such release of Collateral is permitted to be released under this Indenture, the Intercreditor Agreements and/or the Security Documents, as applicable, and that all conditions precedent to such release in such documents have been complied with.

Section 11.07. The Collateral Trustee. (a) The Collateral Trustee will hold (directly or through co-trustees or agents), and is directed by each Holder to so hold, and will be entitled to enforce, on behalf of the Holders, all Liens on the Collateral created by the Security Documents for their benefit and the benefit of the other Secured Parties, subject to the provisions of the Intercreditor Agreements. Neither the Issuer nor any of its Affiliates may serve as Collateral Trustee.

(b) Except as provided in this Indenture and the Security Documents, the Collateral Trustee will not be obligated:

(i) to act upon directions purported to be delivered to it by any Person;

(ii) to foreclose upon or otherwise enforce any Lien; or

(iii) to take any other action whatsoever with regard to any or all of the Security Documents, the Liens created thereby or the Collateral.

Section 11.08. *Co-Collateral Trustee*. At any time or times it shall be necessary or prudent in order to conform to any law of any jurisdiction in which any of the Collateral shall be located, or the Collateral Trustee shall be advised by counsel, satisfactory to it, that it is reasonably necessary in the interest of the Secured Parties, or the Holders of a majority in principal amount of the Securities shall in writing so request the Collateral Trustee, or the Collateral Trustee shall deem it desirable for its own protection in the performance of its duties hereunder, the Collateral Trustee and the Issuer shall, at the reasonable request of the Collateral Trustee, execute and deliver all instruments and agreements necessary or proper to constitute another bank or trust company, or one or more persons approved by the Collateral Trustee (or the Holders of a

majority in principal amount of the Securities, as the case may be) and the Issuer, either to act as co-Collateral Trustee or co-Collateral Trustees of all or any of the Collateral, jointly with the Collateral Trustee originally named herein or any successor or successors, or to act as separate collateral trustee or collateral trustees of any such property. In case an Event of Default shall have occurred and be continuing, the Collateral Trustee may act under the foregoing provisions of this Section 11.08 without the consent of the Issuer, and each Holder hereby appoints the Collateral Trustee as its trustee and attorney to act under the foregoing provisions of this Section 11.08 in such case.

Section 11.09. *New Guarantors; After-Acquired Property*. (a) Following the acquisition by the Issuer or any Guarantor of any assets that constitute Collateral, the Issuer, as soon as reasonably practicable after such property's acquisition or such property becoming an asset that constitutes Collateral and in no event later than 60 days after such acquisition (or such later date as the Issuer may reasonably request and agreed upon in writing by the Collateral Trustee), shall, and shall cause each Guarantor to, and each such Guarantor shall do or cause to be done all acts and things that may be required by applicable law or the Security Documents or as may be reasonably requested by the Collateral Trustee to perfect and maintain the perfection and priority of the Collateral Trustee's Liens on the Collateral, for the benefit of the Secured Parties, in each case, as contemplated by, and with the Lien priority required hereunder and under the applicable Intercreditor Agreement(s) and the Security Documents, all at the Issuer's sole expense.

(b) Following a Restricted Subsidiary (including a newly created one) becoming a Guarantor, the Issuer shall as soon as reasonably practicable after such Restricted Subsidiary becomes a Guarantor pursuant to Section 10.06 cause all of such Restricted Subsidiary's assets that constitute Collateral to be subjected to a Lien securing the Securities subject to the terms and conditions set forth in the Security Agreement, and shall do or cause to be done all acts and things that may be required pursuant to the Security Agreement or by applicable law or as may be reasonably requested by the Collateral Trustee to assure and confirm that the Collateral Trustee holds, for the benefit of the Secured Parties enforceable and perfected Liens upon all of the Collateral, in each case, as contemplated by, and with the Lien priority required under, the applicable Intercreditor Agreement and the Security Documents, all at the Issuer's sole expense.

(c) The Issuer shall from time to time promptly pay all financing and continuation statement recording and/or filing fee, charges and stamp and similar taxes relating to this Indenture, the Security Documents and any amendments thereto.

Section 11.10. *Reserved*.

ARTICLE 12
MISCELLANEOUS

Section 12.01. *Notices*. (a) Any notice or communication by the Issuer, any Guarantor or the Trustee to the others is duly given if in writing and delivered in person, via facsimile, electronic mail or other electronic transmission, mailed by first-class mail

(registered or certified, return receipt requested) or overnight air courier guaranteeing next day delivery, to the addressed as follows:

if to the Issuer or a Guarantor:

Party City Holdco Inc.
100 Tice Boulevard
Woodcliff Lake, NJ 07677
Attn: Ian Heller
Email:

With a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Attn: David Huntington
Email:
if to the Trustee:

Wilmington Savings Fund Society, FSB, as Trustee
500 Delaware Avenue, 11th Floor
Wilmington, Delaware 19801
Attention: Global Capital Markets, Pat Healy
Fax No.: (302) 571-7081
Email:

The Issuer, any Guarantor or the Trustee by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders, Trustee, Collateral Trustee, Paying Agent and Registrar) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, first-class, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery. All notices given by publication or electronic delivery will be deemed given on the first date on which publication or electronic delivery is made. Notices given in accordance with the procedures of DTC will be deemed given on the date sent to DTC. Any notice or communication delivered to the Trustee or the Collateral Trustee shall be deemed effective upon actual receipt thereof.

(b) Any notice or communication mailed to a Holder shall be mailed, first class mail (certified or registered, return receipt requested), by overnight air courier guaranteeing next day delivery or sent electronically to the Holder at the Holder’s address

as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed or sent within the time prescribed.

(c) Failure to deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or otherwise delivered in the manner provided above, it is duly given, whether or not the addressee receives it.

(d) Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event (including any notice of redemption) to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Security (or its designee) pursuant to the standing instructions from the Depositary (or its designee), including by electronic mail in accordance with accepted practices at the Depositary.

Section 12.02. *Certificate and Opinion as to Conditions Precedent*. Upon any request or application by the Issuer to the Trustee to take or refrain from taking any action under this Indenture, the Issuer shall furnish to the Trustee:

(a) an Officer's Certificate in form reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 12.03. *Statements Required in Certificate or Opinion*. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture (other than pursuant to Section 4.16) shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officer's Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with; *provided, however*, that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Section 12.04. *When Securities Disregarded*. In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Issuer or any Subsidiary shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to the Securities and that the pledgee is not the Issuer or a Subsidiary. Subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination.

Section 12.05. *Rules by Trustee, Paying Agent and Registrar*. The Trustee may make reasonable rules for action by or a meeting of the Holders. The Registrar and a Paying Agent may make reasonable rules for their functions.

Section 12.06. *Legal Holidays*. If a payment date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day, and no interest shall accrue on any amount that would have been otherwise payable on such payment date if it were a Business Day for the intervening period. If a regular record date is not a Business Day, the record date shall not be affected.

Section 12.07. *GOVERNING LAW; WAIVER OF JURY TRIAL*. THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH OF THE ISSUER, THE GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 12.08. *No Recourse Against Others*. No past, present or future director, officer, employee, manager, incorporator, member, partner or stockholder of the Issuer or any Guarantor or any of their Subsidiaries or direct or indirect Parent Companies, if applicable, shall have any liability for any obligations of the Issuer or the Guarantors under the Securities, the Guarantees or this Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

Section 12.09. *Successors*. All agreements of the Issuer and each Guarantor in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 12.10. *Multiple Originals*. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent

the same agreement. One signed copy is enough to prove this Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or email (in PDF format or otherwise) transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or email (in PDF format or otherwise) shall be deemed to be their original signatures for all purposes.

Section 12.11. *Table of Contents; Headings*. The table of contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part of this Indenture and shall not modify or restrict any of the terms or provisions of this Indenture.

Section 12.12. *Indenture Controls*. If and to the extent that any provision of the Securities limits, qualifies or conflicts with a provision of this Indenture, such provision of this Indenture shall control.

Section 12.13. *Severability*. In case any provision in this Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

Section 12.14. *Force Majeure*. Notwithstanding any provision to the contrary, in no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, embargo, government action, including laws, ordinances, regulations or the like, which limit, restrict or prohibit the provision of services contemplated by this Indenture, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 12.15. *U.S.A. Patriot Act*. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee.

Section 12.16. *No Adverse Interpretation of Other Agreements*. This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

Very truly yours,

Party City Holdco Inc.

By: /s/ Ian Heller
Name: Ian Heller
Title: General Counsel and Corporate Secretary

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

Party City Holdings Inc.

By: /s/ Ian Heller
Name: Ian Heller
Title: General Counsel and Corporate Secretary

Party City Corporation

By: /s/ Ian Heller
Name: Ian Heller
Title: Secretary

PC Intermediate Holdings, Inc.

By: /s/ Ian Heller
Name: Ian Heller
Title: Secretary

Amscan Inc.

By: /s/ Ian Heller
Name: Ian Heller
Title: Secretary

Am-Source, LLC

By: /s/ Ian Heller
Name: Ian Heller
Title: Secretary

Trisar, Inc.

By: /s/ Ian Heller
Name: Ian Heller
Title: Secretary

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

Wilmington Savings Fund Society, FSB

By: /s/ Patrick J. Healy
Name: Patrick J. Healy
Title: Senior Vice President

Schedule 1.01
Adjustments to Consolidated Adjusted EBITDA

(attached)

****Omitted****

Appendix A

Transfer Restrictions

1. Definitions.

1.1 Definitions.

For the purposes of this Appendix A the following terms shall have the meanings indicated below:

"Definitive Security" means a certificated Security (bearing the Restricted Securities Legend if the transfer of such Security is restricted by applicable law) that does not include the Global Securities Legend.

"Depository" means The Depository Trust Company, its nominees and their respective successors.

"Global Securities Legend" means the legend set forth under that caption in Exhibit A to the Indenture.

"IAI" means an institutional "accredited investor" as described in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Regulation S" means Regulation S under the Securities Act.

"Regulation S Securities" means all Securities offered and sold outside the United States in reliance on Regulation S.

"Restricted Global Securities" means Global Securities and any other Securities that are required to bear, or are subject to, the Restricted Securities Legend.

"Restricted Period," with respect to any Securities, means the period of 40 consecutive days beginning on and including the later of (a) the day on which such Securities are first offered to persons other than distributors (as defined in Regulation S under the Securities Act) in reliance on Regulation S, notice of which day shall be promptly given by the Issuer to the Trustee and (b) the Issue Date.

"Restricted Securities Legend" means the legend set forth in Section 2.2(f)(i) herein. "Rule 144A" means Rule 144A under the Securities Act.

"Rule 144A Securities" means all Securities offered and sold to QIBs in reliance on Rule 144A.

"Rule 501" means Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"Securities Custodian" means the custodian with respect to a Global Security (as appointed by the Depository) or any successor person thereto, who shall initially be the Trustee.

"Transfer Restricted Securities" means Definitive Securities and any other Securities that bear or are required to bear or are subject to the Restricted Securities Legend.

"Unrestricted Definitive Securities" means Definitive Securities and any other Securities that are not required to bear, or are not subject to, the Restricted Securities Legend.

"Unrestricted Global Securities" means Global Securities and any other Securities that are not required to bear, or are not subject to, the Restricted Securities Legend.

1.2 Other Definitions.

Term:	Defined in Section:
4(a)(2) Securities	2.1(a)
Agent Members	2.1(a)
Clearstream	2.1(a)
Euroclear	2.1(a)
Global Securities	2.1(a)
Regulation S Global Securities	2.1(a)
Regulation S Permanent Global Security	2.1(a)
Regulation S Temporary Global Security	2.1(a)
Rule 144A Global Securities	2.1(a)

2. The Securities.

2.1 Form and Dating; Global Securities.

(a) Global Securities. 4(a)(2) Securities initially shall be represented by one or more Securities in definitive, fully registered, global form without interest coupons (collectively, the "4(a)(2) Global Securities").

Rule 144A Securities initially shall be represented by one or more Securities in definitive, fully registered, global form without interest coupons (collectively, the "Rule 144A Global Securities").

Regulation S Securities initially shall be represented by one or more Securities in fully registered, global form without interest coupons (collectively, the "Regulation S Temporary Global Security" and, together with the Regulation S Permanent Global Security (defined below), the "Regulation S Global Securities"), which shall be registered in the name of the Depository or the nominee of the Depository for the accounts of designated agents holding on behalf of Euroclear Bank S.A./N.V., as operator of the Euroclear system ("Euroclear") or Clearstream Banking, Société Anonyme ("Clearstream").

Following the termination of the Restricted Period, beneficial interests in the Regulation S Temporary Global Security shall be exchanged for beneficial interests in a permanent Global Security (the "Regulation S Permanent Global Security") pursuant to the applicable procedures of the Depository. Simultaneously with the authentication of the Regulation S Permanent Global Security, the Trustee shall cancel the Regulation S Temporary Global Security. The aggregate principal amount of the Regulation S Temporary Global Security and the Regulation S Permanent Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided. The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Security and the Regulation S Permanent Global Security that are held by participants through Euroclear or Clearstream.

The term "Global Securities" means the 4(a)(2) Global Securities, Rule 144A Global Securities and the Regulation S Global Securities. The Global Securities shall bear the Global Security Legend. The Global Securities initially shall (i) be registered in the name of the Depository or the nominee of such Depository, in each case for credit to an account of a member of, or participant in, such Depository (an "Agent Member"), (ii) be delivered to the Trustee as Securities Custodian for such Depository and (iii) bear the Restricted Securities Legend.

Members of, or direct or indirect participants in, the Depository shall have no rights under the Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its Securities Custodian, or under the Global Securities. The Depository may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of the Global Securities for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository, or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(i) Transfers of Global Securities shall be limited to transfer in whole,

but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in the Global Securities may be transferred or exchanged for Definitive Securities only in accordance with the applicable rules and procedures of the Depository and the provisions of Section 2.2. In addition, a Global Security shall be exchangeable for Definitive Securities if (x) the Depository (1) notifies the Issuer that it is unwilling or unable to continue as depository for such Global Security and the Issuer thereupon fails to appoint a successor depository within 90 days or (2) has ceased to be a clearing agency registered under the Exchange Act, (y) the Issuer, at its option, notifies the Trustee that it elects to cause the issuance of Definitive Securities or (z) there shall have occurred and be continuing an Event of Default with respect to such Global Security and the Depositary shall have requested such exchange; *provided* that in no event shall the Regulation S Temporary Global Security be exchanged by the Issuer for Definitive Securities prior to (x) the expiration of the Restricted Period and (y) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act. In all cases, Definitive Securities delivered in exchange for any Global Security or beneficial interests therein shall be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository in accordance with its customary procedures.

(ii) In connection with the transfer of a Global Security as an entirety to beneficial owners pursuant to subsection (i) of this Section 2.1(a), such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, to each beneficial owner identified by the Depository in writing in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Definitive Securities of authorized denominations. Any Transfer Restricted Security delivered in exchange for an interest in a Global Security pursuant to Section 2.2 shall, except as otherwise provided in Section 2.2, bear the Restricted Securities Legend.

(iii) Notwithstanding the foregoing, through the Restricted Period, a beneficial interest in such Regulation S Global Security may be held only through Euroclear or Clearstream unless delivery is made in accordance with the applicable provisions of Section 2.2.

(iv) The Holder of any Global Security may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under the Indenture or the Securities.

2.2 Transfer and Exchange.

(a) Transfer and Exchange of Global Securities. A Global Security may not

be transferred as a whole except as set forth in Section 2.1(a)(i). Global Securities will not be exchanged by the Issuer for Definitive Securities except under the circumstances described in Section 2.1(a)(i). Global Securities also may be exchanged or replaced, in whole or in part, as provided in Sections 2.08 and 2.10 of the Indenture. Beneficial interests in a Global Security may be transferred and exchanged as provided in Section 2.2(b) or 2.2(h).

(b) Transfer and Exchange of Beneficial Interests in Global Securities. The transfer and exchange of beneficial interests in the Global Securities shall be effected through the Depository, in accordance with the provisions of the Indenture and the applicable rules and procedures of the Depository. Beneficial interests in Restricted Global Securities shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Beneficial interests in Global Securities shall be transferred or exchanged only for beneficial interests in Global Securities. Transfers and exchanges of beneficial interests in the Global Securities also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Security. Beneficial interests in any Restricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Security in accordance with the transfer restrictions set forth in the Restricted Securities Legend; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in a Regulation S Global Security may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). A beneficial interest in an Unrestricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.2(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Securities. In connection with all transfers and exchanges of beneficial interests in any Global Security that is not subject to Section 2.2(b)(i), the transferor of such beneficial interest must deliver to the Registrar (1) a written order from an Agent Member given to the Depository in accordance with the applicable rules and procedures of the Depository directing the Depository to credit or cause to be credited a beneficial interest in another

Global Security in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the applicable rules and procedures of the Depository containing information regarding the Agent Member account to be credited with such increase. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Securities contained in the Indenture and the Securities or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Security pursuant to Section 2.2(h).

(iii) Transfer of Beneficial Interests to Another Restricted Global Security. A beneficial interest in a Restricted Global Security may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Security if the transfer complies with the requirements of Section 2.2(b)(ii) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in a Rule 144A Global Security, then the transferor must deliver a certificate in the form attached to the applicable Security; and

(B) if the transferee will take delivery in the form of a beneficial interest in a Regulation S Global Security, then the transferor must deliver a certificate in the form attached to the applicable Security.

(iv) Transfer and Exchange of Beneficial Interests in a Restricted Global Security for Beneficial Interests in an Unrestricted Global Security. A beneficial interest in a Restricted Global Security may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Security or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security if the exchange or transfer complies with the requirements of Section 2.2(b)(ii) above and the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Security proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Security, a certificate from such holder in the form attached to the applicable Security; or

(2) if the holder of such beneficial interest in a Restricted Global Security proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security, a certificate from such holder in the form attached to the applicable Security,

and, in each such case, if the Issuer so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend are no longer required in order to maintain compliance with the Securities Act. If any such transfer or exchange is effected pursuant to this subparagraph (iv) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of an written order of the Issuer in the form of an Officer's Certificate in accordance with Section 2.01 of the Indenture, the Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred or exchanged pursuant to this subparagraph (iv).

(v) Transfer and Exchange of Beneficial Interests in an Unrestricted Global Security for Beneficial Interests in a Restricted Global Security. Beneficial interests in an Unrestricted Global Security cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Security.

(c) Transfer and Exchange of Beneficial Interests in Global Securities for Definitive Securities. A beneficial interest in a Global Security may not be exchanged for a Definitive Security except under the circumstances described in Section 2.1(a)(i). A beneficial interest in a Global Security may not be transferred to a Person who takes delivery thereof in the form of a Definitive Security except under the circumstances described in Section 2.1(a)(i). In any case, beneficial interests in Global Securities shall be transferred or exchanged only for Definitive Securities.

(d) Transfer and Exchange of Definitive Securities for Beneficial Interests in Global Securities. Transfers and exchanges of beneficial interests in the Global Securities also shall require compliance with either subparagraph (i), (ii), (iii) or (iv) below, as applicable:

(i) Transfer Restricted Securities to Beneficial Interests in Restricted Global Securities. If any Holder of a Transfer Restricted Security proposes to exchange such Transfer Restricted Security for a beneficial interest in a Restricted Global Security or to transfer such Transfer Restricted Security to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Security, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Transfer Restricted Security proposes to exchange such Transfer Restricted Security for a beneficial interest in a Restricted Global Security, a certificate from such Holder in the form attached to the applicable Security;

(B) if such Transfer Restricted Security is being transferred to a Qualified Institutional Buyer in accordance with Rule 144A under the Securities Act, a certificate from such Holder in the form attached to the

applicable Security;

(C) if such Transfer Restricted Security is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate from such Holder in the form attached to the applicable Security;

(D) if such Transfer Restricted Security is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate from such Holder in the form attached to the applicable Security;

(E) if such Transfer Restricted Security is being transferred to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate from such Holder in the form attached to the applicable Security, including the certifications, certificates and Opinion of Counsel, if applicable; or

(F) if such Transfer Restricted Security is being transferred to the Issuer or a Subsidiary thereof, a certificate from such Holder in the form attached to the applicable Security;

the Trustee shall cancel the Transfer Restricted Security, and increase or cause to be increased the aggregate principal amount of the appropriate Restricted Global Security.

(ii) Transfer Restricted Securities to Beneficial Interests in Unrestricted Global Securities. A Holder of a Transfer Restricted Security may exchange such Transfer Restricted Security for a beneficial interest in an Unrestricted Global Security or transfer such Transfer Restricted Security to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security only if the Registrar receives the following:

(A) if the Holder of such Transfer Restricted Security proposes to exchange such Transfer Restricted Security for a beneficial interest in an Unrestricted Global Security, a certificate from such Holder in the form attached to the applicable Security; or

(B) if the Holder of such Transfer Restricted Securities proposes to transfer such Transfer Restricted Security to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security, a certificate from such Holder in the form

attached to the applicable Security,

and, in each such case, if the Issuer so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend are no longer required in order to maintain compliance with the Securities Act. Upon satisfaction of the conditions of this subparagraph (ii), the Trustee shall cancel the Transfer Restricted Securities and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Security. If any such transfer or exchange is effected pursuant to this subparagraph (ii) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of a written order of the Issuer in the form of an Officer's Certificate, the Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of Transfer Restricted Securities transferred or exchanged pursuant to this subparagraph (ii).

(iii) Unrestricted Definitive Securities to Beneficial Interests in Unrestricted Global Securities. A Holder of an Unrestricted Definitive Security may exchange such Unrestricted Definitive Security for a beneficial interest in an Unrestricted Global Security or transfer such Unrestricted Definitive Security to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Security and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Securities. If any such transfer or exchange is effected pursuant to this subparagraph (iii) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of an written order of the Issuer in the form of an Officer's Certificate, the Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of Unrestricted Definitive Securities transferred or exchanged pursuant to this subparagraph (iii).

(iv) Unrestricted Definitive Securities to Beneficial Interests in Restricted Global Securities. An Unrestricted Definitive Security cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a beneficial interest in a Restricted Global Security.

(e) Transfer and Exchange of Definitive Securities for Definitive Securities. Upon request by a Holder of Definitive Securities and such Holder's compliance with the provisions of this Section 2.2(e), the Registrar shall register the transfer or exchange of Definitive Securities. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Securities duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.2(e).

(i) Transfer Restricted Securities to Transfer Restricted Securities. A Transfer Restricted Security may be transferred to and registered in the name of a Person who takes delivery thereof in the form of a Transfer Restricted Security if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A under the Securities Act, then the transferor must deliver a certificate in the form attached to the applicable Security;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 under the Securities Act, then the transferor must deliver a certificate in the form attached to the applicable Security;

(C) if the transfer will be made pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate in the form attached to the applicable Security;

(D) if the transfer will be made to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (A) through (C) above, a certificate in the form attached to the applicable Security; and

(E) if such transfer will be made to the Issuer or a Subsidiary thereof, a certificate in the form attached to the

applicable Security.

(ii) Transfer Restricted Securities to Unrestricted Definitive Securities. Any Transfer Restricted Security may be exchanged by the Holder thereof for an Unrestricted Definitive Security or transferred to a Person who takes delivery thereof in the form of an Unrestricted Definitive Security only if the Registrar receives the following:

(i) if the Holder of such Transfer Restricted Security proposes to exchange such Transfer Restricted Security for an Unrestricted Definitive Security, a certificate from such Holder in the form attached to the applicable Security; or

(ii) if the Holder of such Transfer Restricted Security proposes to transfer such Securities to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Security, a certificate from such Holder in the form attached to the applicable Security, and, in each such case, if the Issuer so requests, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Securities to Unrestricted Definitive Securities. A Holder of an Unrestricted Definitive Security may transfer such Unrestricted Definitive Securities to a Person who takes delivery thereof in the form of an Unrestricted Definitive Security at any time. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Securities pursuant to the instructions from the Holder thereof.

(iv) Unrestricted Definitive Securities to Transfer Restricted Securities. An Unrestricted Definitive Security cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a Transfer Restricted Security.

At such time as all beneficial interests in a particular Global Security have been exchanged for Definitive Securities or a particular Global Security has been redeemed, repurchased or canceled in whole and not in part, each such Global Security shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 of the Indenture. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or

transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Definitive Securities, the principal amount of Securities represented by such Global Security shall be reduced accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security shall be increased accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(f) Legend.

(i) Except as permitted by the following paragraph (ii), each Security certificate evidencing the Global Securities and the Definitive Securities (and all Securities issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only) (the "Restricted Security Legend"):

"THE SECURITY (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 5 OF THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THE SECURITY EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) SUCH SECURITY MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1)(a) INSIDE THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (b) OUTSIDE THE UNITED STATES TO A FOREIGN PERSON IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (c) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF APPLICABLE) OR

(d) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL ACCEPTABLE TO THE ISSUER IF THE

ISSUER SO REQUESTS), (2) TO THE ISSUER OR (3) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT AND, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THE SECURITY EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN CLAUSE (A) ABOVE. NO REPRESENTATION CAN BE MADE AS TO THE AVAILABILITY OF THE EXEMPTION PROVIDED BY RULE 144 FOR RESALE OF THE SECURITY EVIDENCED HEREBY."

Each Regulation S Temporary Global Security shall bear the following additional legend (the "Regulation S Temporary Global Security Legend"):

"THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION ORIGINALLY EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE TRANSFERRED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON EXCEPT PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS. TERMS USED ABOVE HAVE THE MEANINGS GIVEN TO THEM IN REGULATION S UNDER THE SECURITIES ACT."

Each Global Security shall bear the following additional legends (the "Global Securities Legend"):

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

"TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO DTC, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF

THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF."

Each Definitive Security shall bear the following additional legend (the "Definitive Security Legend"):

"IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS."

(ii) Upon any sale or transfer of a Transfer Restricted Security that is a Definitive Security, the Registrar shall permit the Holder thereof to exchange such Transfer Restricted Security for a Definitive Security that does not bear the legends set forth above and rescind any restriction on the transfer of such Transfer Restricted Security if the Holder certifies in writing to the Registrar that its request for such exchange was made in reliance on Rule 144 of the Securities Act (such certification to be in the form set forth on the reverse of the Security).

(iii) Upon a sale or transfer after the expiration of the Restricted Period of any Security acquired pursuant to Regulation S, all requirements that such Security bear the Restricted Securities Legend shall cease to apply and the requirements requiring any such Security be issued in global form shall continue to apply.

(iv) Any Additional Securities sold in a registered offering shall not be required to bear the Restricted Security Legend. If a Security is issued with original issue discount for U.S. federal income tax purposes, each Security certificate evidencing a Global Security or a Definitive Security (and all Securities issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form (the "OID Legend"):

"THIS SECURITY HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR U.S. FEDERAL INCOME TAX PURPOSES. A HOLDER MAY OBTAIN THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE AND YIELD TO MATURITY FOR THIS SECURITY BY SUBMITTING A WRITTEN REQUEST FOR SUCH

INFORMATION TO THE COMPANY AT THE FOLLOWING ADDRESS: 100 TICE BOULEVARD, ATTN: INVESTOR RELATIONS, WOODCLIFF LAKE, NJ 07677 OR INVESTORRELATIONS@PARTYCITY.COM."

(g) Cancellation or Adjustment of Global Security. At such time as all beneficial interests in a particular Global Security have been exchanged for Definitive Securities or a particular Global Security has been redeemed, repurchased or canceled in whole and not in part, each such Global Security shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 of the Indenture. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Definitive Securities, the principal amount of Securities represented by such Global Security shall be reduced accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security shall be increased accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(h) Obligations with Respect to Transfers and Exchanges of Securities.

(i) To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate, Definitive Securities and Global Securities at the Registrar's request.

(ii) No service charge shall be made for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charge payable upon transfers or exchanges pursuant to Sections 3.08, 4.09, 4.14 and 9.04 of the Indenture).

(iii) Prior to the due presentation for registration of transfer of any Security, the Issuer, the Trustee, a Paying Agent or the Registrar may deem and treat the person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Issuer, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

(iv) All Securities issued upon any transfer or exchange pursuant to the terms of the Indenture shall evidence the same debt and shall be entitled to the same benefits under the Indenture as the Securities surrendered upon such transfer or exchange.

(i) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in the Depository or any other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to the Holders under the Securities shall be given or made only to the registered Holders (which shall be the Depository or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may conclusively rely and shall be fully protected in so relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under the Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of the Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

[FORM OF FACE OF SECURITY]

[*Insert Global Securities Legend if applicable*]

[*Insert Restricted Securities Legend if applicable*]

[*Insert Regulation S Temporary Global Security Legend if applicable*]

[*Insert Definitive Security Legend if applicable*]

[*Insert OID Legend*]

No. $_____

12.00% Senior Secured Second Lien PIK Toggle Notes due 2029

CUSIP No.:[1]
ISIN No.:[2]

Party City Holdco Inc. a Delaware corporation, promises to pay to Cede & Co., or registered assigns, the principal sum of $_____ Dollars, as the same may be revised from time to time on the Schedule of Increases or Decreases in Global Security attached hereto, on January 11, 2029.

Interest Payment Dates: February 15, May 15, August 15 and November 15

Record Dates: February 1, May 1, August 1 and November 1

Additional provisions of this Security are set forth on the other side of this Security.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed.

PARTY CITY HOLDCO INC.

By: _____
Name:
Title:

[1] 702149 AA3 (Rule 144A); U7026G AA4 (Regulation S); 702149 AC9 (Unrestricted)
[2] US702149AA35 (Rule 144A); USU7026GAA41 (Regulation S); US702149AC90 (Unrestricted)

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Authenticating Agent, certifies that this is one of the
Securities referred to in the Indenture.

By: _____
Authorized Signatory

Dated:

[FORM OF REVERSE SIDE OF SECURITY]

12.00% Senior Secured Second Lien PIK Toggle Notes due 2029

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Interest. Party City Holdco Inc. a Delaware corporation (the "Issuer"), promises to pay interest on the principal amount of this Security at the rate per annum shown above. The Issuer shall pay interest quarterly on February 15, May 15, August 15 and November 15 of each year, commencing February 15, 2024.[3] Interest on the Securities shall accrue from the most recent date to which interest has been paid or duly provided for until the principal hereof is due. Interest shall be computed on the basis of a 360-day year of twelve 30- day months. The Issuer shall pay interest on overdue principal at the rate borne by the Securities, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful. Interest shall be payable at a rate per annum of 12.00%, at the option of the Issuer, either (x) in cash or (y) PIK Interest by increasing the principal amount of the Securities outstanding.

On any Interest Payment Date on which the Issuer pays interest in PIK Interest (a "PIK Payment") with respect to a Global Security, the Trustee shall (subject to the Issuer delivering to the Trustee and the Paying Agent (if other than the Trustee) written notification, executed by an Officer of the Issuer, setting forth the amount of PIK Interest to be paid on such Interest Payment Date and directing the Trustee and the Paying Agent (if other than the Trustee) to increase the principal amount of the Global Securities, which notification the Trustee and Paying Agent shall be entitled to rely upon) increase the principal amount of such Global Security by an amount equal to the interest payable as PIK Interest, rounded up to the nearest whole dollar, for the relevant Interest Period on the principal amount of such Global Security as of the relevant Record Date for such Interest Payment Date, to the credit of the Holders of such Global Security on such Record Date, pro rata in accordance with their interests, and an adjustment shall be made on the books and records of the Trustee with respect to such Global Security to reflect such increase. On any Interest Payment Date on which the Issuer pays PIK Interest with respect to a Definitive Security or otherwise issues definitive PIK Securities, the principal amount of any definitive PIK Securities issued to any Holder, for the relevant Interest Period on the principal amount of such Security as of the relevant Record Date for such Interest Payment Date, shall be rounded up to the nearest whole dollar.

For each of the Interest Periods, the Issuer may elect, no later than 15 days prior to the relevant Interest Payment Date, to pay interest in cash or in the form of PIK Interest and, if the Issuer elects to pay PIK Interest in respect of an Interest Period, the Issuer shall deliver to the Trustee and the Paying Agent written notification, executed by an Officer of the Issuer setting forth such election no later than 15 days prior to the relevant Interest Payment Date (and the Trustee shall furnish a copy thereof to the Holders in accordance with the Applicable Procedures).

[3] With respect to Securities issued on the Issue Date.

2. Method of Payment. The Issuer shall pay interest on the Securities (except defaulted interest) to the Persons who are registered Holders at the close of business on the February 1, May 1, August 1 and November 1 next preceding the interest payment date even if Securities are canceled after the record date and on or before the interest payment date (whether or not a Business Day). Holders must surrender Securities to the Paying Agent to collect principal payments. The Issuer shall pay principal, premium, if any, and cash interest (including with respect to PIK Securities at maturity, if applicable) in money of the United States of America that at the time of payment is legal tender for payment of public and private debts. Payments in respect of the Securities represented by a Global Security (including principal, premium, if any, and interest (including PIK Interest, if applicable) shall be made by wire transfer of immediately available funds to the accounts specified by The Depository Trust Company or any successor depositary (the "Depository"). The Issuer shall make all payments in respect of a certificated Security (including principal, premium, if any, and interest (including PIK Interest)) at the office of the Paying Agent. At all times, PIK Interest on the Securities will be payable (x) with respect to Securities represented by one or more Global Securities registered in the name of, or held by, the Depository or its nominee on the relevant record date, by increasing the principal amount of the outstanding Global Securities by an amount equal to the amount of PIK Interest for the applicable interest period (rounded up to the nearest whole dollar) as provided in writing by the Issuer to the Trustee, and the Trustee, at the written direction of the Issuer, will record such increase in such Global Security and (y) with respect to Securities represented in certificated form, by issuing PIK Securities in certificated form in an aggregate principal amount equal to the amount of PIK Interest for the applicable interest period (rounded up to the nearest whole dollar), and the Trustee will, at the written request of the Issuer, authenticate and deliver such PIK Securities in certificated form for original issuance to the holders on the relevant record date, as shown by the records of the register of Holders. Notwithstanding anything herein to the contrary, the payment of accrued interest in connection with any redemption of Securities pursuant to Article III of the Indenture or in connection with any repurchase of Securities pursuant to Section 4.09 or 4.14 of the Indenture shall be made solely in cash.

3. Paying Agent and Registrar. Initially, Wilmington Savings Fund Society, FSB (the "Trustee"), will act as Paying Agent and Registrar. The Issuer may appoint and change any Paying Agent or Registrar without notice.

4. Indenture. The Issuer issued the Securities under an Indenture dated as of October 12, 2023 (the "Indenture"), among the Issuer, the guarantors from time to time party thereto, the Trustee and the Collateral Trustee. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all terms and provisions of the Indenture, and the Holders are referred to the Indenture for a statement of such terms and provisions.

The Securities are senior secured obligations of the Issuer. The Securities include any PIK Securities. Securities and any PIK Securities are treated as a single class of securities under the Indenture. The Indenture imposes certain limitations on the ability of the Issuer and its Restricted Subsidiaries to, among other things, make certain Investments and other Restricted Payments, pay dividends and other distributions, incur Indebtedness, enter into consensual restrictions upon the payment of certain dividends and distributions by such Restricted

Subsidiaries, issue or sell shares of capital stock of the Issuer and such Restricted Subsidiaries, enter into or permit certain transactions with Affiliates, create or incur Liens and make Asset Sales. The Indenture also imposes limitations on the ability of the Issuer and each Guarantor to consolidate or merge with or into any other Person or convey, transfer or lease all or substantially all of its property.

To guarantee the due and punctual payment of the principal and interest on the Securities and all other amounts payable by the Issuer under the Indenture and the Securities when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Securities and the Indenture, the Guarantors party to the Indenture from time to time will, jointly and severally, irrevocably and unconditionally guarantee the Guaranteed Obligations on a senior secured basis pursuant to the terms of the Indenture.

5. Optional Redemption. The Securities are subject to the optional redemption provisions set forth in Article 3 of the Indenture.

6. Sinking Fund. The Securities are not subject to any sinking fund.

7. Notice of Redemption. Notice of redemption pursuant to Paragraph 5 above will be delivered electronically, mailed by first-class mail or otherwise sent in accordance with the procedures of the Depositary at least 10 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed at his, her or its registered address. Securities in denominations larger than $1.00 may be redeemed in part but only in whole multiples of $1.00. If money sufficient to pay the redemption price of and accrued and unpaid interest (including PIK Interest) on all Securities (or portions thereof) to be redeemed on the redemption date is deposited with a Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date, interest ceases to accrue on such Securities (or such portions thereof) called for redemption.

8. Repurchase of Securities at the Option of the Holders upon Change of Control and Asset Sales. Upon the occurrence of a Change of Control, each Holder shall have the right, subject to certain conditions specified in the Indenture, to cause the Issuer and/or the Parent to repurchase all or any part of such Holder's Securities at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest (including an amount of cash equal to all accrued and unpaid PIK Interest), if any, to the date of repurchase (subject to the right of the Holders of record on the relevant record date to receive interest due on the relevant interest payment date), as provided in, and subject to the terms of, the Indenture. In accordance with Section 4.09 of the Indenture, the Issuer will be required to offer to purchase Securities upon the occurrence of certain events constituting "Asset Sales."

9. Denominations; Transfer; Exchange. The Securities are in registered form, without coupons, in minimum denominations of $1.00 and any integral multiple of $1.00. A Holder shall register the transfer of or exchange of Securities in accordance with the Indenture. Upon any registration of transfer or exchange, the Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities selected for redemption (except, in the case of a Security

to be redeemed in part, the portion of the Security not to be redeemed) or to transfer or exchange any Securities for a period of 15 days prior to the mailing of a notice of redemption of Securities to be redeemed.

10. Persons Deemed Owners. The registered Holder of this Security shall be treated as the owner of it for all purposes.

11. Unclaimed Money. If money for the payment of principal or interest remains unclaimed for two years, the Trustee and a Paying Agent shall pay the money back to the Issuer at their written request unless an abandoned property law designates another Person. After any such payment, the Holders entitled to the money must look to the Issuer for payment as general creditors and the Trustee and a Paying Agent shall have no further liability with respect to such monies.

12. Discharge and Defeasance. Subject to certain conditions and as set forth in the Indenture, the Issuer at any time may terminate some of or all of its obligations under the Securities and the Indenture if the Issuer deposits with the Trustee money or Government Securities for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

13. Amendment; Waiver. The Securities are subject to the amendment provisions set forth in Article 9 of the Indenture.

14. Defaults and Remedies. The Securities are subject to the default and remedy provisions set forth in Article 6 of the Indenture.

15. Trustee Dealings with the Issuer. The Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Issuer or its Affiliates and may otherwise deal with the Issuer or its Affiliates with the same rights it would have if it were not Trustee.

16. No Recourse Against Others. No past, present or future director, officer, employee, manager, incorporator, member, partner or stockholder of the Issuer or any Guarantor or any of their Subsidiaries or direct or indirect Parent Companies shall have any liability for any obligations of the Issuer or the Guarantors under the

Securities, the Guarantees or the Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities. The waiver may not be effective to waive liabilities under the federal securities laws.

17. Authentication. This Security shall not be valid until an authorized signatory of the Authenticating Agent signs the certificate of authentication on the other side of this Security.

18. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT

TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

19. Governing Law. **THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.**

20. CUSIP Numbers; ISINs. The Issuer has caused CUSIP numbers and ISINs to be printed on the Securities and has directed the Trustee to use CUSIP numbers and ISINs in notices of redemption as a convenience to the Holders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Issuer will furnish to any Holder of Securities upon written request and without charge to the Holder a copy of the Indenture which has in it the text of this Security.

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to:

(Print or type assignee's name, address and zip code)

(Insert assignee's soc. sec. or tax identification No.)

and irrevocably appoint ____ as agent to transfer this Security on the books of the Issuer. The agent may substitute another to act for him.

Date: Your Signature: _____

Sign exactly as your name appears on the other side of this Security.

Signature Guarantee: Signature of Signature Guarantee: _____

Date: _____
Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee

Party City Holdco Inc.
100 Tice Boulevard
Woodcliff Lake, NJ 07677
Attn: Ian Heller
Email:

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR
REGISTRATION OF TRANSFER RESTRICTED SECURITIES

This certificate relates to $_____ principal amount of Securities held in (check applicable space) _____ book-entry or _____ definitive form by the undersigned.

The undersigned (check one box below):

has requested the Trustee by written order to deliver in exchange for its beneficial interest in the Global Security held by the Depository a Security or Securities in definitive, registered form of authorized denominations and an aggregate principal amount equal to its beneficial interest in such Global Security (or the portion thereof indicated above);

has requested the Trustee by written order to exchange or register the transfer of a Security or Securities.

In connection with any transfer of any of the Securities evidenced by this certificate occurring prior to the expiration of the period referred to in Rule 144(k) under the Securities Act of 1933, as amended (the "Securities Act"), the undersigned confirms that such Securities are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

(1) to the Issuer or subsidiary thereof; or

(2) to the Registrar for registration in the name of the Holder, without transfer; or

(3) inside the United States to a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in reliance on Rule 144A, in each case pursuant to and in compliance with Rule 144A under the Securities Act; or

(4) outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act in compliance with Rule 904 under the Securities Act and such Security shall be held immediately after the transfer through Euroclear or Clearstream until the expiration of the Restricted Period (as defined in the Indenture); or

(5) to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) that has furnished to the Trustee a signed letter containing certain representations and agreements in the form attached as Exhibit B to the Indenture; or

(6) pursuant to another available exemption from registration provided by Rule 144 under the Securities Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any Person other than the registered Holder thereof; *provided, however*, that if box (4), (5) or (6) is checked, the Issuer or the Trustee may require, prior to registering any such transfer of the Securities, such legal opinions, certifications and other information as the Issuer or the Trustee have reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

Date: Your Signature: _____

Signature Guarantee: Signature of Signature Guarantee: _____

Date: _____
Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee

TO BE COMPLETED BY PURCHASER IF (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: _____

_____
NOTICE: To be executed by an executive officer

[TO BE ATTACHED TO GLOBAL SECURITIES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY

The initial principal amount of this Global Security is $_____. The following increases or decreases in this Global Security have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Security	Amount of increase in Principal Amount of this Global Security	Principal amount of this Global Security following such decrease or increase	Signature of authorized signatory of Trustee or Securities Custodian

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Issuer and/or the Parent Company pursuant to Section 4.09 (Asset Sale Offer) or 4.14 (Change of Control Offer) of the Indenture, check the box:

Asset Sale Change of Control

If you want to elect to have only part of this Security purchased by the Issuer and/or the Parent pursuant to Section 4.09 (Asset Sale Offer) or 4.14 (Change of Control Offer) of the Indenture, state the amount ($1.00 or any integral multiple of $1.00):

$

Date: Your Signature: _____
(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: _____
Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee

EXHIBIT B

[FORM OF]
TRANSFEREE LETTER OF REPRESENTATION

Party City Holdco Inc.
100 Tice Boulevard
Woodcliff Lake, NJ 07677

Ladies and Gentlemen:

This CERTIFICATE IS DELIVERED TO REQUEST A TRANSFER OF $[___] PRINCIPAL AMOUNT OF THE 12.00% SENIOR SECURED SECOND LIEN PIK TOGGLE NOTES DUE 2029 (THE "SECURITIES") OF PARTY CITY HOLDCO INC. (THE "ISSUER").

Upon transfer, the Securities would be registered in the name of the new beneficial owner as follows:

Name: _____
Address: _____
Taxpayer ID Number: _____

The undersigned represents and warrants to you that:

(1) We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "Securities Act")), purchasing for our own account or for the account of such an institutional "accredited investor" at least $100,000 principal amount of the Securities, and we are acquiring the Securities not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Securities, and we invest in or purchase securities similar to the Securities in the normal course of our business. We, and any accounts for which we are acting, are each able to bear the economic risk of our or its investment.

(2) We understand that the Securities have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Securities to offer, sell or otherwise transfer such Securities prior to the date that is one year after the later of the date of original issue and the last date on which either the Issuer or any affiliate of such Issuer was the owner of such Securities (or any predecessor thereto) (the "Resale Restriction Termination Date") only (a) in the United States to a person whom we reasonably believe is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (b) outside the United States in an offshore transaction in accordance with Rule 904 of Regulation S under the Securities Act, (c) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if applicable) or (d) pursuant to an effective registration statement under the

Securities Act, in each of cases (a) through (d) in accordance with any applicable securities laws of any state of the United States. In addition, we will, and each subsequent holder is required to, notify any purchaser of the Security evidenced hereby of the resale restrictions set forth above. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Securities is proposed to be made to an institutional "accredited investor" prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Issuer and the Trustee, which shall provide, among other things, that the transferee is an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act and that it is acquiring such Securities for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Issuer and the Trustee reserve the right prior to the offer, sale or other transfer prior to the Resale Restriction Termination Date of the Securities pursuant to clauses (b), (c) or (d) above to require the delivery of an opinion of counsel, certifications or other information satisfactory to the Issuer and the Trustee.

Dated: _____

TRANSFEREE: _____,

By: _____

[FORM OF SUPPLEMENTAL INDENTURE]

SUPPLEMENTAL INDENTURE (this "Supplemental Indenture") dated as of [_____], among [_____] (the "New Guarantor") and Wilmington Savings Fund Society, FSB, as trustee (the "Trustee") and collateral trustee (the "Collateral Trustee") under the Indenture referred to below.

W I T N E S S E T H:

WHEREAS the Issuer and the existing Guarantors have heretofore executed and delivered to the Trustee and Collateral Trustee an indenture, dated as of October 12, 2023 (as amended, supplemented or otherwise modified, the "Indenture"), providing initially for the issuance of $232,394,231 in aggregate principal amount of the Issuer's 12.00% Senior Secured Second Lien PIK Toggle Notes due 2029 (the "Securities");

WHEREAS Sections 4.17 and 10.06 of the Indenture provide that under certain circumstances the Issuer is required to cause the New Guarantor to execute and deliver to the Trustee a supplemental indenture pursuant to which the New Guarantor shall unconditionally guarantee all the Issuer's Obligations under the Securities and the Indenture pursuant to a Guarantee on the terms and conditions set forth herein; and

WHEREAS pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the New Guarantor, the Trustee and the Collateral Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recitals hereto are used herein as therein defined, except that the term "Holders" in this Guarantee shall refer to the term "Holders" as defined in the Indenture and the Trustee and Collateral Trustee acting on behalf of and for the benefit of such Holders. The words "herein," "hereof" and "hereby" and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular section hereof.

2. Agreement to Guarantee. The New Guarantor hereby agrees, jointly and severally with all existing Guarantors (if any), to irrevocably and unconditionally guarantee the Issuer's Obligations under the Securities and the Indenture on the terms and subject to the conditions set forth in the Indenture, including, but not limited to, Article 10 of the Indenture, and to be bound by all other applicable provisions of the Indenture and the Securities and to perform all of the obligations and agreements of a Guarantor under the Indenture.

3. Releases. A Guarantee as to any Guarantor shall terminate and be of no further force or effect and such Guarantor shall be deemed to be released from all obligations as provided in Section 10.02(b) and (c) of the Indenture.

4. Notices. All notices or other communications to the New Guarantor shall be given as provided in Section 12.01 of the Indenture.

5. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended and supplemented hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Securities heretofore or hereafter authenticated and delivered shall be bound hereby.

6. No Recourse Against Others. No past, present or future director, officer, employee, manager, incorporator, agent or holder of any Equity Interests in the Issuer or of the New Guarantor or any direct or indirect parent corporation, as such, shall have any liability for any obligations of the Issuer or the Guarantors under the Securities, the Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities. The waiver may not be effective to waive liabilities under the federal securities laws.

7. Governing Law. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH OF THE NEW GUARANTOR AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE, THE INDENTURE, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

8. Trustee Makes No Representation. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

9. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Supplemental Indenture. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or email (in PDF format or otherwise) shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or email (in PDF format or otherwise) shall be deemed to be their original signatures for all purposes.

10. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction thereof.

11. The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the New Guarantor.

12. Successors. All agreements of the New Guarantor in this Supplemental Indenture shall bind its successors. All agreements of the Trustee and the Collateral Trustee in the Indenture shall bind its successors.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first above written.

[NEW GUARANTOR]

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Collateral Trustee

By: _____
Name:
Title:

EXHIBIT D

EXECUTION VERSION

SECOND LIEN PLEDGE AND SECURITY AGREEMENT

THIS SECOND LIEN PLEDGE AND SECURITY AGREEMENT (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "**Security Agreement**") is entered into as of October 12, 2023, by and among Party City Holdco Inc., a Delaware corporation (the "**Issuer**"), the Subsidiary Parties (as defined below) from time to time party hereto (the foregoing Issuer and Subsidiary Parties, collectively, the "**Grantors**"), and Wilmington Savings Fund Society, FSB ("**WSFS**"), as collateral trustee for the benefit of the Secured Parties (as defined below) (in such capacity, together with its successors and permitted assigns, the "**Collateral Trustee**").

PRELIMINARY STATEMENT

The Grantors, the Collateral Trustee and WSFS, as trustee (in such capacity, the "**Trustee**"), are entering into an Indenture, dated as of the date hereof (as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Indenture**"), by and among the Issuer, the Guarantors (as defined therein) from time to time party thereto, the Trustee and the Collateral Trustee, pursuant to which, among other things, the Issuer is issuing $232,394,231 in aggregate principal amount of 12.00% Senior Secured Second Lien PIK Toggle Notes due 2029 (the "**Notes**") and may from time to time issue additional Notes upon the terms and subject to the conditions set forth therein. The Grantors are entering into this Security Agreement in order to induce the Holders to purchase the Notes and to grant Liens with respect to the Secured Obligations (as defined below).

ACCORDINGLY, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Terms Defined in Indenture*. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Indenture.

Section 1.02. *Terms Defined in UCC*. Terms defined in the UCC that are not otherwise defined in this Security Agreement or the Indenture are used herein as defined in Articles 8 or 9 of the UCC, as applicable.

Section 1.03. *Definitions of Certain Terms Used Herein*. As used in this Security Agreement, in addition to the terms defined in the preamble and Preliminary Statement above, the following terms shall have the following meanings:

"**ABL Credit Agreement**" means that certain ABL Credit Agreement, dated as of October 12, 2023, by and among, *inter alios*, the Issuer, the Grantors, the other subsidiaries of the Borrowers (as defined therein) party thereto from time to them, the lenders party thereto from time to time, and the ABL Facility Security Agent, as administrative agent and collateral agent, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"**ABL Facility First Lien Collateral**" means the "First Priority Collateral", as defined in the ABL Intercreditor Agreement.

"**ABL Facility Security Agent**" means the "First Priority Representative", as defined in the ABL Intercreditor Agreement.

"**ABL Intercreditor Agreement**" shall have the meaning assigned to such term in the Indenture.

"**ABL Security Documents**" means the "First Priority Security Documents", as defined in the ABL Intercreditor Agreement.

"**Account**" shall have the meaning set forth in Article 9 of the UCC.

"**Article**" means a numbered article of this Security Agreement, unless another document is specifically referenced.

"**Blocked Account**" shall mean any Deposit Account constituting Collateral that is designated as a "Blocked Account" pursuant to the ABL Credit Agreement.

"Blocked Account Agreement" means an agreement, in form and substance reasonably satisfactory to the Collateral Trustee, among any Grantor, a depository institution holding such Grantor's funds and the Collateral Trustee, with respect to collection and Control of all deposits and balances held in one or more Blocked Accounts maintained by such Grantor with such depository institution.

"**Chattel Paper**" shall have the meaning set forth in Article 9 of the UCC.

"**Collateral**" shall have the meaning set forth in Article 2.

"**Collateral Access Agreement**" shall have the meaning set forth in Section 4.09.

"**Collateral Trustee**" shall have the meaning set forth in the preamble.

"**Commercial Tort Claim**" shall have the meaning set forth in Article 9 of the UCC.

"**Compliance Certificate**" shall mean the certificate delivered by the Issuers pursuant to Section 4.16(a) of the Indenture.

"**Contract Rights**" shall mean all rights of any Grantor under each Contract, including, without limitation, (i) any and all rights to receive and demand payments under any or all Contracts, (ii) any and all rights to receive and compel performance under any or all Contracts and (iii) any and all other rights, interests and claims now existing or in the future arising in connection with any or all Contracts.

"**Contracts**" shall mean all contracts between any Grantor and one or more additional parties (including, without limitation, any Hedge Agreements, licensing agreements and any partnership agreements, joint venture agreements and limited liability company agreements).

"**Control**" shall have the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

"**Copyrights**" means, with respect to any Grantor, all of such Grantor's right, title, and interest in and to the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright whether published or unpublished, copyright registrations, and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringement or other violation for any of the foregoing; (d) the right to sue for past, present, and future infringement or other violation of any of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (e) all rights corresponding to any of the foregoing.

"**Deposit Account**" shall have the meaning set forth in Article 9 of the UCC.

"**Document**" shall have the meaning set forth in Article 9 of the UCC.

"**Domain Names**" means all Internet domain names and associated URL addresses in or to which any Grantor now or hereafter has any right, title or interest.

"**Electronic Chattel Paper**" shall have the meaning set forth in Article 9 of the UCC.

"**Equipment**" shall have the meaning set forth in Article 9 of the UCC.

"**Excluded Assets**" shall have the meaning set forth in Article 2.

"**Exhibit**" refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced.

"**First Priority Obligations Payment Date**" shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

"**Fixture**" shall have the meaning set forth in Article 9 of the UCC.

"**General Intangible**" shall have the meaning set forth in Article 9 of the UCC.

"**Goods**" shall have the meaning set forth in Article 9 of the UCC.

"**Grantors**" shall have the meaning set forth in the preamble.

"**Hedge Agreement**" shall have the meaning assigned to such term in the ABL Credit Agreement.

"**Indenture**" shall have the meaning set forth in the Preliminary Statement.

"**Instrument**" shall have the meaning set forth in Article 9 of the UCC.

"Intellectual Property" means all intellectual property and proprietary rights, including intellectual property rights in and to Copyrights, Patents, Trademarks, Software, Trade Secrets and Domain Names.

"**Inventory**" shall have the meaning set forth in Article 9 of the UCC.

"**Investment Property**" shall have the meaning set forth in Article 9 of the UCC.

"**IP Filing**" shall have the meaning set forth in Section 3.09.

"**Issuer**" shall have the meaning set forth in the preamble.

"**Letter-of-Credit Right**" shall have the meaning set forth in Article 9 of the UCC.

"**Licenses**" means, with respect to any Grantor, all of such Grantor's right, title, and interest in and to (a) any and all licensing agreements or similar arrangements in and to Intellectual Property, (b) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future breaches thereof and (c) all rights to sue for past, present, and future breaches thereof.

"Margin Stock" shall have the meaning set forth in Regulation U of the Board of Governors of the Federal Reserve System of the United States as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"**Material Adverse Effect**" means a material adverse effect on (i) the business, assets, financial condition or results of operations, in each case, of the Grantors, taken as a whole, (ii) the rights and remedies (taken as a whole) of the Collateral Trustee under the applicable Security Documents or (iii) the ability of the Grantors (taken as a whole) to perform their payment obligations under the Note Documents.

"**Material Real Estate Asset**" means (a) any fee-owned Real Estate Asset having a fair market value (as reasonably estimated by the Issuer) in excess of $5,000,000 as of such date and (b) any fee-owned Real Estate Asset acquired by any Grantor after the Issue Date having a fair market value (as reasonably estimated by the Issuer) in excess of $5,000,000 as of the date of acquisition thereof shall be a "Material Real Estate Asset".

"Money" shall have the meaning set forth in Article 1 of the UCC.

"**Mortgage**" means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Collateral Trustee, for the benefit of the Secured Parties, on owned real property of a Grantor.

"**Note Documents**" means the Indenture and the Security Documents.

"**Notes**" shall have the meaning set forth in the preamble.

"**Pari Intercreditor Agreement**" shall have the meaning assigned to such term in the Indenture.

"**Patents**" means, with respect to any Grantor, all of such Grantor's right, title, and interest in and to: (a) any and all patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements or other violations thereof; (e) all rights to sue for past, present, and future infringements or other violations thereof, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights corresponding to any of the foregoing.

"**Perfection Certificate**" means a certificate substantially in the form of Exhibit A completed and supplemented with the schedules and attachments contemplated thereby and duly executed by an Officer of the Issuer and delivered to the Collateral Trustee as of the date hereof.

"**Perfection Certificate Supplement**" means a supplement substantially in the form of Exhibit B and duly executed by an Officer of the Issuer.

"**Permits**" means, to the extent permitted to be assigned by the terms thereof or by applicable law, all licenses, permits, rights, orders, variances, franchises or authorizations of or from any governmental authority or agency.

"**Pledged Collateral**" means all Pledged Stock, including all stock certificates, options or rights of any nature whatsoever in respect of the Pledged Stock that may be issued or granted to, or held by, such Grantor while this Security Agreement is in effect, all Instruments and other Investment Property owned by any Grantor, whether or not physically delivered to the Collateral Trustee pursuant to this Security Agreement, whether now owned or hereafter acquired by such Grantor and any and all Proceeds thereof, excluding any items specifically excluded from the definition of the Collateral.

"**Pledged Stock**" means, with respect to any Grantor, the shares of Capital Stock set forth in the Perfection Certificate as held by such Grantor, together with any other shares of Capital Stock required to be pledged by such Grantor pursuant to Section 11.09 of the Indenture and this Security Agreement; *provided* that Pledged Stock shall not include any Excluded Assets.

"**Proceeds**" shall have the meaning assigned in Article 9 of the UCC and, in any event, shall also include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Collateral Trustee or any Grantor from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to any Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any Person acting under color of governmental authority), (iii) any and all Stock Rights and (iv) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) in real property then owned by any Grantor.

"**Receivables**" means the Accounts, Chattel Paper, Documents, Investment Property, Instruments and any other rights or claims to receive money that are General Intangibles or that are otherwise included as Collateral, excluding any items specifically excluded from the definition of the Collateral.

"**Section**" means a numbered section of this Security Agreement, unless another document is specifically referenced.

"**Secured Obligations**" means the Obligations of the Grantors from time to time owed to the Secured Parties with respect to the Notes issued pursuant to the Indenture and the Guarantees thereof.

"**Secured Parties**" means (a) the Holders, (b) the Collateral Trustee, (c) the Trustee, (d) the beneficiaries of each indemnification obligation undertaken by any Grantor under any Note Document and (e) the successors and permitted assigns of each of the foregoing.

"**Security Account**" shall have the meaning set forth in Article 9 of the UCC.

"**Security Documents**" shall have the meaning assigned to such term in the Indenture.

"**Software**" shall mean any and all computer programs, source code, object code and supporting documentation including "software" as such term is defined in Article 9 of the UCC, as well as computer programs that may be construed as included in the definition of Goods.

"**Stock Rights**" means all dividends, instruments or other distributions and any other right or property which any Grantor shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any Capital Stock constituting Collateral, any right to receive any Capital Stock constituting Collateral and any right to receive earnings, in which such Grantor now has or hereafter acquires any right, issued by an issuer of such Capital Stock.

"**Subsidiary Parties**" means (a) the Subsidiaries identified on Exhibit C hereto and (b) each other Subsidiary that becomes a party to this Security Agreement as a Subsidiary Party after the date hereof, in accordance with Section 7.12 herein and Section 11.09 of the Indenture.

"**Supporting Obligation**" shall have the meaning set forth in Article 9 of the UCC.

"**Tangible Chattel Paper**" shall mean "tangible chattel paper" as such term is defined in Article 9 of the UCC.

"**Termination Date**" means the date of termination and discharge of all of the Secured Obligations (other than contingent surviving indemnity obligations in respect of which no claim or demand has been made).

"**Trade Secrets**" means, with respect to any Grantor, all of such Grantor's right, title and interest in and to the following: (a) trade secrets or other confidential and proprietary information, including unpatented inventions, invention disclosures, engineering or other data, information, production procedures, know-how, financial data, customer lists, supplier lists, business and

marketing plans, processes, schematics, algorithms, techniques, analyses, proposals, source code, and data collections; (b) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims and payments for past and future infringement, misappropriation or other violation thereof; (c) all rights to sue for past, present and future infringement, misappropriation or other violation of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (d) all rights corresponding to any of the foregoing.

"**Trademarks**" means, with respect to any Grantor, all of such Grantor's right, title, and interest in and to the following: (a) all trademarks (including service marks), trade names, trade dress, and logos, slogans and other indicia of origin and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all renewals of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringement or other violation thereof; (d) all rights to sue for past, present, and future infringement or other violation of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (e) all rights corresponding to any of the foregoing.

"**Trustee**" shall have the meaning set forth in the Preliminary Statement.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of the 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.

"**WSFS**" shall have the meaning set forth in the preamble.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

ARTICLE 2
GRANT OF SECURITY INTEREST

Section 2.01. *Grant of Security Interest*. (a) As collateral security for the prompt and complete payment or performance when due (whether at stated maturity, acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges, collaterally assigns, mortgages, transfers and grants to the Collateral Trustee, its successors and permitted assigns, on behalf of and for the benefit of the Secured Parties, a continuing security interest in all of its right, title and interest in, to and under all of the following personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Grantor, and regardless of where located (all of which are collectively referred to as the "**Collateral**"):

(i) all Accounts;

(ii) all Chattel Paper (including, without limitation, all Tangible Chattel Paper and all Electronic Chattel Paper);

(iii) all Documents;

(iv) all Equipment;

(v) all Fixtures;

(vi) all General Intangibles;

(vii) all Goods;

(viii) all Instruments;

(ix) all Intellectual Property, including all recorded data of any kind or nature, regardless of the medium of recording;

(x) all Inventory;

(xi) all Investment Property, Pledged Stock and Pledged Collateral;

(xii) all Money, cash and cash equivalents;

(xiii) all letters of credit and Letter-of-Credit Rights;

(xiv) all Deposit Accounts, Securities Accounts, Commodities Accounts and all other demand, deposit, time, savings, cash management, passbook and similar accounts maintained by such Grantor with any bank or other financial institution and all monies, securities, Instruments and other investments deposited or required to be deposited in any of the foregoing;

(xv) all Security Entitlements in any or all of the foregoing;

(xvi) all Commercial Tort Claims;

(xvii) all Permits;

(xviii) all Contracts, together with all Contract Rights arising thereunder;

(xix) all Licenses;

(xx) all other personal property not otherwise described in clauses (i) through (xxii) above, in each case now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest;

(xxi) all Supporting Obligations; and

(xxii) all accessions to, substitutions and replacements for, Proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs,

printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

(b) Notwithstanding the foregoing, the term "Collateral" (and any component of the definition thereof) shall not include:

(i) any General Intangibles or other rights arising under any contracts, instruments, leases, licenses, agreements or other documents as to which the grant of a security interest would (i) constitute a violation of a restriction in favor of a third party on such grant or result in the abandonment, invalidation or unenforceability of any right of such Grantor, unless and until any required consents shall have been obtained, or (ii) result in a breach, termination or default under such contract, instrument, lease, license, agreement or other document (including pursuant to any "change of control" or similar provision); *provided*, that such Collateral shall only be excluded, in each case under clauses (i) and (ii) above, to the extent such violation or right to terminate would not be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity; *provided, further*, that such Collateral shall not be excluded, and such security interest shall attach immediately at such time as the condition causing such violation or right to terminate shall no longer exist and to the extent severable, shall attach immediately to any portion of such General Intangible that does not result in any of the consequences specified in clauses (i) or (ii) above;

(ii) solely to the extent any such Pledge shall result in material adverse tax consequences to the Issuer and its Subsidiaries (taken as a whole) (as reasonably determined in good faith by the Issuer) the equity interests (as determined for U.S. federal income tax purposes) of any Foreign Subsidiary, FSHCO Subsidiary or Disregarded Domestic Subsidiary of such Grantor, other than 65% of the equity interests (as determined for U.S. federal income tax purposes) of any Foreign Subsidiary, FSHCO Subsidiary or Disregarded Domestic Subsidiary of any Grantor, as applicable;

(iii) the Capital Stock of any Immaterial Subsidiary (except to the extent the security interest therein can be perfected by the filing of a Form UCC-1 financing statement), Captive Insurance Subsidiary, Unrestricted Subsidiary (except for the capital stock of Anagram Holdings, LLC) or not-for-profit Subsidiary or any special purpose entity used for securitization facilities;

(iv) any intent-to-use (or similar) Trademark applications prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein may impair the validity or enforceability of such intent-to-use Trademark applications under applicable law;

(v) any asset or property, the granting of a security interest in which would (A) require any governmental consent, approval, license or authorization, (B) be prohibited by enforceable anti-assignment provisions of applicable law, except, in the case of this clause (B), to the extent such prohibition would be rendered ineffective under the UCC, other applicable law or principles of equity notwithstanding such prohibition, or (C) result in materially adverse tax consequences to

any Grantor as reasonably determined in good faith by the Issuer with notice to the Collateral Trustee;

(vi) any leasehold Real Estate Asset and any owned Real Estate Asset that is not a Material Real Estate Asset;

(vii) any interests in partnerships, joint ventures and non-Wholly-Owned Subsidiaries which cannot be pledged without the consent of one or more third parties other than either the Issuer or any of its Subsidiaries (after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity);

(viii) any Margin Stock;

(ix) [Reserved];

(x) Commercial Tort Claims individually with a value (as reasonably estimated by the Issuer) of less than $1,000,000;

(xi) [Reserved];

(xii) Letter of Credit Rights of less than $1,000,000 to the extent that a security interest therein cannot be perfected by filing a UCC financing statement in appropriate form in the applicable jurisdiction;

(xiii) Solely to the extent (A) Indebtedness is incurred by any Grantor pursuant to Section 4.03(w) of the Indenture and (B) such Indebtedness is secured by Liens that are subject to intercreditor arrangements on terms acceptable to the Collateral Trustee and documented in an agreement to which the Collateral Trustee is a party, "Non-Working Capital Assets" (or the functional equivalent term used and defined in the such agreement) of Anagram International, Inc., Anagram Holdings, LLC and any Grantor that is a subsidiary of either of the foregoing; and

(xiv) any specifically identified asset with respect to which the Collateral Trustee and the Issuer shall have reasonably determined that the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the fair market value thereof and the benefit of a security interest to the Secured Parties afforded thereby (all of the items referred to in clauses (i) through (xiii) hereof, collectively, the "**Excluded Assets**").

Notwithstanding anything to the contrary contained herein, immediately upon the ineffectiveness, lapse or termination of any restriction or condition set forth in the preceding paragraph, the Collateral shall include, and the Issuer and/or the Guarantors shall be deemed to have granted a security in, all such rights and interests or other assets, as the case may be, as if such provision had never been in effect.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

The Grantors, jointly and severally, represent and warrant to the Collateral Trustee, as of the Issue Date, for the benefit of the Secured Parties, that:

Section 3.01. *Title, Perfection and Priority; Filing Collateral*. This Security Agreement is effective to create a legal, valid and enforceable Lien on and security interest in the Collateral in which a security interest may be perfected by filing a financing statement under the UCC in favor of the Collateral Trustee for the ratable benefit of the Secured Parties, subject, as to enforceability, to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and dealing, and when appropriate financing statements have been filed with the Secretary of State of the state of organization of such Grantor against such Grantor, the Collateral Trustee will have a fully perfected second priority security interest (subject to Permitted Liens) on such Collateral.

Section 3.02. *Type, Jurisdiction of Organization and Federal Taxpayer Identification Numbers*. As of the Issue Date, the type of entity of each Grantor, its jurisdiction of organization, incorporation or formation, as applicable, and its Federal Taxpayer Identification Number, if any, are accurately set forth on Schedule 1(a) to the Perfection Certificate.

Section 3.03. *Principal Location*. As of the Issue Date, the address of each Grantor's chief executive office is set forth on Schedule 2(a) to the Perfection Certificate.

Section 3.04. *Collateral Locations*. Each location where material Collateral consisting of Inventory or Equipment is located as of the Issue Date (except for Collateral in transit) is accurately listed on Schedules 2(c) and 2(d) of the Perfection Certificate. All of said locations are owned by a Grantor except for locations (a) that are leased by a Grantor as lessee and designated as such on Schedule 2(d) of the Perfection Certificate and (b) at which Inventory or Equipment is held in a public warehouse or is otherwise held by a bailee or on consignment as designated on Schedule 2(d) of the Perfection Certificate.

Section 3.05. *Bailees, Warehousemen, Etc*. As of the Issue Date, Schedule 2(d) of the Perfection Certificate accurately sets forth a list of each address where a bailee, warehouseman or other third party is in possession or control of any material Inventory or Equipment of any Grantor (except for any such Collateral in transit).

Section 3.06. *Exact Names*. As of the Issue Date, the name in which each Grantor has executed this Security Agreement and each other Note Document to which such Grantor is a party is the exact legal name of such Grantor as it appears in such Grantor's organizational documents, as filed with the Secretary of State of such Grantor's jurisdiction of organization, incorporation or formation, as applicable.

Section 3.07. *Letter-of-Credit Rights, Tangible Chattel Paper and Instruments*. As of the Issue Date, Schedule 8 to the Perfection Certificate lists all Letter-of-Credit Rights with value in excess of $1,000,000. As of the Issue Date, Schedule 4 to the Perfection Certificate lists all Instruments (other than checks to be deposited in the ordinary course of business), in each case having a value

in excess of $1,000,000 held by each Grantor and all Tangible Chattel Paper, in each case having a value in excess of $1,000,000 held by each Grantor.

Section 3.08. *Accounts and Chattel Paper*. The names of the obligors, amounts owing, due dates and other material information with respect to each Grantor's Accounts and Chattel Paper that are Collateral are correctly stated in all material respects in the records of such Grantor relating thereto and, to the extent they have been created, in all invoices, to the extent that such records and invoices are required to be furnished to the Collateral Trustee by such Grantor from time to time.

Section 3.09. *Intellectual Property*. (a) As of the Issue Date, no Grantor has any ownership interest in, or title to, any material registered or issued Patent, Trademark or Copyright, or any application for registration or issuance thereof, except as set forth in Schedules 5(a) or 5(b) to the Perfection Certificate. Upon filing of appropriate financing statements with the Secretary of State of the state of organization of such Grantor and the filing of a fully executed short form agreement substantially in the form of Exhibit D hereto with the United States Copyright Office or the United States Patent and Trademark Office, as applicable (each such filing, an "**IP Filing**"), the Collateral Trustee shall have a fully perfected second priority security interest (subject to Permitted Liens) on the Collateral constituting Patents, Trademarks and Copyrights under the UCC and the laws of the United States for the benefit of the Secured Parties to the extent a security interest in such Collateral constituting Patents, Trademarks and Copyrights can be perfected by the filing of the financing statements under the Secretary of State of the state of organization of such Grantor and/or the filing of the IP Filings with the United States Copyright Office or United States Patent and Trademark Office, as applicable, and any such perfected security interests shall be enforceable as such as against any and all creditors of and purchasers from the Grantors, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and dealing.

(b) Each Grantor represents and warrants that it owns or has a valid license or right to use, all Patents, Trademarks, Copyrights, Domain Names, Trade Secrets and Software necessary for the present conduct of its business, without, to the knowledge of the Issuer and its Subsidiaries, any infringement, misuse, misappropriation or violation, individually or in the aggregate, of the rights of others, and free from any burdensome restrictions on the present conduct of its business, except where such failure to own or license or where such infringement, misuse, misappropriation or violation or restrictions would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) Each Grantor represents and warrants that such Grantor is not aware of any third-party claim (i) alleging that any of its owned Patent, Trademark or Copyright registrations or applications are invalid or unenforceable, (ii) challenging such Grantor's rights to such registrations and applications, or (iii) alleging that the conduct of such Grantor's business infringes upon, misappropriates or otherwise violates the intellectual property of any third party, and no Grantor is aware of any basis for such claims, other than, in each case, to the extent any such third-party claims would not reasonably be expected to have a Material Adverse Effect.

Section 3.10. **[Reserved.]**

Section 3.11. Pledged Collateral. As of the Issue Date, Schedules 3 and 4 to the Perfection Certificate set forth a complete and accurate list of all promissory notes, Instruments (other than checks to be deposited in the ordinary course of business) and Tangible Chattel Paper, in each case exceeding $1,000,000, held by any Grantor and all Pledged Stock of each Grantor, together with the percentage of the total issued and outstanding Capital Stock of the issuer thereof represented thereby. Each Grantor further represents and warrants that (i) all Pledged Stock has been (to the extent such concepts are relevant with respect to such Pledged Stock) duly authorized and validly issued by the issuer thereof and are fully paid and non-assessable, (ii) with respect to any certificates delivered to the Collateral Trustee (or its bailee) representing Capital Stock, either such certificates are "securities" as defined in Section 8-102(a)(15) of the UCC or pursuant to Section 8-103 of the UCC as a result of actions by the Grantor, or, if such certificates are not "securities" under the UCC, such Grantor has so informed the Collateral Trustee and such Grantor has taken the necessary steps to perfect the Collateral Trustee's security interest therein as a General Intangible and (iii) it has complied with the applicable procedures set forth in Section 4.03 hereof with respect to all Pledged Collateral.

Section 3.12. *Commercial Tort Claims*. As of the Issue Date, no Grantor holds any Commercial Tort Claims having a value in excess of $1,000,000, except as indicated on Schedule 6 to the Perfection Certificate.

Section 3.13. *Perfection Certificate*. The Perfection Certificate and each Perfection Certificate Supplement has been duly prepared, completed and executed and the information set forth therein is correct and complete in all material respects as of the Issue Date or, in the case of each Perfection Certificate Supplement, as of the date of delivery thereof.

Section 3.14. *Deposit Accounts*. As of the Issue Date, all Deposit Accounts maintained by each Grantor are described in Exhibit E, which description includes for each such account the name of the Grantor maintaining such account, the name of the financial institution at which such account is maintained and the account number of such account.

Section 3.15. *Certain Significant Transactions*. During the four-month period preceding the date of this Security Agreement, no Person shall have merged or consolidated with or into any Grantor, and no Person shall have liquidated into, or transferred all or substantially all of its assets to, any Grantor, in each case except as described in Schedule 1(d) of the Perfection Certificate.

Section 3.16. *Recourse*. This Security Agreement is made with full recourse to each Grantor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of such Grantor contained herein, in the Note Documents and otherwise in writing in connection herewith and therewith.

ARTICLE 4
COVENANTS

From the date hereof, and thereafter until the Termination Date, each Grantor agrees that:

Section 4.01. *General*.

(a) **[Reserved.]**

(b) *Authorization to File Financing Statements; Ratification*. Each Grantor hereby authorizes the Collateral Trustee to file (but without obligation to do so), and, if requested, agrees to prepare and deliver to the Collateral Trustee, all financing statements, in form appropriate for filing under the UCC of the relevant jurisdiction, and to execute and deliver other documents (including IP Filings) and take such other actions as may from time to time be necessary and reasonably requested by the Collateral Trustee in order to establish and maintain a valid, enforceable (subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and dealing) and perfected security interest in and, with respect to Pledged Collateral to the extent required under Section 4.03, Control of, the Collateral; *provided*, that the primary responsibility for filing any initial financing statements under the UCC and the filing or recording of any other documents (including IP Filings) and to take such other actions as may from time to time be necessary in order to establish and maintain a valid and enforceable security interest hereunder rests solely on the applicable Grantor (subject to such Grantor obtaining necessary authorizations from the Collateral Trustee with respect to any such filing and/or recordation) and the Collateral Trustee shall have no obligation to prepare, file or record any financing statement or continuation statement or ensure the preparation, filing or recording of the same. Notwithstanding anything to the contrary set forth in this Security Agreement, the Collateral Trustee hereby agrees to authorize the applicable Grantor to (a) file any financing statements (including continuation statements) that are prepared by the applicable Grantor and which require the Collateral Trustee's authorization pursuant to Section 9-509 of the UCC or any other applicable law or (b) file or record any other documents or instruments and take such other actions as may from time to time be necessary in order to establish and maintain a second priority Lien, and to provide such authorization in each case within five (5) Business Days' after having received a written notice of any Grantor's intent to file any financing statements (including continuation statements and amendments) and receipt of draft financing statements therewith (but without obligation or duty on the Collateral Trustee to investigate or confirm as to the accuracy and completeness of any such financing statements, other documents, instruments or the filing jurisdictions). Each Grantor shall pay any applicable filing fees, recordation taxes and related expenses to the extent incurred by the Collateral Trustee relating to the Collateral in accordance with Section 7.06 of the Indenture. Any financing statement filed in connection with the security interests granted to the Collateral Trustee hereunder with respect to the Collateral may be filed in any filing office in any applicable UCC jurisdiction and may (i) be filed without the signature of such Grantor where permitted by law, (ii) indicate the Collateral (A) as all assets of the applicable Grantor, whether now owned or hereafter acquired, or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of such jurisdiction, or (B) by any other description which reasonably approximates the description of the Collateral contained in this Security Agreement, and (iii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether the Grantor is an organization and the type of organization of such Grantor and (B) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Each Grantor also agrees to furnish any such information to the Collateral Trustee promptly upon request.

(c) *Further Assurances*. Each Grantor agrees, at its own expense, to take any and all actions commercially reasonably necessary to defend title to the Collateral against all Persons (other than Persons holding Permitted Liens on such Collateral that have priority over the Collateral Trustee's Lien) and to defend the security interest of the Collateral Trustee in the Collateral and the priority thereof against any Lien that is not a Permitted Lien; *provided* that, nothing in this Security Agreement shall prevent any Grantor from discontinuing the operation or maintenance of any of its assets or properties if such discontinuance is (x) determined by such Grantor to be desirable in the conduct of its business and (y) permitted by the Indenture.

(d) **[Reserved.]**

(e) **[Reserved.]**

(f) **[Reserved.]**

(g) *Change of Name, Etc*. Each Grantor agrees to furnish to the Collateral Trustee promptly, within fifteen (15) calendar days (or such longer period as the Collateral Trustee may agree in its reasonable discretion), written notice of any change in: (i) such Grantor's legal name, (ii) such Grantor's identity or corporate structure, (iii) such Grantor's jurisdiction of organization, incorporation or formation, as applicable, or (iv) such Grantor's Federal Taxpayer Identification Number and, in each case, shall promptly make all filings required under the UCC or other applicable law and take all other actions reasonably necessary or reasonable and appropriate to ensure that the Collateral Trustee shall continue at all times following such change to have a valid, legal, enforceable (subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and dealing) and perfected second priority Lien in such Collateral (subject to Permitted Liens) for its benefit and the benefit of the other Secured Parties; *provided*, *however*, such Grantor's obligation to make any UCC amendment filings shall be contingent upon obtaining relevant filing authorizations from the Collateral Trustee in accordance with Section 4.01(b).

Section 4.02. **[Reserved.]**

Section 4.03. *Pledged Collateral*.

(a) *Delivery of Certificated Securities, Tangible Chattel Paper, Instruments and Documents*. Each Grantor will, subject in each case to the applicable Intercreditor Agreement, (a) on the Issue Date, deliver to the Collateral Trustee for the benefit of the Secured Parties the originals of all (x) Certificated "security" (as defined in Section 8-102(a)(15) of the UCC) and (y) Tangible Chattel Paper and Instruments, in each case under this clause (y), having an outstanding balance in excess of $1,000,000, in each case, constituting Collateral owned by such Grantor as of the Issue Date, accompanied by undated instruments of transfer or assignment duly executed in blank, (b) after the Issue Date, hold in trust for the Collateral Trustee upon receipt and, on or prior to the later to occur of (i) thirty (30) calendar days following the date of such receipt and (ii) the earlier of the date of the required delivery of the next Compliance Certificate following such receipt and the date which is forty-five (45) calendar days after the end of the most recently ended fiscal quarter (or such later date as the applicable Grantor shall notify the Collateral Trustee reasonably and in good faith but in any event no later than ninety (90) calendar days after the end

of the most recently ended fiscal quarter), deliver to the Collateral Trustee for the benefit of the Secured Parties all (x) Certificated "security" (as defined in Section 8-102(a)(15) of the UCC) and (y) Tangible Chattel Paper and Instruments, in each cause under this clause (y), having an outstanding balance in excess of $1,000,000, in each case, constituting Collateral received after the date hereof, accompanied by undated instruments of transfer or assignment duly executed in blank and (c) upon the occurrence and during the continuance of an Event of Default and upon the Collateral Trustee's request, deliver to the Collateral Trustee, and thereafter hold in trust for the Collateral Trustee upon receipt and promptly deliver to the Collateral Trustee any other Document evidencing or constituting Collateral.

(b) *Uncertificated Securities and Pledged Collateral*. With respect to (i) any uncertificated Pledged Stock or any Pledged Collateral held by a Clearing Corporation, Securities Intermediary or other financial intermediary of any kind, at the Collateral Trustee's request, the relevant Grantor shall execute and deliver, and shall cause any such issuer or intermediary to execute and deliver, an agreement among such Grantor, the Collateral Trustee and such issuer or intermediary in form and substance reasonably satisfactory to the Collateral Trustee which provides, among other things, for the issuer's or intermediary's agreement that it will comply with such entitlement orders, and apply any value distributed on account of any Pledged Collateral, as directed by the Collateral Trustee without further consent by such Grantor and (ii) any partnership interest or limited liability company interest of any Grantor (other than Excluded Assets and a partnership interest or limited liability company interest held by a Clearing Corporation, Securities Intermediary or other financial intermediary of any kind) which is not represented by a certificate and/or which is not a "security" for purposes of the UCC, such Grantor shall not permit any issuer of such partnership interests or limited liability company interests to (A) enter into any agreement with any Person, other than the Collateral Trustee and the ABL Facility Security Agent, whereby such issuer effectively delivers "control" of such partnership interests or limited liability company interests (as applicable) under the UCC to such Person, or (B) allow such partnership interests or limited liability company interests (as applicable) to become a "security" (as defined in Section 8-102(a)(15) of the UCC) unless such Grantor complies with the procedures set forth in Sections 4.03(a) or 4.03(b)(i), as applicable.

(c) *Registration in Nominee Name; Denominations*. Subject to the terms of the applicable Intercreditor Agreement, the Collateral Trustee, on behalf of the Secured Parties, shall hold certificated Pledged Collateral required to be delivered to the Collateral Trustee under clause (a) above in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Trustee, but following the occurrence and during the continuance of an Event of Default and upon three (3) Business Days' prior written notice to the Issuer, the Collateral Trustee shall have the right (in its sole and absolute discretion) to hold the Pledged Collateral in its own name as pledgee, or in the name of its nominee (as pledgee or as sub-agent). Subject to the terms of the applicable Intercreditor Agreement, following the occurrence and during the continuance of an Event of Default, the Collateral Trustee shall at all times have the right to exchange the certificates representing Pledged Collateral for certificates of smaller or larger denominations for any purpose consistent with this Security Agreement.

(d) *Exercise of Rights in Pledged Collateral*. Subject, in each case, to the applicable Intercreditor Agreement,

(i) without in any way limiting the foregoing and subject to clause (ii) below, each Grantor shall have the right to exercise all voting rights or other rights relating to the Pledged Collateral for all purposes not inconsistent with this Security Agreement, the Indenture or any other Note Document;

(ii) each Grantor will permit the Collateral Trustee or its nominee at any time after the occurrence and during the continuance of an Event of Default and upon three Business Days' prior written notice from the Collateral Trustee to the Grantors stating its intent to exercise remedies under this Section 4.03(d)(ii), to exercise all voting rights or other rights relating to Pledged Collateral, including, without limitation, exchange, subscription or any other rights, privileges, or options pertaining to any Capital Stock or Investment Property constituting Pledged Collateral as if it were the absolute owner thereof, in each case in accordance with the terms of the Indenture, the other Note Documents and applicable law; and

(iii) each Grantor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral; *provided* that any non-cash dividends or other distributions that would constitute Pledged Collateral, whether resulting from a subdivision, combination or reclassification of the outstanding Capital Stock of the issuer of any Pledged Collateral or received in exchange for Pledged Collateral or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall, to the extent constituting Collateral, be and become part of the Pledged Collateral, and, if received by any Grantor, shall be delivered to the Collateral Trustee as and to the extent required by clause (a) above. So long as no Event of Default has occurred and is continuing, the Collateral Trustee shall promptly deliver to each Grantor (without recourse and without any representation or warranty of any kind) any Pledged Collateral in its possession if requested to be delivered to the issuer thereof in connection with any redemption or exchange of such Pledged Collateral permitted by the Indenture.

Section 4.04. *Intellectual Property*. (a) Upon the occurrence and during the continuance of an Event of Default and upon the written request of the Collateral Trustee, each Grantor will use its commercially reasonable efforts to obtain all consents and approvals necessary or appropriate for the assignment to or for the benefit of the Collateral Trustee of any License held by such Grantor to enable the Collateral Trustee to enforce the security interests granted hereunder. To the extent required pursuant to any License pursuant to which a Grantor is the licensee, each Grantor party to such License shall deliver to the licensor thereunder any notice of the grant of security interest hereunder or such other notices required to be delivered thereunder in order to permit the security interest created or permitted to be created hereunder pursuant to the terms of such License.

(b) Each Grantor shall notify the Collateral Trustee promptly, but in any event within fifteen (15) calendar days (or (i) such later date as the applicable Grantor shall notify the Collateral Trustee reasonably and in good faith but in any event no later than ninety (90) calendar days after the end of the most recently ended fiscal quarter or (ii) such later date as may be acceptable to the Collateral Trustee in its sole discretion), if it knows or reasonably expects that any of its applications or registrations of any Patent, Trademark or Copyright (now or hereafter existing) may become abandoned or dedicated to the public, or of any determination or development (including the institution of, or any such determination or development in, any proceeding in the

United States Patent and Trademark Office, the United States Copyright Office, any similar office or agency or any court) abandoning such Grantor's ownership of any such Patent, Trademark or Copyright, its right to register the same, or to keep and maintain the same, except, in each case, for dispositions permitted under the Indenture or where such occurrences individually or in the aggregate, could not result in a Material Adverse Effect on the business of such Grantor.

(c) In the event that a Grantor files an application for the registration of any material Patent, Trademark or Copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency, it shall, on or prior to the later to occur of (i) thirty (30) calendar days following the date of such filing and (ii) the earlier of the date of the required delivery of the next Compliance Certificate following such filing and the date that is forty-five (45) calendar days after the end of the most recently ended fiscal quarter (or (i) such later date as the applicable Grantor shall notify the Collateral Trustee reasonably and in good faith but in any event no later than ninety (90) calendar days after the end of the most recently ended fiscal quarter or (ii) such later date as may be acceptable to the Collateral Trustee in its sole discretion), provide the Collateral Trustee with written notice thereof, and such Grantor shall execute and deliver any and all security agreements or other instruments as the Collateral Trustee may reasonably request to evidence the Collateral Trustee's security interest in such Patent, Trademark or Copyright, and the Licenses and General Intangibles of such Grantor relating thereto or represented thereby.

(d) Each Grantor shall take all actions necessary or reasonably requested by the Collateral Trustee to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of the Patents, Trademarks, Domain Names and Copyrights (now or hereafter existing) where failure to do so could reasonably be expected to result in a Material Adverse Effect on the business of the Grantors, taken as a whole, or except as otherwise permitted under the Indenture, including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and, if consistent with good business judgment, to initiate opposition and interference and cancellation proceedings against third parties.

(e) Each Grantor shall promptly, within fifteen (15) calendar days (or (i) such later date as the applicable Grantor shall notify the Collateral Trustee reasonably and in good faith but in any event no later than ninety (90) calendar days after the end of the most recently ended fiscal quarter or (ii) such later date as may be acceptable to the Collateral Trustee in its sole discretion), notify the Collateral Trustee of any material infringement, misappropriation, dilution or other violation of such Grantor's Patents, Trademarks, Copyrights or Trade Secrets of which it becomes aware and shall, if consistent with good business judgment, promptly sue for infringement, misappropriation, dilution or other violation of such Patent, Trademark, Copyright or Trade Secret and to recover any and all damages for such infringement, misappropriation, dilution or other violation, and shall take such other actions as are reasonable and appropriate under the circumstances to protect such Patent, Trademark, Copyright or Trade Secret, except where such infringement, misappropriation, dilution or other violation could not reasonably be expected to cause a Material Adverse Effect.

Section 4.05. *Commercial Tort Claims*. After the Issue Date, on or prior to the later to occur of (i) thirty (30) calendar days following the date of such acquisition and (ii) the earlier of the date of the required delivery of the Compliance Certificate required pursuant to Section 4.16(a) of the

Indenture following such acquisition and the date which is forty-five (45) calendar days after the end of the most recently ended fiscal quarter (and, in any event, the date which is ninety (90) calendar days after the end of the most recently ended fiscal quarter), each Grantor shall notify the Collateral Trustee of any Commercial Tort Claim having a value in excess of $1,000,000 (as reasonably estimated by the Issuer) acquired by it, together with a written update to Schedule 6 of the Perfection Certificate describing the details thereof, and such Commercial Tort Claims and all Proceeds thereof shall automatically be subject to a second priority security interest in favor of the Collateral Trustee (for the benefit of the Secured Parties), all upon the terms of this Security Agreement, subject to Permitted Liens.

Section 4.06. *Letter-of-Credit Rights*. Subject to the applicable Intercreditor Agreement, if any Grantor is or becomes the beneficiary of a letter of credit having a face amount in excess of $1,000,000, such Grantor shall, on or prior to the later to occur of (i) thirty (30) calendar days following the date of such acquisition and (ii) the earlier of the date of the required delivery of the Compliance Certificate provided for in Section 4.16(a) of the Indenture following such acquisition and the date which is forty-five (45) calendar days after the end of the most recently ended fiscal quarter (or such later date as the applicable Grantor shall notify the Collateral Trustee reasonably and in good faith but in any event no later than ninety (90) calendar days after the end of the most recently ended fiscal quarter), notify the Collateral Trustee thereof.

Section 4.07. **[Reserved.]**

Section 4.08. *Insurance*. (a) The Issuer and the other Grantors shall maintain, with reputable companies, insurance policies insuring their property in at least such amounts and against such risks as are customarily carried or maintained by Persons engaged in the same or a similar business.

(b) Subject in each case to the applicable Intercreditor Agreement, all insurance policies with respect to the Collateral shall name the Collateral Trustee (on behalf of the Secured Parties) as an additional insured or as loss payee, as applicable, and, in the case of casualty insurance policies (including any business interruption policies), shall contain loss payable clauses or endorsements in favor of the Collateral Trustee in form and substance reasonably satisfactory to the Collateral Trustee. Subject to the applicable Intercreditor Agreement, and except to the extent otherwise permitted to be retained by such Grantor or applied by such Grantor pursuant to the terms of the Note Documents, the Collateral Trustee shall, at the time any proceeds of any insurance are distributed to the Secured Parties, apply such proceeds in accordance with Section 5.04 hereof. Each Grantor assumes all liability and responsibility in connection with the Collateral acquired by it and the liability of such Grantor to pay the Secured Obligations shall in no way be affected or diminished by reason of the fact that such Collateral may be lost, destroyed, stolen, damaged or for any reason whatsoever unavailable to such Grantor.

Section 4.09. *Collateral Access Agreements*. Subject to the applicable Intercreditor Agreement, each Grantor shall use commercially reasonable efforts to obtain a collateral access agreement (the **"Collateral Access Agreement"**) in substantially the form of Exhibit F or Exhibit G, as applicable, from the lessor of each of its leased properties (other than stores) and the bailee, warehouseman or other third party with respect to any warehouse or other location, in each case where Inventory having a value in excess of $1,000,000 is stored or located (other than with respect to locations

where Inventory is stored or located on a temporary basis (not to exceed sixty (60) calendar days) in connection with docking and stevedoring services related to such Inventory).

Section 4.10. *Grantors Remain Liable Under Contracts.* Each Grantor (rather than the Collateral Trustee or any Secured Party) shall remain liable (as between itself and any relevant counterparty) to observe and perform all the conditions and obligations to be observed and performed by it under each Contract relating to the Collateral, all in accordance with the terms and conditions thereof. Neither the Collateral Trustee nor any other Secured Party shall have any obligation or liability under any Contract by reason of or arising out of this Security Agreement or the receipt by the Collateral Trustee or any other Secured Party of any payment relating to such Contract pursuant hereto, nor shall the Collateral Trustee or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or sufficiency of any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times.

Section 4.11. *Grantors Remain Liable Under Accounts.* Anything herein to the contrary notwithstanding, the Grantors shall remain liable under each of the Accounts to observe and perform all of the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to such Accounts. Neither the Collateral Trustee nor any other Secured Party shall have any obligation or liability under any Account (or any agreement giving rise thereto) by reason of or arising out of this Security Agreement or the receipt by the Collateral Trustee or any other Secured Party of any payment relating to such Account pursuant hereto, nor shall the Collateral Trustee or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Account (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by them or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times.

Section 4.12. *Blocked Account Agreements.* No Grantor maintains, or at any time after the date of this Security Agreement shall establish or maintain, any Blocked Account, except for such accounts maintained with a bank (as defined in Section 9-102 of the UCC) whose jurisdiction (determined in accordance with Section 9-304 of the UCC) is within a state of the United States. For each Blocked Account, whether maintained as of the Issue Date or hereinafter established or maintained, the respective Grantor shall use commercially reasonable efforts to cause the bank with which the Blocked Account is maintained to execute and deliver to the Collateral Trustee a Blocked Account Agreement, or the respective Grantor shall furnish to the Collateral Trustee a supplement of an existing Blocked Account Agreement containing the relevant information with respect to the respective Blocked Account with which same is established and a Perfection Certificate Supplement shall be provided solely to reflect such Blocked Account; *provided*, that such Blocked Account Agreement or supplement of an existing Blocked Account Agreement is in form reasonably satisfactory to the Collateral Trustee as to its duties and obligations. Other than with respect to any Blocked Accounts for which a Blocked Account Agreement is required pursuant to the two preceding sentences, perfection by Control shall not be required by this Security Agreement with respect to cash and cash equivalents, Deposit Accounts, Securities

Accounts and Commodities Accounts (including Securities Entitlements and related assets with respect thereto).

ARTICLE 5
REMEDIES

Section 5.01. *Remedies*. (a) Each Grantor agrees that, upon the occurrence and during the continuance of an Event of Default, the Collateral Trustee may exercise any or all of the following rights and remedies (in addition to the rights and remedies existing under applicable law):

(i) those rights and remedies provided in this Security Agreement, the Indenture, or any other Note Document; *provided* that this Section 5.01(a) shall not be understood to limit any rights available to the Collateral Trustee and the Holders prior to an Event of Default;

(ii) those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' Lien) when a debtor is in default under a security agreement;

(iii) give notice of sole control or any other instruction under any Blocked Account Agreement, Collateral Access Agreement or any other control or similar agreement and take any action permitted therein with respect to the applicable Collateral;

(iv) to the extent permitted by applicable law, without notice (except as specifically provided in Section 7.01 or elsewhere herein), demand or advertisement of any kind to any Grantor or any other Person, personally, or by agents or attorneys, enter the premises of any Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time within ordinary business hours with or without notice and may take place at such Grantor's premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit risk, and upon such other terms as the Collateral Trustee may deem commercially reasonable;

(v) upon three Business Days' prior written notice to the Grantors, transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations, and subject to the notice requirements of Section 4.03(d)(ii), to exercise the voting and all other rights as a holder with respect thereto, to collect and receive all cash dividends, interest, principal and other distributions made thereon and to otherwise act with respect to the Pledged Collateral as though the Collateral Trustee was the outright owner thereof;

(vi) subject to the applicable Intercreditor Agreement, instruct all depositary banks which have entered into a Blocked Account Agreement to transfer all monies, securities and instruments held by such depositary bank to the Collateral Trustee and without notice to or assent

by any Grantor, apply any or all amounts therein toward the payment of the Secured Obligations in the manner provided in Section 5.04 hereof; and

(vii) take possession of the Collateral or any part thereof, by directing such Grantor in writing to deliver the same to the Collateral Trustee at any reasonable place or places designated by the Collateral Trustee, in which event such Grantor shall at its own expense:

(1) forthwith cause the same to be moved to the place or places so designated by the Collateral Trustee and there delivered to the Collateral Trustee;

(2) store and keep any Collateral so delivered to the Collateral Trustee at such place or places pending further action by the Collateral Trustee; and

(3) while the Collateral shall be so stored and kept, provide such security and maintenance services as shall be reasonably necessary to protect the same and to preserve and maintain it in good condition.

(b) Each Grantor acknowledges and agrees that the compliance by the Collateral Trustee, on behalf of the Secured Parties, with any applicable state or federal law requirements in connection with a disposition of the Collateral will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(c) The Collateral Trustee shall have the right upon any public sale or sales and, to the extent permitted by law, upon any private sale or sales, to purchase for the benefit of the Collateral Trustee and the Secured Parties, the whole or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption each Grantor hereby expressly releases.

(d) Until the Collateral Trustee is able to effect a sale, lease, transfer or other disposition of the Collateral under this Section 5.01, the Collateral Trustee shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or the value of the Collateral, or for any other purpose deemed appropriate by the Collateral Trustee. Upon the occurrence and during the continuance of an Event of Default, the Collateral Trustee may, if it so elects, seek the appointment of a receiver or keeper to take possession of the Collateral and to enforce any of the Collateral Trustee's remedies (for the benefit of the Collateral Trustee and Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(e) **[Reserved.]**

(f) Notwithstanding the foregoing, neither the Collateral Trustee nor the Secured Parties shall be required to (i) make any demand upon, or pursue or exhaust any of their rights or remedies against, the Grantors, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof, (ii) marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, or (iii) effect a public sale of any Collateral.

(g) Each Grantor recognizes that the Collateral Trustee may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof. Each Grantor also acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Collateral Trustee shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit any Grantor or the issuer of the Pledged Collateral to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if any Grantor and the issuer would agree to do so.

(h) Notwithstanding the foregoing, any rights and remedies provided in this Section 5.01 shall be subject to the applicable Intercreditor Agreement.

Section 5.02. *Grantors' Obligations Upon Default*. Upon the written request of the Collateral Trustee after the occurrence and during the continuance of an Event of Default, each Grantor will:

(a) at its own cost and expense (i) assemble and make available to the Collateral Trustee the Collateral and all books and records relating thereto at any place or places reasonably specified by the Collateral Trustee, whether at such Grantor's premises or elsewhere, (ii) deliver all tangible evidence of its Accounts and Contract Rights (including, without limitation, all documents evidencing the Accounts and all Contracts) and such books and records to the Collateral Trustee or to its representatives (copies of which evidence and books and records may be retained by such Grantor) to the extent such assets constitute Collateral and (iii) if the Collateral Trustee so directs, such Grantor shall legend, in form and manner satisfactory to the Collateral Trustee, the Accounts and the Contracts, as well as books, records and documents (if any) of such Grantor to the extent such assets constitute Collateral evidencing or pertaining to such Accounts and Contracts to the extent such assets constitute Collateral with an appropriate reference to the fact that such Accounts and Contracts have been assigned to the Collateral Trustee and that the Collateral Trustee has a security interest therein; and

(b) permit the Collateral Trustee, by the Collateral Trustee's representatives and agents, to enter, occupy and use any premises owned by the Grantors or, to the extent lawful and permitted, leased by any of the Grantors where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral or the books and records relating thereto, or both, to remove all or any part of the Collateral or the books and records relating thereto, or both, and to conduct sales of the Collateral, without any obligation to pay any Grantor for such use and occupancy.

Section 5.03. *Intellectual Property Remedies*. (a) For the purpose of enabling the Collateral Trustee to exercise the rights and remedies under this Article 5 upon the occurrence and during the continuance of an Event of Default and at such time as the Collateral Trustee shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Trustee a power of attorney to sign any document which may be required by the United States Patent and Trademark Office, United States Copyright Office, domain name registry or similar office or registrar in order to effect an absolute assignment of all right, title and interest in each registered Patent, Trademark, Domain Name and Copyright, and each application for such registration, and

record the same, in each case to the extent such assets constitute Collateral. If an Event of Default shall occur and be continuing, the Collateral Trustee may (i) declare the entire right, title and interest of such Grantor in and to all Intellectual Property, in each case to the extent such assets constitute Collateral, vested in the Collateral Trustee for the benefit of the Secured Parties, in which event such rights, title and interest shall immediately vest in the Collateral Trustee for the benefit of the Secured Parties, and the Collateral Trustee shall be entitled to exercise the power of attorney referred to in this Section 5.03 hereof to execute, cause to be acknowledged and notarized and record said absolute assignment with any applicable agency or registrar; (ii) sell any Grantor's Inventory (to the extent it constitutes Collateral) directly to any Person, including, without limitation, Persons who have previously purchased any Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Collateral Trustee's rights under this Security Agreement, may (subject to any restrictions contained in applicable third party licenses entered into by a Grantor) sell Inventory (to the extent it constitutes Collateral) which bears any Trademark owned by or licensed to any Grantor and any Inventory that is covered by any Copyright owned by or licensed to such Grantor and the Collateral Trustee may finish any work in process and affix any relevant Trademark owned by or licensed to any Grantor and sell such Inventory as provided herein; (iii) direct such Grantor to refrain, in which event such Grantor shall refrain, from using any Intellectual Property, in each case to the extent such assets constitute Collateral, in any manner whatsoever, directly or indirectly; and (iv) assign or sell the Intellectual Property, in each case to the extent constituting Collateral, as well as the goodwill of such Grantor's business symbolized by the Trademarks and the right to carry on the business and use the assets of such Grantor in connection with which the Trademarks or Domain Names have been used.

(b) Each Grantor hereby grants to the Collateral Trustee an irrevocable (until the Termination Date), nonexclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and (to the extent not prohibited by any applicable license) to all computer software and programs used for compilation or printout thereof. The use of the license granted pursuant to the preceding sentence by the Collateral Trustee may be exercised, at the option of the Collateral Trustee, only upon the occurrence and during the continuance of an Event of Default; *provided* that, while the foregoing license shall expire upon termination or cure of the Event of Default in accordance with the terms of the Indenture, any license, sublicense or other transaction entered into by the Collateral Trustee in accordance with the provisions of this Agreement shall be binding upon the Grantors, notwithstanding any subsequent cure of an Event of Default; *provided*, *further*, that such licenses to be granted hereunder with respect to Trademarks shall be subject to, with respect to the goods and/or services on which such Trademarks are used, maintenance of quality standards that are sufficient to preserve the validity of such Trademarks and are consistent with past practices.

Section 5.04. *Application of Proceeds*. (a) Subject to the applicable Intercreditor Agreement, the Collateral Trustee shall apply the proceeds of any collection, sale, foreclosure or other realization upon any Collateral, as well as any Collateral consisting of Cash, as set forth in Section 6.10 of the Indenture.

(b) Except as otherwise provided herein or in the other Note Documents, the Collateral Trustee shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Security Agreement. Upon any sale of the Collateral by the Collateral Trustee (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Trustee or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Trustee or such officer or be answerable in any way for the misapplication thereof. It is understood that the Grantors shall remain jointly and severally liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations.

ARTICLE 6
ACCOUNT VERIFICATION; ATTORNEY IN FACT; PROXY

Section 6.01. *Account Verification*. The Collateral Trustee may at any time and from time to time following the occurrence and during the continuance of an Event of Default, in the Collateral Trustee's own name, in the name of a nominee of the Collateral Trustee, or in the name of any Grantor communicate (by mail, telephone, facsimile or otherwise) with the Account Debtors of such Grantor, parties to Contracts with such Grantor and obligors in respect of Instruments of such Grantor to verify with such Persons, to the Collateral Trustee's reasonable satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts, Instruments, Chattel Paper, payment intangibles and/or other Receivables that are Collateral.

Section 6.02. *Authorization for Secured Party to Take Certain Action*. (a) Each Grantor hereby irrevocably authorizes the Collateral Trustee (but without obligation to do so) and appoints the Collateral Trustee (until the Termination Date) (and all officers, employees or agents designated by the Collateral Trustee) as its true and lawful attorney in fact (i) at any time and from time to time in the sole discretion of the Collateral Trustee (A) to execute on behalf of such Grantor as debtor and to file financing statements necessary or desirable in the Collateral Trustee's reasonable discretion to perfect and to maintain the perfection and priority of the Collateral Trustee's security interest in the Collateral and (B) to file a carbon, photographic or other reproduction of this Security Agreement or any financing statement with respect to the Collateral as a financing statement and to file any other financing statement or amendment of a financing statement (which would not add new collateral or add a debtor, except as otherwise provided for herein or in any other Note Document) in such offices as the Collateral Trustee in its reasonable discretion deems necessary or desirable to perfect and to maintain the perfection and priority of the Collateral Trustee's security interest in the Collateral; (ii) at any time following the occurrence and during the continuance of an Event of Default in the sole discretion of the Collateral Trustee (in the name of such Grantor or otherwise), (A) to endorse and collect any cash proceeds of the Collateral and to apply the proceeds of any Collateral received by the Collateral Trustee to the Secured Obligations as provided herein or in the Indenture or any other Note Document, subject to the terms of the applicable Intercreditor Agreements, (B) to demand payment or enforce payment of the Receivables in the name of the Collateral Trustee or any Grantor and to endorse any and all checks, drafts, and other instruments for the payment of money relating to the Receivables, (C) to sign any Grantor's name on any invoice or bill of lading relating to the Receivables, drafts against any Account Debtor of such Grantor, assignments and verifications of Receivables, (D) to exercise

all of any Grantor's rights and remedies with respect to the collection of the Receivables and any other Collateral, (E) to settle, adjust, compromise, extend or renew the Receivables, (F) to settle, adjust or compromise any legal proceedings brought to collect Receivables, (G) to prepare, file and sign any Grantor's name on a proof of claim in bankruptcy or similar document against any Account Debtor of such Grantor, (H) to prepare, file and sign any Grantor's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables, (I) to change the address for delivery of mail addressed to any Grantor to such address as the Collateral Trustee may designate and to receive, open and dispose of all mail addressed to such Grantor (*provided* copies of such mail are provided to such Grantor), (J) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for Permitted Liens); *provided* that the Grantors shall not be obligated to reimburse the Collateral Trustee with respect to any Intellectual Property that any Grantor has failed to maintain or pursue, or otherwise allowed to lapse, terminate or be put into the public domain in accordance with Section 4.04, (K) to make, settle and adjust claims in respect of the Collateral under policies of insurance, endorse the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance, (L) make all determinations and decisions with respect thereto; (M) obtain or maintain the policies of insurance of the types referred to in Section 4.08(a) of this Security Agreement or to pay any premium in whole or in part relating thereto; and (N) to contact and enter into one or more agreements with the issuers of uncertificated securities which are Pledged Collateral or with securities intermediaries holding Pledged Collateral as may be necessary or advisable to give the Collateral Trustee Control over such Pledged Collateral (subject to the terms of the applicable Intercreditor Agreement) and (iii) to do all other acts and things or institute any proceedings which the Collateral Trustee may reasonably deem to be necessary or advisable (pursuant to this Security Agreement and the other Note Documents and in accordance with applicable law) to carry out the terms of this Security Agreement and to protect the interests of the Secured Parties; and, to the extent required pursuant to Section 7.06 of the Indenture, each Grantor agrees to reimburse the Collateral Trustee on demand for any payment made in connection with this paragraph or any expense (including reasonable and documented attorneys' fees, court costs and expenses) and other charges related thereto incurred by the Collateral Trustee in connection with any of the foregoing and any such sums shall constitute additional Secured Obligations; *provided* that this authorization shall not relieve any Grantor of any of its obligations under this Security Agreement or under the Indenture. The Collateral Trustee agrees that it will not exercise any rights under the power of attorney provided for in this Section 6.02 unless an Event of Default has occurred and is continuing.

Section 6.03.

(a) All prior acts of said attorney or designee are hereby ratified and approved by the Grantors. The powers conferred on the Collateral Trustee, for the benefit of the Collateral Trustee and Secured Parties, under this Section 6.02 are solely to protect the Collateral Trustee's interests in the Collateral and shall not impose any duty upon the Collateral Trustee or any Secured Party to exercise any such powers.

Section 6.04. *PROXY*. EACH GRANTOR HEREBY IRREVOCABLY (UNTIL THE TERMINATION DATE) CONSTITUTES AND APPOINTS THE COLLATERAL TRUSTEE AS ITS PROXY AND ATTORNEY-IN-FACT (AS SET FORTH IN SECTION 6.02 ABOVE) WITH RESPECT TO THE PLEDGED COLLATERAL, INCLUDING, DURING THE

CONTINUATION OF AN EVENT OF DEFAULT AND SUBJECT TO ANY NOTICE REQUIREMENTS SET FORTH HEREIN, THE RIGHT TO VOTE SUCH PLEDGED COLLATERAL, WITH FULL POWER OF SUBSTITUTION TO DO SO. IN ADDITION TO THE RIGHT TO VOTE ANY SUCH PLEDGED COLLATERAL, THE APPOINTMENT OF THE COLLATERAL TRUSTEE AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT, UPON THE OCCURRENCE AND CONTINUATION OF AN EVENT OF DEFAULT AND SUBJECT TO ANY NOTICE REQUIREMENTS SET FORTH HEREIN, TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF SUCH PLEDGED COLLATERAL WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS). SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY SUCH PLEDGED COLLATERAL ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF SUCH PLEDGED COLLATERAL OR ANY OFFICER OR AGENT THEREOF), IN EACH CASE ONLY UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT.

Section 6.05. *NATURE OF APPOINTMENT; LIMITATION OF DUTY*. THE APPOINTMENT OF THE COLLATERAL TRUSTEE AS PROXY AND ATTORNEY-IN- FACT IN THIS ARTICLE 6 IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS SECURITY AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 7.14. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, NEITHER THE COLLATERAL TRUSTEE, NOR ANY SECURED PARTY, NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO, EXCEPT TO THE EXTENT SUCH DAMAGES ARE ATTRIBUTABLE TO THEIR OWN BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION; *PROVIDED* THAT IN NO EVENT SHALL THEY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES; *PROVIDED, FURTHER*, THAT THE FOREGOING EXCEPTION SHALL NOT BE CONSTRUED TO OBLIGATE THE COLLATERAL TRUSTEE TO TAKE OR REFRAIN FROM TAKING ANY ACTION WITH RESPECT TO THE COLLATERAL.

ARTICLE 7
GENERAL PROVISIONS

Section 7.01. *Waivers*. To the maximum extent permitted by applicable law, each Grantor hereby waives notice of the time and place of any judicial hearing in connection with the Collateral Trustee's taking possession of the Collateral or of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made, including without limitation, any and all prior notice and hearing for any prejudgment remedy or remedies. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to the Grantors, addressed as set forth in Article 8, at least ten (10) calendar days

prior to (a) the date of any such public sale or (b) the time after which any such private sale or other disposition may be made. To the maximum extent permitted by applicable law, each Grantor waives all claims, damages, and demands against the Collateral Trustee or any Secured Party arising out of the repossession, retention or sale of the Collateral, except such as arise out of the bad faith, gross negligence or willful misconduct of the Collateral Trustee or such Secured Party as determined by a court of competent jurisdiction in a final and non-appealable judgment. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Collateral Trustee or any Secured Party, any valuation, stay, appraisal, extension, moratorium, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise. Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest, any notice (to the maximum extent permitted by applicable law) of any kind or all other requirements as to the time, place and terms of sale in connection with this Security Agreement or any Collateral.

Section 7.02. *Limitation on Collateral Trustee's and Secured Party's Duty with Respect to the Collateral*. The Collateral Trustee shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Collateral Trustee and each Secured Party shall use reasonable care with respect to the Collateral in its possession; *provided* that the Collateral Trustee shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to which it accords its own property; *provided*, *further*, that the Collateral Trustee shall have no obligation or duty to obtain or monitor any insurance in respect of the Collateral. Neither the Collateral Trustee nor any Secured Party shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Trustee or such Secured Party, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable law imposes duties on the Collateral Trustee to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it would be commercially reasonable for the Collateral Trustee (a) to fail to incur expenses deemed significant by the Collateral Trustee to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by applicable law, to fail to obtain governmental or third party consents for the collection or disposition of the Collateral to be collected or disposed, (c) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (d) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of the Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other Persons, whether or not in the same business as the Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of the Collateral, whether or not the Collateral is of a specialized nature, (h) to dispose of the Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than

retail markets, (j) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (k) to purchase insurance or credit enhancements to insure the Collateral Trustee against risks of loss, collection or disposition of the Collateral or to provide to the Collateral Trustee a guaranteed return from the collection or disposition of the Collateral, or (l) to the extent deemed appropriate by the Collateral Trustee, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Trustee in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 7.02 is to provide non-exhaustive indications of what actions or omissions by the Collateral Trustee would be commercially reasonable in the Collateral Trustee's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Trustee shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 7.02. Without limitation upon the foregoing, nothing contained in this Section 7.02 shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Trustee that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 7.02.

Section 7.03. *Compromises and Collection of Collateral*. Each Grantor and the Collateral Trustee recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, each Grantor agrees that the Collateral Trustee may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable to the extent it constitutes Collateral, accept in full payment of any Receivable to the extent it constitutes Collateral such amount as the Collateral Trustee in its sole discretion shall determine or abandon any such Receivable, and any such action by the Collateral Trustee shall be commercially reasonable so long as the Collateral Trustee acts in good faith based on information known to it at the time it takes any such action.

Section 7.04. *Secured Party Performance of Debtor Obligations*. Without having any obligation to do so, the Collateral Trustee may, during the continuance of an Event of Default, perform or pay any obligation which any Grantor has agreed to perform or pay under this Security Agreement and which obligation is due and unpaid and not being contested by such Grantor in good faith and the Grantor shall reimburse the Collateral Trustee for any amounts paid by the Collateral Trustee pursuant to this Section 7.04. Each Grantor's obligation to reimburse the Collateral Trustee pursuant to the preceding sentence shall be a Secured Obligation payable in accordance with Section 7.06 of the Indenture.

Section 7.05. ***[Reserved.]***

Section 7.06. ***[Reserved.]***

Section 7.07. *No Waiver; Amendments; Cumulative Remedies*. No delay or omission of the Collateral Trustee or any Secured Party to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Default or Event of Default or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this

Security Agreement whatsoever shall be valid unless in writing signed by the Grantors and the Collateral Trustee, subject to the concurrence or at the direction of the Holders to the extent required under Sections 9.02 and 11.06 of the Indenture, as applicable, and then only to the extent in such writing specifically set forth. All rights and remedies with respect to the Collateral contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to the Collateral Trustee and the Secured Parties until the Termination Date.

Section 7.08. *Limitation by Law; Severability of Provisions*. All rights, remedies and powers with respect to the Collateral provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that such provisions shall not render this Security Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. To the extent permitted by law, any provision of this Security Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions of this Security Agreement; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 7.09. *Security Interest Absolute*. All rights of the Collateral Trustee hereunder, the security interests granted hereunder and all obligations of each Grantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Indenture, any other Note Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Indenture, any other Note Document or any other agreement or instrument relating to the foregoing, (c) any exchange, release or nonperfection of any Lien on any Collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations, (d) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Grantor, (e) any exercise or non-exercise, or any waiver of, any right, remedy, power or privilege under or in respect of this Security Agreement or any other Note Document or (f) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Security Agreement (other than a termination of any Lien contemplated by Section 7.14 or the occurrence of the Termination Date, but in each case, without prejudice to the reinstatement of rights under Section 8.06 of the Indenture).

Section 7.10. *Benefit of Security Agreement*. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of each Grantor, the Collateral Trustee and the Secured Parties and their respective successors and permitted assigns (including all Persons who become bound as a debtor to this Security Agreement), except that no Grantor shall have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, without the prior written consent of the Collateral Trustee. No sales of participations, assignments, transfers, or other dispositions of any agreement governing the Secured Obligations or any portion

thereof or interest therein shall in any manner impair the Lien granted to the Collateral Trustee, for the benefit of the Collateral Trustee and the Secured Parties, hereunder.

Section 7.11. *Survival of Representations*. All representations and warranties of each Grantor contained in this Security Agreement shall survive the execution and delivery of this Security Agreement until the Termination Date.

Section 7.12. *Additional Subsidiaries; Additional Collateral*. (a) Pursuant to and in accordance with Sections 4.17 and 10.06 of the Indenture, each Subsidiary (other than an Excluded Subsidiary) of the Issuer that was not in existence or not a Subsidiary on the date of the Indenture or that ceases to be an Excluded Subsidiary is required to enter in this Security Agreement as a Subsidiary Party upon becoming a Subsidiary or ceasing to be an Excluded Subsidiary, in each case, within the time periods specified in Section 11.09 of the Indenture. Upon execution and delivery by the Collateral Trustee and such Subsidiary of an instrument in the form of Exhibit H hereto, such Subsidiary shall become a Subsidiary Party hereunder with the same force and effect as if originally named as a Subsidiary Party herein. The execution and delivery of any such instrument shall not require the consent of any other Grantor hereunder or any Secured Party. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Security Agreement.

(b) The Grantors will cause all Capital Stock directly owned by them to be subject at all times to a second priority security interest (subject to Permitted Liens) in favor of the Collateral Trustee pursuant to the terms and conditions set forth in this Security Agreement.

(c) Subject to the limitations set forth or referred to in this Section 7.12 and Section 2.01(b), if any Material Real Estate Assets are acquired by any Grantor after the Issue Date (other than assets constituting Collateral under this Security Agreement that become subject to the Lien in favor of the Collateral Trustee upon acquisition thereof), the Issuer will notify the Collateral Trustee of the same, and within ninety (90) calendar days (or such later date as the applicable Grantor shall notify the Collateral Trustee reasonably and in good faith but in any event, within 120 days of such request) the Issuer will cause such assets to be subjected to a Lien securing the Secured Obligations and will take such actions as shall be necessary to grant and perfect such Liens, including actions described in clause (d) of this Section 7.12, all at the expense of the Credit Parties.

(d) Notwithstanding anything to the contrary in this Section 7.12 or any other Security Document, (i) the Secured Parties shall not require the taking of a Lien on, or require the perfection of any Lien granted in, those assets as to which the cost of obtaining or perfecting such Lien (including any mortgage, stamp, intangibles or other tax or expenses relating to such Lien) is excessive in relation to the benefit to the Holders of the security afforded thereby as reasonably determined by the Issuer and the Collateral Trustee (acting solely at the direction of the Secured Parties), (ii) no Lien in Real Estate Assets shall be required except in respect of Material Real Estate Assets (*provided* that in any jurisdiction in which a tax is required to be paid in respect of the Mortgage on real property located in such jurisdiction based on the entire amount of the Secured Obligations, the amount secured by such Mortgage shall be limited to the estimated fair market value of the property to be subject to the Mortgage), (iii) no actions shall be required to be taken in order to create or grant any security interest in any assets located outside of the United

States and no foreign law security or pledge agreements shall be required, (iv) Liens required to be granted or perfected pursuant to this Section 7.12 shall be subject to the Intercreditor Agreements and to exceptions and limitations consistent with those set forth in the Indenture and the Security Documents and (v) no action shall be required to perfect the security interest in motor vehicles and other assets subject to certificates of title.

Section 7.13. *Headings*. The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

Section 7.14. *Termination or Release*. (a) This Security Agreement shall continue in effect until the Termination Date.

(b) A Subsidiary Party shall automatically be released from its obligations hereunder and the security interests created hereunder in the Collateral of such Subsidiary Party shall be automatically released upon the consummation of any transaction permitted pursuant to the Indenture as a result of which such Subsidiary Party ceases to be a Subsidiary and/or upon effectiveness of any written consent to the release of security interest granted in the Collateral pursuant to the Indenture (or becomes an Excluded Subsidiary; *provided, however*, that the release of any Subsidiary Party from its obligations under this Security Agreement if such Subsidiary Party becomes an Excluded Subsidiary of the type described in clause (a) of the definition thereof shall be subject to the requirements in Section 11.02 of the Indenture and of Section 11.06 of the Indenture).

(c) Upon (i) any sale or other transfer permitted under the Note Documents by any Grantor of any Collateral to any Person that is not another Grantor, (ii) the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Section 9.02 of the Indenture, (iii) the occurrence of any event that causes any part of the Collateral to cease to constitute Collateral or (iv) the release of the Grantor owning such Collateral in accordance with clause (b) above, the security interest in such Collateral shall be automatically released.

(d) The security interests granted hereby in any Collateral shall be automatically released to the extent such release is required pursuant to Section 4.2(a) of the ABL Intercreditor Agreement.

(e) In connection with any termination or release pursuant to paragraph (a), (b), (c) or (d) above, the Collateral Trustee shall promptly execute and deliver to any Grantor, at such Grantor's expense, all UCC termination statements and similar documents that such Grantor shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section 7.14 shall be without recourse to or representation or warranty of any kind by the Collateral Trustee or any Secured Party. The Issuer shall reimburse the Collateral Trustee for all costs and expenses, including the fees, charges and expenses of counsel, incurred by it in connection with any action contemplated by this Section 7.14 pursuant to Section 7.06 of the Indenture.

(f) At any time that a Grantor desires that the Collateral Trustee take any action to acknowledge or give effect to any release of the Collateral pursuant to the foregoing Sections 7.14(a), (b), (c), (d) or (e), such Grantor shall deliver to the Collateral Trustee a certificate signed by an Officer of the Issuer stating that the release of the respective Collateral is permitted to the extent required pursuant to such Sections 7.14(a), (b), (c), (d) or (e) and the terms of the Indenture. At any time that the Issuer or the respective Grantors desire that a Subsidiary of the Issuer be released hereunder, it shall deliver to the Collateral Trustee a certificate signed by an Officer of the Issuer and the respective Grantor stating that the release of the respective Grantor (and its Collateral) is permitted pursuant to such Sections 7.14(a), (b), (c), (d) or (e) and the terms of the Indenture.

(g) Collateral Trustee shall have no liability whatsoever to any other Secured Party as the result of any release of the Collateral by it in accordance with (or which the Collateral Trustee in good faith believes to be in accordance with) this Section 7.14.

Section 7.15. *Entire Agreement*. This Security Agreement, together with the other Note Documents, embodies the entire agreement and understanding between each Grantor and the Collateral Trustee relating to the Collateral and supersedes all prior agreements and understandings between any Grantor and the Collateral Trustee relating to the Collateral.

Section 7.16. ***CHOICE OF LAW*. THIS SECURITY AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SECURITY AGREEMENT, WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

Section 7.17. ***CONSENT TO JURISDICTION; CONSENT TO SERVICE OF PROCESS.***

(a) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK (OR ANY APPELLATE COURT THEREFROM) OVER ANY SUIT, IN ANY ACTION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS, CONTROVERSIES OR DISPUTES IN RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL (EXCEPT AS PERMITTED BELOW) BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENTS BY REGISTERED MAIL ADDRESSED TO SUCH PERSON SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PERSON FOR ANY SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER

PROVIDED BY LAW. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OR ANY CLAIM THAT ANY SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY HERETO AGREES THAT THE COLLATERAL TRUSTEE AND HOLDERS RETAIN THE RIGHT TO BRING PROCEEDINGS AGAINST ANY GRANTOR IN THE COURTS OF ANY OTHER JURISDICTION SOLELY IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER THIS SECURITY AGREEMENT.

(b) TO THE EXTENT PERMITTED BY LAW, EACH PARTY TO THIS SECURITY AGREEMENT HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 12.01 OF THE INDENTURE. EACH GRANTOR HEREBY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS SECURITY AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS SECURITY AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 7.18. ***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 SUIT, ACTION, LEGAL PROCEEDING OR COUNTERCLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT, ANY OTHER NOTE 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 PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECURITY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

Section 7.19. *Indemnity*. Each Grantor hereby agrees to indemnify the Collateral Trustee and the Secured Parties, and their respective successors, permitted assigns, agents and employees, as, and to the extent, set forth in Section 7.06 of the Indenture.

Section 7.20. *Counterparts*. This Security Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but

all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Security Agreement by facsimile or by email as a ".pdf" or ".tif" attachment or other customary means of electronic transmission shall be as effective as delivery of a manually executed counterpart of this Security Agreement. The words "execution," "signed," "signature," and words of like import in this Security Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 7.21. *INTERCREDITOR AGREEMENTS GOVERN*. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE PRIORITY OF THE LIENS AND SECURITY INTERESTS GRANTED TO THE COLLATERAL TRUSTEE FOR THE BENEFIT OF THE SECURED PARTIES PURSUANT TO THIS SECURITY AGREEMENT (1) IN ANY ABL FACILITY FIRST LIEN COLLATERAL AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE COLLATERAL TRUSTEE WITH RESPECT TO ANY ABL FACILITY FIRST LIEN COLLATERAL HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE ABL INTERCREDITOR AGREEMENT AND (2) IN ANY SHARED COLLATERAL (AS DEFINED IN THE PARI INTERCREDITOR AGREEMENT) AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE COLLATERAL TRUSTEE WITH RESPECT TO ANY SHARED COLLATERAL HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE PARI INTERCREDITOR AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENTS AND THIS SECURITY AGREEMENT WITH RESPECT TO THE PRIORITY OF ANY LIENS OR THE EXERCISE OF ANY RIGHTS OR REMEDIES, THE TERMS OF THE INTERCREDITOR AGREEMENTS SHALL GOVERN AND CONTROL.

Section 7.22. *Delivery of Collateral*. Prior to the First Priority Obligations Payment Date, to the extent any Grantor is required hereunder to deliver Collateral to the Collateral Trustee for purposes of possession and control and is unable to do so as a result of having previously delivered such Collateral to the ABL Facility Security Agent in accordance with the terms of the ABL Security Documents, such Grantor's obligations hereunder with respect to such delivery shall be deemed satisfied by the delivery to the ABL Facility Security Agent, acting as a gratuitous bailee of the Collateral Trustee. Notwithstanding anything to the contrary contained above in this Article 7, or elsewhere in this Security Agreement or any other Security Document, to the extent the provisions of this Security Agreement (or any other Security Document) require the delivery of, or control over, ABL Facility First Lien Collateral to be granted to the Collateral Trustee at any time prior to the First Priority Obligations Payment Date, then delivery of such ABL Facility First Lien Collateral (or control with respect thereto) shall instead be made to the ABL Facility Security Agent, to be held in accordance with the ABL Security Documents and the Intercreditor Agreements, as applicable. Furthermore, at all times prior to the First Priority Obligations Payment Date, the Collateral Trustee is authorized by the parties hereto to effect transfers of such Collateral at any time in its possession (and any "control" or similar agreements with respect to such Collateral) to the ABL Facility Security Agent.

Section 7.23. Mortgages. In the case of a conflict between this Security Agreement and any Mortgages with respect to a Material Real Estate Asset that is also subject to a valid and enforceable Lien under the terms of the Mortgage (including Fixtures), the Mortgages shall govern. In all other conflicts between this Security Agreement and the Mortgages, this Security Agreement shall govern.

Section 7.24. *Successors and Assigns.* Whenever in this Security Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and permitted assigns of such party; and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Trustee that are contained in this Security Agreement shall bind and inure to the benefit of their respective successors and permitted assigns. Except in a transaction expressly permitted under the Indenture, no Grantor may assign any of its rights or obligations hereunder without the written consent of the Collateral Trustee.

Section 7.25. *Survival of Agreement.* Without limitation of any provision of the Indenture or Section 7.19 hereof, all covenants, agreements, indemnities, representations and warranties made by the Grantors in the Note Documents and in the certificates or other instruments delivered in connection with or pursuant to this Security Agreement or any other Note Document shall be considered to have been relied upon by the Holders and shall survive the execution and delivery of the Note Documents and the issuing of any Notes, regardless of any investigation made by any such Holder or on its behalf and notwithstanding that the Collateral Trustee or any Holder may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended under the Indenture, and shall continue in full force and effect until the Termination Date, or with respect to any individual Grantor until such Grantor is otherwise released from its obligations under this Security Agreement in accordance with the terms hereof.

Section 7.26. *Reinstatement*. This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor'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 Secured Obligations, or any part thereof (including a payment effected through exercise of a right of setoff), is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), all as though such payment or performance had not been made. In the event that any payment, or any part thereof (including a payment effected through exercise of a right of setoff), is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

ARTICLE 8
NOTICES

Section 8.01. *Sending Notices*. Any notice required or permitted to be given under this Security Agreement shall be delivered in accordance with Section 12.01 of the Indenture (it being

understood and agreed that references in such Section to “herein”, “hereunder” and other similar terms shall be deemed to be references to this Security Agreement).

Section 8.02. *Change in Address for Notices*. Each of the Grantors and the Collateral Trustee may change the address or facsimile number for service of notice upon it by a notice in writing to the other parties.

ARTICLE 9
The Collateral Trustee

WSFS has been appointed Collateral Trustee for the Holders hereunder pursuant to Article 11 of the Indenture. It is expressly understood and agreed by the parties to this Security Agreement that any authority conferred upon the Collateral Trustee hereunder is subject to the terms of the delegation of authority made by the Holders to the Collateral Trustee pursuant to the Indenture, and that the Collateral Trustee has agreed to act (and any successor Collateral Trustee shall act) as such hereunder only on the express conditions contained in such Article 11. Without limiting the generality of the foregoing, the Collateral Trustee is executing and delivering this Security Agreement solely in its capacity as agent (including as “collateral trustee”), and not in its individual or corporate capacity, under and pursuant to directions set forth in the Indenture under which it was appointed, and in so doing the Collateral Trustee shall not be responsible for the terms or sufficiency of this Security Agreement for any purpose. In entering into this Security Agreement, and in taking (or refraining from) any actions under or pursuant to this Security Agreement, the Collateral Trustee shall be protected by and shall enjoy all of the rights, immunities, privileges, protections and indemnities granted to it under the Indenture and the other Notes Documents, except the Collateral Trustee shall not be entitled to reimbursement for any expenses or indemnification against losses or liabilities as may be attributable to the Collateral Trustee’s gross negligence, willful misconduct or bad faith as determined by a court of competent jurisdiction. Without limiting the generality of the foregoing, each acknowledgment, agreement, consent or waiver (in each case whether express or implied) in this Security Agreement made by the Collateral Trustee, whether on behalf of itself or any of the other Secured Parties, is made in reliance on the authority granted and direction to the Collateral Trustee by the other Secured Parties as applicable pursuant to the authorization under the Indenture and the other Note Documents. Any successor Collateral Trustee appointed pursuant to Article 7 of the Indenture shall be entitled to all the rights, interests and benefits of the Collateral Trustee hereunder.

By accepting the benefits of this Security Agreement and each other Note Document, the Secured Parties expressly acknowledge and agree that this Security Agreement and each other Note Document may be enforced only by the action of the Collateral Trustee and that no other Secured Party shall have any right individually to seek to enforce or to enforce this Security Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Collateral Trustee for the benefit of the Secured Parties upon the terms of this Security Agreement and the other Note Documents.

[Signature Pages Follow]

IN WITNESS WHEREOF, each Grantor and the Collateral Trustee have executed this Security Agreement as of the date first above written.

GRANTORS:

PARTY CITY HOLDCO INC.
PARTY CITY HOLDINGS INC.
PARTY CITY CORPORATION
PC INTERMEDIATE HOLDINGS, INC.
AMSCAN INC.
TRISAR, INC.
AM-SOURCE, LLC

By: _____
Name:
Title:

[Signature Page to Party City Pledge and Security Agreement]

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Collateral Trustee

By: _____
Name:
Title:

[Signature Page to Party City Pledge and Security Agreement]

EXHIBIT A

PERFECTION CERTIFICATE

[See Attached]

EXHIBIT B[1]

PERFECTION CERTIFICATE SUPPLEMENT

[Insert date]

Reference is hereby made to (i) that certain Second Lien Pledge and Security Agreement, dated as of October 12, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**"), by and among Party City Holdco Inc., a Delaware corporation (the "**Issuer**"), the Subsidiary Parties from time to time party thereto (the Issuer and Subsidiary Parties, collectively, the "**Grantors**"), and Wilmington Savings Fund Society, FSB ("**WSFS**"), in its capacity as collateral trustee for the benefit of the Secured Parties (in such capacity, together with its successors and permitted assigns, the "**Collateral Trustee**"), (ii) that certain Indenture, dated as of October 12, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Indenture**"), among the Issuer, the guarantors from time to time party thereto, and WSFS, as trustee and the Collateral Trustee, and (iii) the Perfection Certificate, dated as of October 12, 2023 (as supplemented by any perfection certificate supplements delivered prior to the date hereof, collectively, the "**Prior Perfection Certificate**"), executed by the Issuer and delivered to the Collateral Trustee. Capitalized terms used but not defined herein have the meanings assigned to such terms in the Security Agreement.

This Perfection Certificate Supplement is delivered in connection with the Security Agreement and in accordance with the requirement set forth in Section 4.16(b) of the Indenture. As of the date hereof, the undersigned Issuer hereby certifies, solely in its official capacity on behalf of the Issuer, to the Collateral Trustee as follows:

1. Names, Types, Jurisdictions of Organization. (a) Except as listed on **Schedule 1(a)** hereto, Schedule 1(a) of the Prior Perfection Certificate sets forth, with respect to each Grantor, the exact legal name, type of entity and jurisdiction of organization, incorporation or formation, as applicable, the Federal Taxpayer Identification Number, if any, of each Grantor (as each such appears in its respective organizational documents filed with the Secretary of State of such Grantor's jurisdiction of organization, incorporation or formation, as applicable).

(b) Except as listed on **Schedule 1(b)** hereto, Schedule 1(b) of the Prior Perfection Certificate sets forth any other legal name that each Grantor has had in the past four months, together with the date of the relevant change.

(c) Except as listed on **Schedule 1(c)** hereto, Schedule 1(c) of the Prior Perfection Certificate sets forth a list of each trade name or assumed name, if any, used by each Grantor during the past four months preceding the date hereof.

[1] This Perfection Certificate Supplement is only required to be delivered in the event there has been any change in the information contained in the previously delivered Perfection Certificate and in that instance, only to the extent of such incremental information. If there are no changes to such prior certificate, the Issuer is only required to deliver a confirmation that there have been no changes to the previously delivered Perfection Certificate.

(d) Except as listed on **Schedule 1(d)** hereto, Schedule 1(d) of the Prior Perfection Certificate sets forth a list of the information required by Section 1(a) of this certificate for any other business or organization (i) to which each Grantor became the successor by merger, consolidation or acquisition or (ii) that has been liquidated into, or transferred all or substantially all of its assets to, any Grantor, at any time within the past four months preceding the date hereof. Except as listed on **Schedule 1(e)** hereto or as set forth on Schedule 1(e) of the Prior Perfection Certificate, no Grantor has changed its jurisdiction of organization, incorporation or formation, as applicable, or form of entity at any time during the past four months.

2. Locations. (a) Except as listed on **Schedule 2(a)** hereto, Schedule 2(a) of the Prior Perfection Certificate sets forth the address of the chief executive office of each Grantor.

(b) Except as listed on **Schedule 2(b)** hereto, Schedule 2(b) of the Prior Perfection Certificate sets forth all locations where each Grantor maintains any books or records relating to any Collateral.

(c) Except as listed on **Schedule 2(c)** hereto, Schedule 2(c) of the Prior Perfection Certificate sets forth all other locations where each Grantor currently maintains any material Collateral consisting of Inventory or Equipment (other than property in possession of a third party (e.g. warehouseman or other bailee) or Collateral in transit).

(d) Except as listed on **Schedule 2(d)** hereto, Schedule 2(d) of the Prior Perfection Certificate sets forth a list of each address where a bailee, warehouseman or other third party is in possession or control of any material Inventory or Equipment of any Grantor (except for any Collateral in transit).

3. Stock Ownership and Other Equity Interests. Except as listed on **Schedule 3** hereto, Schedule 3 of the Prior Perfection Certificate sets forth a true and correct list of each of all of the issued and outstanding stock, partnership interests, limited liability company membership interests or other equity interests of each Grantor and its Subsidiaries constituting Pledged Stock, the beneficial owners of such stock, partnership interests, membership interests or other equity interests and the percentage of the total issued and outstanding stock, partnership interests, membership interests or other equity interests represented thereby.

4. Instruments and Tangible Chattel Paper. Except as listed on **Schedule 4** hereto, Schedule 4 of the Prior Perfection Certificate sets forth a true and correct list of all Instruments (other than checks to be deposited in the ordinary course of business), in each case having a value in excess of $1,000,000 held by each Grantor and all Tangible Chattel Paper, in each case having a value in excess of $1,000,000, held by each Grantor as of the date hereof, including all intercompany notes between or among any two or more Grantors including the names of the obligors, amounts owing, due dates, and other material information.

5. Intellectual Property. Except as listed on **Schedule 5(a)** hereto, Schedule 5(a) of the Prior Perfection Certificate sets forth all of each Grantor's material Patents and Trademarks registered or applied for with the United States Patent and Trademark Office, including the name of the registered owner and the registration number or application number of each such Patent and Trademark. Attached hereto as Schedule 5(b) is a schedule setting forth all of each Grantor's

material United States Copyrights registered with the United States Copyright Office, including the name of the registered owner and the registration number of each such Copyright.

6. Commercial Tort Claims. Except as listed on **Schedule 6** hereto, Schedule 6 of the Prior Perfection Certificate sets forth a true and correct list of all Commercial Tort Claims, with a value exceeding $1,000,000 (as reasonably estimated by the Issuer), held by each Grantor, including a brief description thereof.

7. Blocked Accounts. Except as listed on **Schedule 7** hereto, Schedule 7 of the Prior Perfection Certificate sets forth a true and complete list of all Blocked Accounts maintained by each Grantor, including the name of the Grantor maintaining such account, the name of the financial institution at which such account is maintained and the account number of such account.

8. Letter-of-Credit Rights. Except as listed on **Schedule 8** hereto, Schedule 8 of the Prior Perfection Certificate sets forth a true and correct list of all Letters-of-Credit Rights with a value exceeding $1,000,000 issued in favor of each Grantor, as a beneficiary thereunder.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has hereunto signed this Perfection Certificate Supplement solely in his/her official capacity as of the date first above written.

PARTY CITY HOLDCO INC.,
AS ISSUER

By: _____
Name:
Title:

EXHIBIT C

SUBSIDIARY PARTIES

Ref	Entity	Jurisdiction	Type
1.	Party City Holdings Inc.	Delaware	Corporation
2.	PC Intermediate Holdings, Inc.	Delaware	Corporation
3.	AM-SOURCE, LLC	Rhode Island	Limited liability company
4.	AMSCAN INC.	New York	Corporation
5.	TRISAR, INC.	California	Corporation
6.	Party City Corporation	Delaware	Corporation

EXHIBIT D-1

Form of

PATENT SECURITY AGREEMENT

[See attached.]

GRANT OF SECURITY INTEREST
IN PATENTS

This GRANT OF SECURITY INTEREST IN PATENTS (this "Agreement"), dated as of [●], is entered into by [●], a [●] with principal offices at [●], [●], a [●] with principal offices at [●] (collectively, the "Grantors", and each, a "Grantor"), and **WILMINGTON SAVINGS FUND SOCIETY, FSB**, a Delaware federal savings bank, with offices at 500 Delaware Avenue, Wilmington, DE 19801 (the "Grantee"), as collateral trustee for the benefit of the Secured Parties (in such capacity, together with its successors and permitted assigns, the "Collateral Trustee").

WHEREAS, the Grantee desires to acquire a security interest in the patents and patent applications set forth in Schedule A attached hereto (collectively, the "Patents"); and

WHEREAS, the Grantors are willing to grant to the Grantee a security interest in the Patents.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions of the Second Lien Pledge and Security Agreement, dated as of October 12, 2023, by and among the Grantors, the subsidiaries of the Issuer from time to time party thereto and the Grantee (as amended, modified, restated and/or supplemented from time to time, the "Security Agreement"), the Grantors and the Grantee agree as follows:

i. Defined Terms

Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

ii. Grant of Security Interest

a. As collateral security for the prompt and complete payment or performance when due (whether at stated maturity, acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges, collaterally assigns, mortgages, transfers and grants to the Grantee, its successors and permitted assigns, on behalf of and for the benefit of the Secured Parties, a continuing security interest in all of such Grantor's right, title and interest in, to and under (i) the Patents; (ii) all inventions and improvements described and claimed therein; (iii) all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof; (iv) all Proceeds and products of the foregoing; (v) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringement or other violation thereof; (vi) all rights to sue for past, present, and future infringement or other violation thereof, including the right to settle suits involving claims and demands for royalties owing; and (vii) all rights corresponding to any of the foregoing.

b. This Agreement has been granted in conjunction with the security interest granted to the Grantee under the Security Agreement. The rights, protections, powers, immunities, indemnities and remedies of the Grantee with respect to the security interest granted herein shall be as afforded to it as Collateral Trustee under the Security Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Agreement are deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

iii. Termination of Security Interest

Upon the occurrence of the Termination Date, the Grantee shall execute, acknowledge and deliver to the Grantors an instrument in writing releasing the security interest in the Patents acquired under this Agreement.

iv. Authorization; Constitution

To the extent applicable, the parties hereto authorize and request that the Commissioner of Patents and Trademarks of the United States record this security interest in the Patents.

v. Governing Law

THIS AGREEMENT, ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER IN TORT, CONTRACT (AT LAW OR EQUITY) OR OTHERWISE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

vi. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Grantee, the Grantors and their respective successors and assigns. The Grantors shall not, without the prior written consent of the Collateral Trustee given in accordance with the Security Agreement, assign any right, duty or obligation hereunder.

vii. INTERCREDITOR AGREEMENTS GOVERN

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE PRIORITY OF THE LIENS AND SECURITY INTERESTS GRANTED TO THE COLLATERAL TRUSTEE FOR THE BENEFIT OF THE SECURED PARTIES PURSUANT TO THIS AGREEMENT (1) IN ANY ABL FACILITY FIRST LIEN COLLATERAL AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE COLLATERAL TRUSTEE WITH RESPECT TO ANY ABL FACILITY FIRST LIEN COLLATERAL HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE ABL INTERCREDITOR AGREEMENT AND (2) IN ANY SHARED COLLATERAL (AS DEFINED IN THE PARI INTERCREDITOR AGREEMENT) AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE COLLATERAL TRUSTEE WITH RESPECT TO ANY SHARED COLLATERAL

HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE PARI INTERCREDITOR AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENTS AND THIS AGREEMENT WITH RESPECT TO THE PRIORITY OF ANY LIENS OR THE EXERCISE OF ANY RIGHTS OR REMEDIES, THE TERMS OF THE INTERCREDITOR AGREEMENTS SHALL GOVERN AND CONTROL.

viii. Counterparts

This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed, shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by email as a ".pdf" or ".tif" attachment or other customary means of electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[Remainder of this page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

GRANTORS:

[●]

By: _____
Name:
Title:

[*Signature Page to Patent Security Agreement*]

Wilmington Savings Fund Society, FSB, as
Collateral Trustee and Grantee

By: _____
Name:
Title:

[*Signature Page to Patent Security Agreement*]

SCHEDULE A

U.S. Patents and Patent Applications

Title	Patent No.	Issue Date	App. No.	App. Date	Owner

EXHIBIT D-2

Form of

TRADEMARK SECURITY AGREEMENT

[See attached.]

GRANT OF SECURITY INTEREST
IN TRADEMARKS

This GRANT OF SECURITY INTEREST IN TRADEMARKS (this "Agreement"), dated as of [●], is entered into by [●], a [●] with principal offices at [●] and [●], a [●] with principal offices at [●], (the "Grantors", and each, a "Grantor"), and **WILMINGTON SAVINGS FUND SOCIETY, FSB**, a Delaware federal savings bank, with offices at 500 Delaware Avenue, Wilmington, DE 19801 (the "Grantee"), as collateral trustee for the benefit of the Secured Parties (in such capacity, together with its successors and permitted assigns, the "Collateral Trustee").

WHEREAS, the Grantee desires to acquire a security interest in the trademarks and trademark applications set forth in Schedule A attached hereto (collectively, the "Trademarks"); and

WHEREAS, the Grantors are willing to grant to the Grantee a security interest in the Trademarks.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions of the Second Lien Pledge and Security Agreement, dated as of October 12, 2023, by and among the Grantors, the subsidiaries of the Issuer from time to time party thereto and the Grantee (as amended, modified, restated and/or supplemented from time to time, the "Security Agreement"), the Grantors and the Grantee agree as follows:

i. Defined Terms

Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

ii. Grant of Security Interest

a. As collateral security for the prompt and complete payment or performance when due (whether at stated maturity, acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges, collaterally assigns, mortgages, transfers and grants to the Grantee, its successors and permitted assigns, on behalf of and for the benefit of the Secured Parties, a continuing security interest in all of such Grantor's right, title and interest in, to and under (i) the Trademarks and the goodwill of the business symbolized by the foregoing; (ii) all renewals of the foregoing; (iii) all Proceeds and products of the foregoing; (iv) all income, royalties, damages, and payments now or hereafter due or payable with respect to the foregoing, including, without limitation, damages, claims, and payments for past and future infringement or other violation of the foregoing; (v) all rights to sue for past, present, and future infringement or other violation of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (vi) all rights corresponding to any of the foregoing (together, the "Trademark Collateral"). Notwithstanding the foregoing, the Trademark Collateral shall not include any intent-to-use (or similar) trademark applications prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if

any, that, and solely during the period, if any, in which, the grant of a security interest therein may impair the validity or enforceability of such intent-to-use trademark applications (or any resulting registration) under applicable law.

b. This Agreement has been granted in conjunction with the security interest granted to the Grantee under the Security Agreement. The rights, protections, powers, immunities, indemnities and remedies of the Grantee with respect to the security interest granted herein shall be as afforded to it as Collateral Trustee under the Security Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Agreement are deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

iii. Termination of Security Interest

Upon the occurrence of the Termination Date, the Grantee shall execute, acknowledge and deliver to the Grantors an instrument in writing releasing the security interest in the Trademarks acquired under this Agreement.

iv. Authorization; Constitution

To the extent applicable, the parties hereto authorize and request that the Commissioner of Patents and Trademarks of the United States record this security interest in the Trademarks.

v. Governing Law

THIS AGREEMENT, ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER IN TORT, CONTRACT (AT LAW OR EQUITY) OR OTHERWISE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

vi. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Grantee the Grantors and their respective successors and assigns. The Grantors shall not, without the prior written consent of the Collateral Trustee given in accordance with the Security Agreement, assign any right, duty or obligation hereunder.

vii. INTERCREDITOR AGREEMENTS GOVERN.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE PRIORITY OF THE LIENS AND SECURITY INTERESTS GRANTED TO THE COLLATERAL TRUSTEE FOR THE BENEFIT OF THE SECURED PARTIES PURSUANT TO THIS AGREEMENT (1) IN ANY ABL FACILITY FIRST LIEN COLLATERAL AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE COLLATERAL TRUSTEE WITH RESPECT TO ANY ABL FACILITY FIRST LIEN COLLATERAL HEREUNDER ARE

SUBJECT TO THE PROVISIONS OF THE ABL INTERCREDITOR AGREEMENT AND (2) IN ANY SHARED COLLATERAL (AS DEFINED IN THE PARI INTERCREDITOR AGREEMENT) AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE COLLATERAL TRUSTEE WITH RESPECT TO ANY SHARED COLLATERAL HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE PARI INTERCREDITOR AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENTS AND THIS AGREEMENT WITH RESPECT TO THE PRIORITY OF ANY LIENS OR THE EXERCISE OF ANY RIGHTS OR REMEDIES, THE TERMS OF THE INTERCREDITOR AGREEMENTS SHALL GOVERN AND CONTROL.

viii. Counterparts

This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed, shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by email as a ".pdf" or ".tif" attachment or other customary means of electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[Remainder of this page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

GRANTORS:

[●]

By: _____
Name:
Title:

[●]

By: _____
Name:
Title:

[*Signature Page to Trademark Security Agreement*]

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Collateral Trustee and Grantee

By: _____
Name:
Title:

[*Signature Page to Trademark Security Agreement*]

SCHEDULE A

U.S. Trademark Registrations and Applications

Trademark	App. No.	App. Date	Reg. No.	Reg. Date	Owner Name

EXHIBIT D-3

Form of

COPYRIGHT SECURITY AGREEMENT

[See attached.]

GRANT OF SECURITY INTEREST
IN COPYRIGHTS

This GRANT OF SECURITY INTEREST IN COPYRIGHTS (this "Agreement"), dated as of [●], is entered into by [●], a [●] with principal offices at [●] and [●], a [●] with principal offices at [●], (the "Grantors", and each, a "Grantor"), and **WILMINGTON SAVINGS FUND SOCIETY, FSB**, a Delaware federal savings bank, with offices at 500 Delaware Avenue, Wilmington, DE 19801 (the "Grantee"), as collateral trustee for the benefit of the Secured Parties (in such capacity, together with its successors and permitted assigns, the "Collateral Trustee").

WHEREAS, the Grantee desires to acquire a security interest in the copyright registrations and applications for copyright registration set forth in Schedule A attached hereto (collectively, the "Copyrights"); and

WHEREAS, the Grantors are willing to grant to the Grantee a security interest in the Copyrights.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions of the Second Lien Pledge and Security Agreement, dated as of October 12, 2023, by and among the Grantors, the other subsidiaries of the Issuer from time to time party thereto and the Grantee (as amended, modified, restated and/or supplemented from time to time, the "Security Agreement"), the Grantors and the Grantee agree as follows:

i. Defined Terms

Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

ii. Grant of Security Interest

a. As collateral security for the prompt and complete payment or performance when due (whether at stated maturity, acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges, collaterally assigns, mortgages, transfers and grants to the Grantee, its successors and permitted assigns, on behalf of and for the benefit of the Secured Parties, a continuing security interest in all of such Grantor's right, title and interest in, to and under:

(i) the Copyrights; (ii) all renewals of any of the foregoing; (iii) all Proceeds and products of the foregoing; (iv) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringement or other violation for any of the foregoing; (v) the right to sue for past, present, and future infringement or other violation of any of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (vi) all rights corresponding to any of the foregoing.

b. This Agreement has been granted in conjunction with the security interest granted to the Grantee under the Security Agreement. The rights, protections, powers, immunities, indemnities and remedies of the Grantee with respect to the security interest granted herein shall be as afforded to it as Collateral Trustee under the Security Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Agreement are deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

iii. Termination of Security Interest

Upon the occurrence of the Termination Date, the Grantee shall execute, acknowledge, and deliver to the Grantors an instrument in writing releasing the security interest in the Copyrights acquired under this Agreement.

iv. Authorization; Constitution

To the extent applicable, the parties hereto authorize and request that the Register of Copyrights of the United States record this security interest in the Copyrights.

v. Governing Law

THIS AGREEMENT, ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER IN TORT, CONTRACT (AT LAW OR EQUITY) OR OTHERWISE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

vi. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Grantee, the Grantors and their respective successors and assigns. The Grantors shall not, without the prior written consent of the Collateral Trustee given in accordance with the Security Agreement, assign any right, duty or obligation hereunder.

vii. INTERCREDITOR AGREEMENTS GOVERN.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE PRIORITY OF THE LIENS AND SECURITY INTERESTS GRANTED TO THE COLLATERAL TRUSTEE FOR THE BENEFIT OF THE SECURED PARTIES PURSUANT TO THIS AGREEMENT (1) IN ANY ABL FACILITY FIRST LIEN COLLATERAL AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE COLLATERAL TRUSTEE WITH RESPECT TO ANY ABL FACILITY FIRST LIEN COLLATERAL HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE ABL INTERCREDITOR AGREEMENT AND (2) IN ANY SHARED COLLATERAL (AS DEFINED IN THE PARI INTERCREDITOR AGREEMENT) AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE COLLATERAL TRUSTEE WITH RESPECT TO ANY SHARED COLLATERAL HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE PARI INTERCREDITOR

AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENTS AND THIS AGREEMENT WITH RESPECT TO THE PRIORITY OF ANY LIENS OR THE EXERCISE OF ANY RIGHTS OR REMEDIES, THE TERMS OF THE INTERCREDITOR AGREEMENTS SHALL GOVERN AND CONTROL.

viii. Counterparts

This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed, shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by email as a ".pdf" or ".tif" attachment or other customary means of electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[Remainder of this page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

GRANTORS:

[●]

By: _____
Name:
Title:

[●]

By: _____
Name:
Title:

[*Signature Page to Copyright Security Agreement*]

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Collateral Trustee and Grantee

By: _____
Name:
Title:

[*Signature Page to Copyright Security Agreement*]

SCHEDULE A

U.S. Copyright Registrations and Applications

Title	Registration Number	Registration Date	Owner

EXHIBIT E

DEPOSIT ACCOUNTS

****Omitted****

EXHIBIT F

Form of

LANDLORD AGREEMENT

Wilmington Savings Fund Society, FSB ("**WSFS**"), in its capacity as collateral trustee pursuant to the Indenture (as hereinafter defined) acting for and on behalf of the Noteholder Secured Parties (as herein defined) (in such capacity, together with its successors and permitted assigns, the "**Collateral Trustee**") and JPMorgan Chase Bank, N.A. ("**JPM**"), in its capacity as administrative agent and collateral agent pursuant to the ABL Credit Agreement (as hereinafter defined) acting for and on behalf of the parties thereto as lenders (in such capacity, together with its successors and permitted assigns, the "**ABL Agent**" and, together with the Collateral Trustee, the "**Agents**", and each an "**Agent**") and the parties from time to time to the ABL Credit Agreement as lenders (collectively, together with their respective successors and assigns, the "**ABL Lenders**") have entered into collateral arrangements with [ ] (the "**Debtor**") and the other parties party thereto, pursuant to which the Debtor has granted security interests in favor of the Agents to secure the Debtor's obligations and liabilities under the Debt Documents (as defined below) (the "**Secured Obligations**") in any or all of the Debtor's or its subsidiaries personal property, subject to the terms of the Security Agreement, including, but not limited to, "**inventory**" and "**equipment**" (as such terms are defined in Article 9 of the UCC as in effect from time to time in the state in which the Premises (as defined below) are located) and all products and proceeds of the foregoing, as more fully described in the Debt Documents (hereinafter "**Personal Property**"). For purposes of this Landlord Agreement (this "**Letter Agreement**"), the term "**Personal Property**" does not include plumbing and electrical fixtures, heating, ventilation and air conditioning, wall and floor coverings, walls or ceilings and other fixtures not constituting trade fixtures. Some of the Personal Property has or may from time to time become affixed to or be located on, wholly or in part, the real property leased by the Debtor or its subsidiaries located at *[insert Street Address, City, State ZIP Code]* (the "**Premises**"). The undersigned is the owner or lessor (the "**Landlord**") of the Premises which is leased to the Debtor pursuant to the terms of the [Lease Agreement], dated as of (together with all amendments thereto, the "**Lease**").

For purposes of this Letter Agreement, (1) the term "**Indenture**" as used herein shall mean that certain Indenture, dated as of October 12, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among Party City Holdco Inc., a Delaware corporation (the "**Company**" or "**Issuer**"), the guarantors from time to time party thereto, and WSFS, as trustee and the Collateral Trustee, (2) the term "**2L Security Agreement**" as used herein shall mean that certain Second Lien Pledge and Security Agreement, dated as of October 12, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among the Issuer, the subsidiary parties from time to time party thereto, and WSFS as Collateral Trustee for the benefit of the Secured Parties (as defined therein), (3) the term "**ABL Credit Agreement**" as used herein shall mean that certain ABL Credit Agreement, dated as of October 12, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof), by and among the Issuer, certain of its subsidiaries, the ABL Agent and the ABL Lenders, (4) the term "**1L Security Agreement**"

(together with the 2L Security Agreement, (the "**Security Agreements**"), and collectively, with the Indenture, the 2L Security Agreement, the ABL Credit Agreement and the respective agreements and documents entered into in connection with the Indenture, the 2L Security Agreement, the ABL Credit Agreement and the 1L Security Agreement, the "**Debt Documents**") as used herein shall mean that certain Pledge and Security Agreement by and among the Issuer, certain of its subsidiaries party thereto and the ABL Agent and (4) the term "**Lender Representative**" as used herein shall mean the ABL Agent until such time as the ABL Agent notifies the undersigned in writing (at the undersigned's address below) that the Lender Representative shall be the Collateral Trustee, and on and after delivery of such notice to the undersigned, the term "**Lender Representative**" shall mean Collateral Trustee and (5) the term "**Secured Parties**" as used herein shall collectively mean the "Secured Parties" (as defined in the 1L Security Agreement) and the "Secured Parties" (as defined in the 2L Security Agreement).

In order for the Agents and the Secured Parties to continue making and/or maintaining loans or providing and/or maintaining other financial accommodations to the Issuer and its subsidiaries under the Debt Documents in reliance upon the Personal Property as collateral, the Landlord agrees as follows:

1. The Landlord acknowledges that the Lease is in full force and effect and is not aware of any existing default under the Lease.

2. The Landlord acknowledges the validity of the Agents' liens and security interests on the Personal Property and waives and relinquishes any landlord's lien, rights of levy or distraint, claim, security interest or other interest the undersigned may now or hereafter have in or with respect to any of the Personal Property, whether for rent or otherwise.

3. The Landlord agrees to simultaneously send notice in writing of any default under the Lease (including, but not limited to, any termination notice) (a "**Default Notice**") to the Debtor and Lender Representative at:

   JPMorgan Chase Bank, N.A., as ABL Agent
   131 S Dearborn St, Floor 04
   Chicago, IL, 60603-5506
   Attention: Loan and Agency Servicing
   Email:

   Agency Withholding Tax Inquiries:
   Email:

   Agency Compliance/Financials/Intralinks:
   Email:

   With a Copy to:

   JPMorgan Chase Bank, N.A.
   383 Madison Ave, Floor 23

New York, NY, 10179-0001
Attention: Bonnie David, Executive Director
Tel.: (212) 449-2509
Facsimile No: (646) 534-2288
Email:

Wilmington Savings Fund Society, FSB, as Trustee
500 Delaware Avenue, 11th Floor
Wilmington, Delaware 19801
Attention: Global Capital Markets, Pat Healy
Fax No.: (302) 571-7081
Email:

Upon receipt of such notice, each Agent shall have the right, but not the obligation, to cure such default within 15 days of the Agents' receipt of such Default Notice, but neither the Agents nor any Secured Party shall be under any obligation to cure any default by the Company under the Lease. Any payment made or act done by any Agent to cure any such default shall not constitute an assumption by such Agent of the Lease or any obligations of the Debtor, and except as expressly provided in paragraphs 6 and 7 below, the Agents shall not have any obligation to the Landlord.

4. The Landlord agrees that Personal Property may be installed in or located on the Premises and is not and shall not be deemed a fixture or part of the real property but shall at all times be considered personal property.

5. The Landlord agrees that the Personal Property may be inspected and evaluated by the Agent or its designee, without necessity of court order, at any time without payment of any fee.

6. In the event of default by the Debtor in the payment or performance of the Secured Obligations or if the Landlord takes possession of the Premises for any reason, including because of termination of the Company's Lease (each a "**Disposition Event**"), the Landlord agrees that, the Agents (and/or their designee), at their option, may enter and use the Premises for the purpose of repossessing, removing, selling or otherwise dealing with any of the Personal Property, and such license shall be irrevocable and shall continue from the date the Agents (and/or their designee) enter the Premises pursuant to the rights granted to it herein for a period not to exceed one hundred twenty (120) days (the "**Disposition Period**") or if later, until the receipt by the Agents (and/or its designee) of written notice from the undersigned directing the Agents (and/or their designee) to leave the Premises; provided, that, for each day that an Agent (or its designee) uses the Premises pursuant to the rights granted to it herein, unless the undersigned has otherwise been paid rent in respect of any of such period, such Agent (and/or its designee) shall pay the regularly scheduled basic rent provided under the Lease relating to the Premises between the undersigned and the Debtor, prorated on a per diem basis to be determined on a thirty (30) day month, without any Agent thereby assuming the Lease or incurring any other obligations of the Debtor. Any damage to the Premises caused by the Agents (and/or their respective designees

or representatives) will be repaired by the Agents (and/or their respective designees or representatives), at the Agents' expense, or the Agents shall reimburse the Landlord for any physical damage to the Premises actually caused by the conduct of any auction or sale and any removal of the Personal Property by or through the Agents (ordinary wear and tear excluded). Neither the Agents nor any Secured Party shall (a) be liable to the Landlord for any diminution in value caused by the absence of any removed Personal Property or for any other matter except as specifically set forth herein or (b) have any duty or obligation to remove or dispose of any Personal Property or other property left on the Premises by the Debtor. To the extent that either or both Agents are prohibited by any process or injunction issued by any court, or by reason of any bankruptcy or insolvency proceeding involving the Debtor, from enforcing its security interest in the Personal Property, such one hundred twenty (120) day period shall commence on the termination of such prohibition.

7. During any Disposition Period, the Agents (a) or their respective designees may, without necessity of court order, enter upon the Premises at any time to inspect or remove all or any Personal Property from the Premises without interference by the Landlord, and the Agents (and/or their respective designees) may sell, transfer or otherwise dispose of that Personal Property free of all liens, claims, demands, rights and interests that the Landlord may have in that Personal Property by law or agreement, including, without limitation, by public auction or private sale (and the Agents may advertise and conduct such auction or sale at the Premises, and shall use reasonable efforts to notify the Landlord of their intention to hold any such auction or sale), in each case, without interference by the Landlord and (b) shall make the Premises available for inspection by the Landlord and prospective tenants and shall cooperate in Landlord's reasonable efforts to lease the Premises.

8. Without affecting the validity of this Letter Agreement, any of the Secured Obligations may be extended, amended, or otherwise modified without the consent of the Landlord and without giving notice thereof to the Landlord. This Letter Agreement may not be changed or terminated orally or by course of conduct and is binding upon the Landlord and the heirs, personal representatives, successors and assigns of the undersigned and inures to the benefit of the Agents and their respective successors and assigns. The person signing this Letter Agreement on behalf of the Landlord represents to the Agents that he/she has the authority to do so on behalf of the Landlord.

9. All notices hereunder shall be in writing and sent by certified mail (return receipt requested), overnight mail or facsimile (with a copy to be sent by certified or overnight mail), to the other party at the address set forth on the signature page hereto or at such other address as such other party shall otherwise designate in accordance with this paragraph.

10. This Letter Agreement is governed by, and shall be construed and interpreted in accordance with, the laws of the State of New York. The Landlord agrees that any legal action or proceeding with respect to any of its obligations under this Letter Agreement may be brought by the Agents in any New York state court or federal

court sitting in the Borough of Manhattan, in the city of New York. By its execution and delivery of this Letter Agreement, the Landlord submits to and accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of those courts. The Landlord waives any claim that the State of New York is not a convenient forum or the proper venue for any such action or proceeding.

11. THE LANDLORD WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE LANDLORD MAY HAVE TO CLAIM OR RECOVER FROM THE AGENTS OR ANY SECURED PARTY IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

12. THE LANDLORD AND THE AGENTS HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE BETWEEN THE LANDLORD AND THE AGENTS IN ANY WAY RELATED TO THIS WAIVER.

13. This Letter Agreement shall continue in full force and effect until the indefeasible payment in full of all Secured Obligations.

This Letter Agreement is executed and delivered by the Landlord as of the date first written above.

[NAME OF LANDLORD]

By: _____
Name: _____
Title:

Notice Address:

_____

_____
Attention: _____
Facsimile: _____

EXHIBIT G

Form of

BAILEE NOTIFICATION
AND
ACKNOWLEDGMENT OF SECURITY INTEREST

_____ __, 20__

_____

_____

_____

Ladies and Gentlemen:

Please be advised that we and certain of our subsidiaries (collectively, the "**Company**") have entered into collateral arrangements with JPMorgan Chase Bank, N.A. ("**JPM**"), in its capacity as administrative agent and collateral agent pursuant to the ABL Credit Agreement (as hereinafter defined) acting for and on behalf of the parties thereto as lenders (in such capacity, together with its successors and permitted assigns, "**ABL Agent**") and the parties from time to time to the ABL Credit Agreement as lenders (collectively, together with their respective successors and assigns, "**ABL Lenders**") and Wilmington Savings Fund Society, FSB ("**WSFS**"), in its capacity as collateral trustee pursuant to the Indenture (as hereinafter defined) acting for and on behalf of the parties thereto as noteholders (in such capacity, together with its successors and permitted assigns, the "**Collateral Trustee**" and, together with the ABL Agent, the "**Agents**", and each an "**Agent**"), pursuant to which the Company has granted to each Agent a security interest in, among other collateral, all of the Company's existing and future inventory and other goods, which may at any time now or hereafter be in your possession or control and all of the Company's inventory and other goods which may at any time now or hereafter be located on or in real property or buildings owned, leased or otherwise in your possession or control, and/or received or delivered to you for shipment, distribution, storage or otherwise, whether pursuant to any agreement or otherwise (collectively, "**Collateral**").

For purposes of this Bailee Notification and Acknowledgment of Security Interest (this "**Letter Agreement**"), (1) the term "**Indenture**" as used herein shall mean that certain Indenture, dated as of October 12, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among Party City Holdco Inc., a Delaware corporation (the "**Issuer**"), the guarantors from time to time party thereto, and WSFS, as trustee and the Collateral Trustee, (2) the term "**2L Security Agreement**" as used herein shall mean that certain Second Lien Pledge and Security Agreement, dated as of October 12, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among the Issuer, the subsidiary parties from time to time party thereto, and WSFS as Collateral Trustee for the benefit of the Secured Parties (as defined therein, (3) the term "**ABL Credit Agreement**" as used herein shall mean that certain ABL Credit Agreement, dated as of October

12, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof), by and among the Issuer, certain of its subsidiaries, the ABL Agent and the ABL Lenders, (4) the term "**1L Security Agreement**" (together, with the Indenture, the 2L Security Agreement, the ABL Credit Agreement and the respective agreements and documents entered into in connection with the Indenture, the 2L Security Agreement, the ABL Credit Agreement and the 1L Security Agreement, the "**Debt Documents**") as used herein shall mean that certain Pledge and Security Agreement by and among the Issuer, certain of its subsidiaries party thereto and the ABL Agent,(4) the term "**Lender Representative**" as used herein shall mean the ABL Agent until such time as the ABL Agent notifies the undersigned in writing (at the undersigned's address below) that the Lender Representative shall be the Collateral Trustee, and on and after delivery of such notice to the undersigned, the term "**Lender Representative**" shall mean Collateral Trustee and (5) the term "**Secured Parties**" as used herein shall collectively mean the "Secured Parties" (as defined in the 1L Security Agreement) and the "Secured Parties" (as defined in the 2L Security Agreement).

By your signature below, you acknowledge receipt of the above notice of each Agent's liens and security interest and, upon receipt of written notice from the Lender Representative, agree to follow all instructions that Lender Representative may from time to time thereafter give to you with respect to Collateral in your possession or control or located on or in any of your premises, and/or received or delivered to you by or for our account for distribution, storage or otherwise. Upon being so notified by Lender Representative, you are to abide solely by Lender Representative's instructions with respect to any of such goods or other Collateral and you are not to release any Collateral to the Company or to anyone else except according to written instructions which may be given to you from time to time by Lender Representative. If so instructed by Lender Representative, you agree to return to Lender Representative all of the Company's goods and other Collateral in your custody, control or possession at the Company's expense. Pursuant to the Uniform Commercial Code, Sections 9-313(c)(1) and 9-313(c)(2), a person in possession of such Collateral must authenticate a record acknowledging that it holds possession and will take possession for the Secured Party's benefit. You hereby acknowledge and agree that you hold and will have possession of such goods or other Collateral and proceeds for the benefit of the Agents and Secured Parties and you shall not take any action purporting to encumber or transfer any interest in such goods or other Collateral or the proceeds thereof.

You agree and acknowledge that you do not have and in no event will you assert, as against Lender Representative, any Agent or any Secured Party, any lien, right of distraint or levy, right of offset, claim, deduction, counterclaim, security or other interest in any Collateral now or hereafter located on any of your premises or in your custody, possession or control, including any of the foregoing which might otherwise arise or exist in your favor pursuant to any agreement, common law, statute (including the Bankruptcy Code or any state insolvency law) or otherwise. You certify that you do not know of any security interest or other claim with respect to any of the Collateral, other than the security interest in favor of the Agents which is the subject of this Letter Agreement. You agree that you will not enter into any arrangement similar to that which is set forth in this Letter Agreement with any other person or entity at any time with respect to the Collateral or any portion thereof without the prior written consent of the Agents. You agree and

acknowledge that no negotiable or non-negotiable warehouse receipts, documents of title or similar instruments have been or will be issued by you with respect to any of the Company's goods, except for non-negotiable receipts naming the Lender Representative or the Company as consignee. You shall not take any action purporting to encumber or transfer any interest in such inventory or other goods or other Collateral. You are holding the Collateral as bailee for the Agents and Secured Parties for the purpose of perfecting the security interest and lien of Agents in the Collateral. You acknowledge that the Company is not a lessee or tenant of the premises where such Collateral is held and that the Collateral is not held by you as a consignee. You also acknowledge (i) that the Collateral not covered by a document, as defined in the Uniform Commercial Code, and (ii) that the Collateral is and will be sequestered, stored, controlled, identified and accounted for separately from the equipment, inventory and other similar property of yours and other parties. You further acknowledge that you employ security measures consistent with industry practice with respect to safeguarding the property in your possession (including, without limitation, the Collateral) from theft and/or damage.

You further agree, upon prior written notice from the Lender Representative, to (a) allow the Lender Representative or its agents to enter upon your premises during business hours for the purpose of examining, removing, taking possession of or otherwise dealing with any of the Collateral at any time in your possession or copies of any books and records related thereto and (b) provide the Lender Representative with any available detailed inventory reporting on a per location basis upon written request from the Lender Representative.

The Agents and Secured Parties are relying upon this acknowledgment in connection with their collateral arrangements with the Company. This Letter Agreement may not be changed or terminated orally or by course of conduct. Any change to the terms of this Letter Agreement must be in writing and signed by the Agents. This Letter Agreement shall be binding upon you and your successors and assigns and shall be enforceable by and inure to the benefit of the Lender Representative, the Agents, the Secured Parties and their respective successors and assigns.

This Letter Agreement constitutes our acknowledgment that the Lender Representative, any Agent or any Secured Party may assert any of the rights set forth or referred to herein, without objection by us. We also agree to reimburse you for all reasonable costs and expenses incurred by you as a direct result of compliance with the instructions of the Lender Representative as to the disposition of any of the Collateral.

This Letter Agreement is governed by, and shall be construed in accordance with, the laws of the State of New York.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Please acknowledge your agreement to the foregoing by signing in the space provided below.

Very truly yours,

[APPROPRIATE ENTITY]

By: _____
Title: _____

Very truly yours,

ACKNOWLEDGED AND AGREED:

[_____]

By: _____
Title: _____
(Bailee)

EXHIBIT H

Form of

SUPPLEMENT AGREEMENT

SUPPLEMENT NO. [●], dated as of [●] (this "**Supplement**"), to that certain Second Lien Pledge and Security Agreement, dated as of October 12, 2022 (as amended, amended and restated, supplemented, waived, renewed, replaced or otherwise modified from time to time, the "**Security Agreement**"), by and among Party City Holdco Inc., a Delaware corporation (the "**Issuer**"), the Subsidiary Parties from time to time party thereto (the foregoing Issuer and Subsidiary Parties, collectively, the "**Grantors**"), and Wilmington Savings Fund Society, FSB ("**WSFS**"), in its capacity as collateral trustee for the benefit of the Secured Parties (as defined in the Security Agreement) (in such capacity, together with its successors and permitted assigns, the "**Collateral Trustee**").

A. Reference is made to that certain Indenture, dated as of October 12, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Indenture**"), by and among the Issuer, the Grantors from time to time party thereto, WSFS as trustee and the Collateral Trustee.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement, and if not defined therein, in the Indenture.

C. The Grantors have entered into the Security Agreement in order to induce the Holders to purchase the Notes and to grant Liens with respect to the Secured Obligations. Section 7.12 of the Security Agreement and Section 11.09 of the Indenture provide that additional Subsidiaries of the Company (other than Excluded Subsidiaries) may become Subsidiary Parties under the Security Agreement by the execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the "**New Subsidiary**") is executing this Supplement in accordance with the requirements of Section 7.12 of the Security Agreement and Section 11.09 of the Indenture to become a Subsidiary Party under the Security Agreement as consideration for Notes previously purchased.

Accordingly, the Collateral Trustee and the New Subsidiary agree as follows:

SECTION 1. In accordance with Section 7.12 of the Security Agreement and Section 11.09 of the Indenture, the New Subsidiary by its signature below becomes a Subsidiary Party and a Grantor under the Security Agreement with the same force and effect as if originally named therein as a Subsidiary Party and the New Subsidiary hereby (a) agrees to all the terms and provisions of the Security Agreement applicable to it as a Subsidiary Party and Grantor thereunder and (b) represents and warrants as of the date hereof that the representations and warranties made by it as a Grantor thereunder to the extent required to be made as of the date hereof that are qualified as to materiality are true and correct in all respects on and as of the date hereof and those that are not so qualified are true and correct in all material respects on and as of the date hereof.

In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Secured Obligations, does hereby create and grant to the Collateral Trustee, for the benefit of the Secured Parties, their successors and permitted assigns, a security interest in and Lien on all of the New Subsidiary's right, title and interest in and to the Collateral of the New Subsidiary. On and from the date hereof, each reference to a "**Grantor**" and "**Subsidiary Party**" in the Security Agreement shall be deemed to include the New Subsidiary. The Security Agreement is hereby incorporated herein by reference.

SECTION 2. The New Subsidiary represents and warrants to the Collateral Trustee and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and except insofar as enforcement thereof is subject to general principles of equity and good faith and fair dealing.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Trustee shall have received a counterpart of this Supplement that bears the signature of the New Subsidiary and the Collateral Trustee has executed a counterpart hereof. Delivery of an executed signature page to this Supplement by facsimile transmission or by email as a ".pdf" or ".tif" attachment or other electronic transmission shall be as effective as delivery of a manually signed counterpart of this Supplement. The words "execution," "signed," "signature," and words of like import in this Supplement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 4. The New Subsidiary hereby represents and warrants that (a) set forth in Schedule I attached hereto is a true and correct list of the locations where the New Subsidiary currently maintains any material Collateral consisting of Inventory or Equipment of the New Subsidiary (other than in-transit Collateral), (b) set forth in Schedule II attached hereto is a true and correct schedule of all the Pledged Stock of the New Subsidiary and Instruments (other than checks to be deposited in the ordinary course of business) and Tangible Chattel Paper, in each case, with a face amount exceeding $1,000,000, held by the New Subsidiary, (c) set forth in Schedule III attached hereto is a true and correct schedule of all material registered Patents, Trademarks and Copyrights of the New Subsidiary and (d) set forth in Schedule IV attached hereto is the exact legal name of the New Subsidiary, its jurisdiction of organization, incorporation or formation, as applicable, and the location of its chief executive office.

SECTION 5. Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect.

SECTION 6. THIS SUPPLEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENT, WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 7. In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Security Agreement shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction) and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 8. All communications and notices hereunder shall be in writing and given as provided in Section 8.01 of the Security Agreement.

SECTION 9. The New Subsidiary agrees to reimburse the Collateral Trustee for its expenses in connection with this Supplement, including the fees, other charges and disbursements of counsel in accordance with Section 7.06 of the Indenture.

IN WITNESS WHEREOF, the New Subsidiary and the Collateral Trustee have caused this Supplement to the Security Agreement to be executed and delivered by its duly authorized officer as of the date first above written.

[NAME OF NEW SUBSIDIARY], as New Subsidiary

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Collateral Trustee

By: _____
Name:
Title:

LOCATION OF COLLATERAL

Description	Location

**LIST OF PLEDGED STOCK
AND OTHER INVESTMENT PROPERTY**

PLEDGED STOCK

Grantor	Record Owner	Certificate No.	Number of Shares	Class of Stock	Percentage of Outstanding Shares

BONDS

Grantor	Issuer	Number	Face Amount	Coupon Rate	Maturity

TANGIBLE CHATTEL PAPER

Grantor	Issuer	Number	Type	Face Amount	Coupon Rate	Maturity

PROMISSORY NOTES OR OTHER SECURITIES

Grantor	Issuer	Description of Collateral

INTELLECTUAL PROPERTY RIGHTS

PATENT REGISTRATIONS

Registered Owner	Patent Description	Registered Patent Number	Issue Date

PATENT APPLICATIONS

Patent Applicant	Patent Description	Application Serial Number	Application Filing Date

TRADEMARK REGISTRATIONS

Registered Owner	Trademark	Registration Number	Registration Date

TRADEMARK APPLICATIONS

Trademark Applicant	Trademark Application	Application Serial Number	Application Filing Date

COPYRIGHT REGISTRATIONS

Copyright Owner	Copyright	Registration Number	Registration Date

COPYRIGHT APPLICATIONS

Copyright Applicant	Copyright Application	Application Serial Number	Application Filing Date

ORGANIZATIONAL INFORMATION

1. Legal Name:

2. Jurisdiction of Formation:

3. Location of Chief Executive Office:

EXHIBIT E

COMPANY NOTIFICATION OF PIK INTEREST ELECTION

[Date]

This notification is delivered to you, [ ], as Trustee under the indenture dated October 12, 2023, among Party City Holdco Inc. (the "Company"), the guarantors party thereto, and the Trustee (as amended, supplemented, or otherwise modified from time to time, the "Indenture"), in connection with the Company's option to elect to pay PIK Interest as set forth in Section 2.02 of the Indenture. Capitalized terms used and not otherwise defined herein shall have the meanings assigned thereto in the Indenture.

The undersigned Officer of the Company (the "Officer") hereby certifies that the undersigned is authorized to execute this notification on behalf of the Company (and not in a personal capacity) and does hereby notify the Trustee and the Paying Agent, in the name and on behalf of the Company (and not in his personal capacity), that for the Interest Payment Date of [_____], 20[ ], the Company shall pay the interest on the Securities that will be due and payable on such Interest Payment Date by way of a PIK Payment.

IN WITNESS WHEREOF, the undersigned have executed this Officer's Certificate as of the date first written above

By: _____
Name:
Title:

EXHIBIT F

COMPANY NOTIFICATION AND DIRECTION TO TRUSTEE UNDER SECTION 2.02 OF THE INDENTURE REGARDING THE PAYMENT OF PIK INTEREST

[Date]

This notification is delivered to you, [ ], as Trustee under the indenture dated October 12, 2023, among Party City Holdco Inc.] (the "Company"), the guarantors party thereto, and the Trustee (as amended, supplemented, or otherwise modified from time to time, the "Indenture"), in connection with the Company's option to elect to pay PIK Interest as set forth in Section 2.02 of the Indenture. Capitalized terms used and not otherwise defined herein shall have the meanings assigned thereto in the Indenture.

The undersigned Officer of the Company (the "Officer") hereby certifies that the undersigned is authorized to execute this notification on behalf of the Company (and not in a personal capacity) and does hereby notify the Trustee and the Paying Agent, in the name and on behalf of the Company (and not in his personal capacity), that for the Interest Payment Date of [_____], 20[ ], the Company is obligated to pay interest on the Securities in the aggregate amount of $[_____] and the Company shall pay such amount in PIK Interest.

The Officer hereby authorizes and directs the Trustee to increase the principal amount of the Global Securities and/or to authenticate new Definitive Securities in respect of the PIK Interest to be paid on such Interest Payment Date in accordance with Section 2.02 of the Indenture.

IN WITNESS WHEREOF, the undersigned have executed this Officer's Certificate as of the date first written above

By: _____
Name:
Title:

EXHIBIT 10.1

Execution Version

ABL CREDIT AGREEMENT

dated as of October 12, 2023

among

PARTY CITY HOLDCO INC.

PC INTERMEDIATE HOLDINGS, INC.,

PARTY CITY HOLDINGS INC.,

PARTY CITY CORPORATION,

THE SUBSIDIARIES OF THE BORROWERS
FROM TIME TO TIME PARTY HERETO,

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as the Lenders,

and

JPMORGAN CHASE BANK, N.A.,
as the Administrative Agent

JPMORGAN CHASE BANK, N.A.,
BANK OF AMERICA, N.A.,
and
WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Joint Bookrunners and Joint Lead Arrangers,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
and
BANK OF AMERICA, N.A.,
as Syndication Agent,

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH.,
MUFG BANK, LTD.
TD BANK, N.A.,

and

BANK OF MONTREAL,
as Co-Documentation Agents

SCHEDULES:

EXHIBITS:

ABL CREDIT AGREEMENT

ABL CREDIT AGREEMENT, dated as of October 12, 2023, by and among PARTY CITY HOLDINGS INC., a Delaware corporation (the "**Parent Borrower**"), PARTY CITY CORPORATION, a Delaware corporation ("**Party City**"), PARTY CITY HOLDCO INC., a Delaware corporation ("**Ultimate Parent**"), PC INTERMEDIATE HOLDINGS, INC., a Delaware corporation ("**Holdings**"), the subsidiaries of the Borrowers from time to time party hereto, the Lenders (as defined in Article 1), JPMORGAN CHASE BANK, N.A. ("**JPMCB**"), as administrative agent and collateral agent for the Lenders (in such capacities, the "**Administrative Agent**") and as an Issuing Bank and the Swingline Lender, and the other Issuing Banks party hereto.

RECITALS

(A) The Loan Parties are debtors in the Chapter 11 Cases (as defined below) and have continued as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

(B) On August 31, 2023, the Loan Parties filed the Plan of Reorganization (as defined below) with the Bankruptcy Court.

(C) On September 6, 2023, the Bankruptcy Court confirmed the Plan of Reorganization pursuant to the Confirmation Order (as defined below).

(D) In connection with the Chapter 11 Cases and the Plan of Reorganization, the Borrowers have requested that (i) the ABL Revolving Lenders establish a $545,000,000 senior secured asset-based revolving loan facility in favor of the Borrowers (the "**ABL Revolving Facility**") and (ii) the FILO Lenders establish a $17,110,500.00 senior secured asset-based first-in last-out loan facility (the **"FILO Facility**"), in each case on the terms and conditions set forth herein.

(E) In addition, the Borrowers have requested the Issuing Banks issue Letters of Credit, in an aggregate face amount at any time outstanding not in excess of $60,000,000.

(F) The Lenders are willing to extend such credit to the Borrowers and the Issuing Banks are willing to issue Letters of Credit for the account of the Borrowers and Guarantors, in each case on the terms and subject to the conditions set forth herein including without limitation, the consummation of the Plan of Reorganization. Accordingly, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

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

"**90-Day Excess Availability**" means the quotient obtained by dividing (a) the sum of each day's Excess Availability during the 90-consecutive day period immediately preceding the proposed transaction by (b) 90.

"**ABL Applicable Percentage**" means, with respect to any ABL Revolving Lender, a percentage equal to a fraction the numerator of which is such ABL Revolving Lender's ABL Revolving Commitment and the denominator of which is the aggregate ABL Revolving Commitments; provided that for purposes of Section 2.22 and otherwise herein, when there is a Defaulting Lender, any such Defaulting Lender's Commitment shall be disregarded in any such calculations. If the ABL Revolving Commitments have terminated or expired, the ABL Applicable Percentages of each ABL Revolving Lender shall be determined

based on the ABL Revolving Exposure of the applicable ABL Revolving Lenders, giving effect to any assignments and to any ABL Revolving Lender's status as a Defaulting Lender at the time of determination.

"**ABL Borrowing Base**" means, at any time, an amount equal to (a) the Trade Receivables Component plus (b) the Inventory Component plus (c) the Credit Card Receivables Component minus (d) the amount of any FILO Reserve and all other Reserves as may have been established in accordance with Section 2.25 at such time. The ABL Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.01(l), the FILO Reserve and Reserves established pursuant to Section 2.25.

"**ABL Line Cap**" means, at any time, the lesser of (a) aggregate ABL Revolving Commitments and (b) the ABL Borrowing Base.

"**ABL Revolving Commitment**" means, with respect to each ABL Revolving Lender, the commitment of such ABL Revolving Lender hereunder set forth as its ABL Revolving Commitment opposite its name on Schedule 1.01(a) hereto or as may subsequently be set forth in the Register from time to time, as the same may be increased or reduced from time to time pursuant to this Agreement. The aggregate ABL Revolving Commitments on the Closing Date are $545,000,000.

"**ABL Revolving Commitment Increase**" has the meaning assigned to such term in Section 2.23(a).

"**ABL Revolving Commitment Increase Lender**" has the meaning assigned to such term in Section 2.23(e).

"**ABL Revolving Credit Extensions**" means ABL Revolving Loans (including Swingline Loans) and Letters of Credit issued hereunder.

"**ABL Revolving Exposure**" means, with respect to any ABL Revolving Lender at any time, the sum of (a) the outstanding principal amount of such ABL Revolving Lender's ABL Revolving Loans, (b) its LC Exposure, (c) its ABL Applicable Percentage of the aggregate principal amount of Swingline Loans outstanding at such time and (d) its ABL Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time.

"**ABL Revolving Facility**" has the meaning assigned to such term in the recitals hereto.

"**ABL Revolving Lender**" means each Lender which holds an ABL Revolving Commitment and any other Person who becomes an "ABL Revolving Lender" in accordance with the provisions of this Agreement.

"**ABL Revolving Loans**" means collectively, the Loans made by the ABL Revolving Lenders with ABL Revolving Commitments pursuant to Article 2, other than FILO Loans.

"**ABR**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

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

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

"**ACH**" means automated clearing house transfers.

"**Additional Lender**" has the meaning assigned to such term in Section 2.23(b).

"**Adjusted Term SOFR**" means, with respect to any Borrowing of Term SOFR Loans denominated in dollars for any Interest Period or for any ABR Borrowing for which the Alternate Base Rate is determined with reference to Term SOFR, an interest rate per annum equal to (a) Term SOFR for such Interest Period for purposes of such Term SOFR Borrowing or for the applicable tenor and calculation for purposes of such ABR Borrowing, as the case may be, plus (b) 0.10% per annum; provided that, if Adjusted Term SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

"**Administrative Agent**" has the meaning assigned to such term in the preamble to this Agreement.

"**Administrative Agent Account**" has the meaning assigned to such term in Section 2.21(d).

"**Administrative Questionnaire**" has the meaning assigned to such term in Section 2.23(d).

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Parent Company, any Borrower or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of any Parent Company, any Borrower or any of its Subsidiaries, threatened in writing against or affecting any Parent Company, any Borrower or any of its Subsidiaries or any property of any Borrower or any of its Subsidiaries.

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

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, that Person.

"**Aggregate Commitments**" means, at any time, the sum of the Commitments at such time. As of the Closing Date (without giving effect to any extension of credit hereunder made on the Closing Date), the Aggregate Commitments are $562,110,500.

"**Agreement**" means this ABL Credit Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Alternate Base Rate**" means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1% and (c) Adjusted Term SOFR for a one-month tenor in effect on such day as published two U.S. Government Securities Business Days prior to such day (or if such day is not a U.S. Government Securities Business Day, the immediately preceding U.S. Government Securities Business Day) plus 1.0%; provided that, for the purpose of this definition, Adjusted Term SOFR for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day, subject to the Floor set forth in the definition of "Adjusted Term SOFR" (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the SOFR Reference Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR, respectively. If and only for so long as the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 hereof, then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"**Anti-Corruption Laws**" means all laws, rules, and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption (including the U.S. Foreign Corrupt Practices Act of

1977, as amended, the UK Bribery Act 2010, and any other applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) applicable to Ultimate Parent, Holdings or the Borrower or their subsidiaries.

"**Applicable Percentage**" means, with respect to any Lender, a percentage equal to a fraction the numerator of which is such Lender's Commitment and the denominator of which is the Aggregate Commitments; provided that for purposes of Section 2.22 and otherwise herein, when there is a Defaulting Lender, any such Defaulting Lender's Commitment shall be disregarded in any such calculations. If the Commitments have terminated or expired, the Applicable Percentages of each Lender shall be determined based on the Credit Exposure of the applicable Lenders, giving effect to any assignments and to any Lender's status as a Defaulting Lender at the time of determination.

"**Applicable Rate**" means, for any day, (x) with respect to any FILO Loan that is (i) a Term SOFR Loan, 6.00% per annum or (ii) an ABR Loan, 5.00% per annum and (y) with respect to any ABL Revolving Loan that is (i) a Term SOFR Loan, 4.00% per annum or (ii) an ABR Loan, 3.00% per annum; provided that the Applicable Rate shall at all times be subject to increases in connection with an Applicable Rate Audit Delivery Step-Up.

"**Applicable Rate Audit Delivery Step-Up**" means, for any day, following the failure of the Borrower Agent to deliver the audited consolidated balance sheet of Ultimate Parent and its subsidiaries as at the end of December 31, 2022 and the related statements of income, stockholders' equity and cash flows of Ultimate Parent and its subsidiaries for the fiscal year ended December 31, 2022, in a manner (other than with respect to timing) required by Section 5.13(a), (x) on or before March 31, 2024, an increase in the Applicable Rate of 0.50% per annum (e.g., with respect to any FILO Loan that is a Term SOFR Loan, to 6.50% per annum) and (y) on or before June 30, 2024, an additional increase in the Applicable Rate of 0.50% per annum for a total increase (inclusive of all increases pursuant to the Applicable Rate Audit Delivery Step-Up) of 1.00% per annum (e.g., with respect to any FILO Loan that is a Term SOFR Loan, to 7.00% per annum); provided that the "Applicable Rate Audit Delivery Step-Up" will reduce to zero commencing on the date that is five Business Days following receipt by the Administrative Agent of such financial statements in a manner required by Section 5.13(a).

"**Approved Fund**" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its activities and that is administered, advised 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.

"**Arrangers**" means J.P. Morgan Securities LLC, Wells Fargo Bank, National Association and Bank of America, N.A.

"**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.05), and accepted by the Administrative Agent, in the form of Exhibit B-1 or Exhibit B-2, as applicable, or any other form approved by the Administrative Agent and the Borrower Agent.

"**Audit Delivery Condition**" means the audited financial statements for the fiscal year ended on December 31, 2022 have been received by the Administrative Agent pursuant to Section 5.13(a).

"**Availability Block**" means an amount equal to the greater of (i) 10.0% of the Total Line Cap and (ii) $46,000,000.

"**Availability Period**" means the period from and including the Closing Date to but excluding the Maturity Date.

"**Available Commitment**" means, at any time, the Aggregate Commitments then in effect minus the ABL Revolving Exposure of all Lenders at such time. For the avoidance of doubt, for purposes of this definition, the Aggregate Commitments in respect of the FILO Facility shall be equal to $0 after giving effect to the FILO Credit Extensions made on the Closing Date.

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to clause (e) of Section 2.14.

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

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

"**Banking Services**" means each and any of the following bank services provided to any Loan Party (a) under any arrangement that is in effect on the Closing Date between any Loan Party and a counterparty that is the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender as of the Closing Date or (b) under any arrangement that is entered into after the Closing Date by any Loan Party with any counterparty that is the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender at the time such arrangement is entered into: (i) commercial credit cards, (ii) stored value cards, (iii) purchasing cards and (iv) treasury management services (including, without limitation, controlled disbursement, ACH transactions, return items and interstate depository network services).

"**Banking Services Obligations**" of the Loan Parties means any and all obligations of the Loan Parties, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), in connection with Banking Services, in each case, that has been designated to the Administrative Agent in writing by the Borrower Agent as being a Banking Services Obligation for the purposes of the Loan Documents; provided that no such designation shall be required in connection with Banking Services provided by JPMCB or any Affiliate thereof.

"**Bankruptcy Code**" means Title 11 of the United States Code (11 U.S.C. § 101 et seq.).

"**Bankruptcy Court**" means the United States Bankruptcy Court for the Southern District of Texas, Houston Division together with any other court having jurisdiction over any of the Chapter 11 Cases or any proceeding therein from time to time.

"**Bankruptcy Laws**" means the Bankruptcy Code or any similar U.S. federal or state law for the relief of debtors.

"**Benchmark**" means, initially, Term SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Term SOFR or the then-current

Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.14.

"**Benchmark Replacement**" means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of: (a) Daily Simple SOFR and (b) 0.10% per annum;

(2) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Agent as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for syndicated credit facilities denominated in Dollars at such time in the United States and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"**Benchmark Replacement Adjustment**" means, for purposes of clause (2) of the definition of "Benchmark Replacement," with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period (or, if such Unadjusted Benchmark Replacement is not a term rate, for any applicable interest payment period) for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Agent for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in Dollars at such time in the United States.

"**Benchmark Replacement Conforming Changes**" means, with respect to the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition, timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the first date on which all Available Tenors of such Benchmark (or the published component used in the calculation thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (a) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (b) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

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

"**Benchmark Unavailability Period**" means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230.

"**Benefit Plan**" means any of (a) an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

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

"**Blocked Account Agreement**" has the meaning assigned to such term in Section 2.21(c).

"**Blocked Accounts**" has the meaning assigned to such term in Section 2.21(c).

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

"**Borrower Agent**" means the Parent Borrower.

"**Borrowers**" means (a) the Borrower Agent and (b) the Subsidiary Borrowers.

"**Borrowing**" means any (a) Loans of the same Type and Class made, converted or continued on the same date and, in the case of Term SOFR Loans, as to which a single Interest Period is in effect, (b) Swingline Loan or (c) Protective Advance.

"**Borrowing Base**" means the sum of the ABL Borrowing Base and the FILO Borrowing Base.

"**Borrowing Base Certificate**" means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Agent, in substantially the form of Exhibit C, as such form, subject to the terms hereof, may from time to time be modified as agreed by the Borrower Agent and the Administrative Agent or such other form which is acceptable to the Administrative Agent in its reasonable discretion.

"**Borrowing Request**" means a request by any Borrower (or the Borrower Agent on behalf of such Borrower) for a Borrowing in accordance with Section 2.03 and substantially in the form attached hereto as Exhibit G, as such form, subject to the terms hereof, may from time to time be modified as agreed by the Borrower Agent and the Administrative Agent or such other form as shall be reasonably acceptable to the Administrative Agent.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or Chicago are authorized or required by law to remain closed.

"**Canadian Tire**" means Canadian Tire Corp. Ltd.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing, but excluding for the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing.

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

"**Cash**" means money, currency or a credit balance in any demand or Deposit Account.

"**Cash Dominion Event**" means at any time (a) an Event of Default under Sections 7.01(a), 7.01(c) (with respect to breaches of Sections 2.21, 5.01(l) or 6.18), 7.01(f) or 7.01(g)) exists or has occurred and is continuing or (b) Excess Availability shall have been less than the greater of (x) 10.0% of the Total Line Cap and (y) $46,000,000 for five consecutive Business Days; provided that the Administrative Agent has notified the Borrower Agent thereof. The occurrence of a Cash Dominion Event shall be deemed to exist and to be continuing notwithstanding that Excess Availability may thereafter exceed the amount set forth in the preceding sentence unless and until Excess Availability shall have been at least the greater of (x) 10.0% of the Total Line Cap and (y) $46,000,000 for 30 consecutive calendar days, in which event a Cash Dominion Event shall no longer be deemed to exist or be continuing.

"**Cash Equivalents**" means, as at any date of determination, (a) readily marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (b) readily marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody's; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (d) certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that has a capital surplus of not less than $500,000,000 (each Lender and each commercial bank referred to herein as a "**Cash Equivalent Bank**"); (e) shares of any money market mutual fund (i) whose investment guidelines restrict 95% of such fund's investments to the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than $250,000,000, and (iii) has the highest rating obtainable from either S&P or Moody's; and (f) with respect to Foreign Subsidiaries, investments of the types described in clause (d) above issued by a Cash Equivalent Bank or any commercial bank of recognized international standing chartered in the country where such Foreign Subsidiary is domiciled having unimpaired capital and surplus of at least $500,000,000. In the case of Investments by any Foreign Subsidiary that is a Subsidiary or Investments made in a country outside the United States, Cash and Cash Equivalents shall also include (x) investments of the type and maturity described in clauses (a) through (e) above of foreign obligors, which Investments or obligors (or

the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (y) other short-term investments utilized by Foreign Subsidiaries that are Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments described in clauses (a) through (e) of the first sentence of this definition of "Cash Equivalents".

"**Change in Law**" means (a) the adoption of or taking effect of any law, rule, regulation or treaty after the date of this Agreement, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or any Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or such Issuing Bank's holding company, if any) with any request, guideline, requirement or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement (other than any such request, guideline or directive to comply with any law, rule or regulation that was in effect on the date of this Agreement). For purposes of this definition and Section 2.15, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof; provided that increased costs as a result of any Change in Law pursuant to this clause (x) shall only be reimbursable by the Borrowers to the extent the applicable Lender is requiring reimbursement therefor from similarly situated borrowers under comparable syndicated credit facilities, and (y) all requests, rules, guidelines, requirements 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 described in clauses (x) and (y) above, 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) the Permitted Holders shall cease to own at least a majority of the outstanding voting Capital Stock of Ultimate Parent or Holdings on a fully diluted basis unless the Permitted Holders (i) own at least 35.0% of the outstanding voting Capital Stock of Ultimate Parent or Holdings, as applicable, on a fully diluted basis and (ii) have the right or the ability (directly or indirectly) by voting power or contract to elect or designate for election at least a majority of the board of directors of Ultimate Parent;

(b) (i) Holdings ceasing to be a directly wholly-owned subsidiary of Ultimate Parent or (ii) the Borrower Agent ceasing to be a directly wholly-owned subsidiary of Holdings;

(c) any Borrower ceasing to be a directly or indirectly wholly-owned subsidiary of Holdings, except with respect to any Borrower (other than the Borrower Agent) in connection with a transaction permitted by Section 6.08(h); or

(d) any "Change of Control" (or any comparable term) in any document pertaining to the Second Lien Notes, Indebtedness permitted under Section 6.01(k) or (w) or any other Junior Indebtedness (or any Refinancing Indebtedness in respect of any of the foregoing) constituting Material Indebtedness.

"**Chapter 11 Cases**" means the Chapter 11 bankruptcy cases, jointly administered under lead case number 23-90005, pending before the Bankruptcy Court.

"**Charges**" has the meaning assigned to such term in Section 9.19.

"**Class**", when used (a) in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are ABL Revolving Loans, FILO Loans, Swingline Loans or Protective

Advances, (b) in reference to any Commitment (or any increase thereto pursuant to Section 2.23), refers to whether such Commitment (or such increase) is an ABL Revolving Commitment or a FILO Commitment, and (c) in reference to a Credit Facility, refers to whether such Credit Facility is the ABL Revolving Facility or the FILO Facility.

"**Closing Date**" means October 12, 2023, which is the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

"**CME Term SOFR Administrator**" means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator of the forward-looking term SOFR selected by the Administrative Agent in its reasonable discretion).

"**Co-Documentation Agents**" means Credit Suisse AG, Cayman Islands Branch, TD Bank, N.A., Bank of Montreal and MUFG Bank, Ltd., in their capacity as Co-Documentation Agents.

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

"**Collateral**" means any and all property of a Loan Party subject to a Lien under the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that is or becomes subject to a Lien pursuant to the Collateral Documents in favor of the Administrative Agent, on behalf of itself and the Lenders, to secure the Secured Obligations.

"**Collateral Access Agreement**" has the meaning assigned to such term in the Pledge and Security Agreement.

"**Collateral Documents**" means, collectively, the Pledge and Security Agreement, the Mortgages, short-form intellectual property security agreements, and any other documents granting a Lien upon the Collateral as security for payment of the Secured Obligations.

"**Commercial Letter of Credit**" means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by the Borrower Agent or any of its Subsidiaries in the ordinary course of business of such Person.

"**Commitment**" means, with respect to each Lender, the commitment of such Lender to make ABL Revolving Loans, acquire participations in Letters of Credit and Swingline Loans, and make Protective Advances hereunder, and to make FILO Loans hereunder, expressed as an amount representing the maximum possible aggregate amount of such Lender's Credit Exposure hereunder, as such commitment may be (a) increased from time to time as a result of a Commitment Increase, (b) reduced from time to time pursuant to Section 2.09 or (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.05. The initial amount of each Lender's Commitment as of the Closing Date is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. For the avoidance of doubt, as of the Closing Date, (i) the ABL Revolving Commitments shall be in an aggregate principal amount equal to $545,000,000 and (ii) the FILO Commitments shall be in an aggregate principal amount equal to $17,110,500. The initial aggregate amount of the Lenders' Commitments on the Closing Date is $562,110,500.

"**Commitment Increase**" has the meaning assigned to such term in Section 2.23(a).

"**Commitment Schedule**" means the Schedule attached hereto as Schedule 1.01(a).

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

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

"**Confirmation Order**" means the order of the Bankruptcy Court dated September 6, 2023 [Docket No. 1711] confirming the Plan of Reorganization, which order *inter alia* authorized and approved the applicable Loan Parties' entry into and performance under this Agreement.

"**Consolidated Adjusted EBITDA**" means, for any period, an amount determined for Ultimate Parent and its Subsidiaries on a consolidated basis equal to the total of (a) Consolidated Net Income for such period plus (b) the sum, without duplication, of (to the extent deducted in calculating Consolidated Net Income, other than in respect of clauses (xii) and (xiv)); the amounts of (provided that, in no event shall revenue synergies be added-back to Consolidated Net Income in calculating Consolidated Adjusted EBITDA hereunder):

(i) consolidated interest expense (including (A) fees and expenses paid to the Administrative Agent in connection with its services hereunder, (B) other bank, administrative agency (or trustee) and financing fees, (C) costs of surety bonds in connection with financing activities and (D) commissions, discounts and other fees and charges owed with respect to letters of credit, bankers' acceptance or any similar facilities or financing and hedging agreements);

(ii) taxes paid and provisions for taxes based on income, profits or capital of Ultimate Parent and its Subsidiaries, including, in each case federal, state, provincial, local, foreign, unitary, franchise, excise, property, withholding and similar taxes, including any penalties and interest;

(iii) Consolidated Depreciation and Amortization Expense for such period;

(iv) other non-Cash charges; provided that if any such non-Cash charge represents an accrual or reserve for potential Cash items in any future period, (A) the Borrower Agent may determine not to add back such non-Cash charge in the current period and (B) to the extent the Borrower Agent does decide to add back such non-Cash charge, the Cash payment in respect thereof in such future period shall be subtracted from Consolidated Adjusted EBITDA in the period in which such payment is made;

(v) (A) Transaction Costs and (B) transaction fees, costs and expenses incurred (1) in connection with the consummation of any transaction (or any transaction proposed and not consummated) permitted under this Agreement, including the issuance of Capital Stock, Investments, acquisitions, dispositions, recapitalizations, mergers, option buyouts or the incurrence or repayment of Indebtedness or similar transactions, (2) in connection with an underwritten public offering or (3) to the extent reimbursable by third parties pursuant to indemnification provisions or similar agreements or insurance; provided that, in respect of any fees, costs and expenses incurred pursuant to clause (3) above, the Borrower Agent in good faith expects to receive reimbursement for such fees, costs and expenses within the next four Fiscal Quarters (it being understood that to the extent not actually received within such Fiscal Quarters, such reimbursement amounts shall be deducted in calculating Consolidated Adjusted EBITDA for such Fiscal Quarters);

(vi) the amount of any expense or deduction associated with any Subsidiary attributable to non-controlling interests or minority interests of third parties;

(vii) [Reserved];

(viii) the amount of any one-time restructuring charge or reserve, including in connection with (A) acquisitions permitted hereunder after the Closing Date and (B) the consolidation or closing of facilities, stores or distribution centers during such period;

(ix) earn-out obligations incurred in connection with any Permitted Acquisition or other Investment permitted pursuant to Section 6.07 and paid or accrued during such period and on similar acquisitions and Investments completed prior to the Closing Date;

(x) pro forma "run rate" cost savings, product margin synergies (including increased share of shelf), operating expense reductions and product cost (including sourcing) and other synergies (net of the amount of actual amounts realized) reasonably identifiable and factually supportable (in the good faith determination of the Borrower Agent) related to and projected by the Borrower Agent in good faith to result from actions taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower Agent) within 18 months after the occurrence of, (A) the Transactions and (B) after the Closing Date, permitted asset sales, acquisitions, Investments, dispositions, operating improvements, restructurings, cost saving initiatives and certain other similar initiatives and specified transactions; provided that the aggregate amount of such costs savings, operating expense reductions and synergies under this clause (x) (other than in connection with any mergers, business combinations, acquisitions or divestures) shall not exceed, together with any amounts added back pursuant to clause (xi) and pursuant to any pro forma adjustment in accordance with Section 1.08, 25.0% of Consolidated Adjusted EBITDA in any four-Fiscal Quarter period (calculated before giving effect to any such add-backs and adjustments);

(xi) costs, charges, accruals, reserves or expenses attributable to the undertaking and/or implementation of cost savings initiatives, operating expense reductions, integration, transition, facilities opening and pre-opening, business optimization and other restructuring costs, charges, accruals, reserves and expenses (including, without limitation, inventory optimization programs, software development costs and costs related to the closure or consolidation of facilities, stores or distribution centers (without duplication of amounts in clause (ix) above) and curtailments, costs related to entry into new markets, consulting fees, signing costs, retention or completion bonuses, relocation expenses, severance payments, modifications to pension and post-retirement employee benefit plans, new systems design and implementation costs and project startup costs); provided that the aggregate amount of any such costs, charges, accruals, reserves or expenses under this clause (xi) (other than any applicable adjustments set forth in Schedule 1.01(d) and other than in connection with any mergers, business combinations, acquisitions or divestures) shall not exceed, together with any amounts added back pursuant to clause (x) and pursuant to any pro forma adjustment in accordance with Section 1.08, 25.0% of Consolidated Adjusted EBITDA in any four-Fiscal Quarter period (calculated before giving effect to any such add-backs and adjustments);

(xii) business interruption insurance in an amount representing the earnings for the applicable period that such proceeds are intended to replace (whether or not received so long as the Borrower Agent in good faith expects to receive the same within the next four Fiscal Quarters (it being understood that to the extent not actually received within such Fiscal Quarters, such proceeds shall be deducted in calculating Consolidated Adjusted EBITDA for such Fiscal Quarters));

(xiii) unrealized net losses in the fair market value of any arrangements under Hedge Agreements;

(xiv) Cash actually received (or any netting arrangements resulting in reduced Cash expenditures) during such period, and not included in Consolidated Net Income in any period, to the extent that the non-Cash gain relating to such Cash receipt or netting arrangement was deducted in the calculation of Consolidated Adjusted EBITDA pursuant to clause (c)(i) below for any previous period and not added back; and

(xv) any non-cash adjustments and charges resulting from the application of fresh start accounting such as the loss of deferred gross profit related to inventory purchased prior to

emergence, and amortization of lease incentives no longer allowed post emergence under fresh start accounting;

minus (c) to the extent such amounts increase Consolidated Net Income:

(i) other non-Cash items (excluding any such non-Cash item to the extent it represents the reversal of an accrual or reserve for a potential Cash item in any prior period);

(ii) unrealized net gains in the fair market value of any arrangements under Hedge Agreements; and

(iii) the amount added back to Consolidated Adjusted EBITDA pursuant to clause (b)(xii) above to the extent such business interruption proceeds were not received within the time period required by such clause.

"**Consolidated Capital Expenditures**" means, for any period, the aggregate amount of all expenditures of Ultimate Parent and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included as additions to property, plant and equipment in the consolidated statement of cash flows of Ultimate Parent and its Subsidiaries. Notwithstanding the foregoing, Consolidated Capital Expenditures shall not include:

(a) the purchase price of property, plant or equipment or software in an amount equal to the proceeds of asset dispositions of fixed or capital assets that are not required to be applied to prepay Loans of the Borrowers pursuant to Section 2.11(b),

(b) expenditures made with tenant allowances received by Ultimate Parent or any of its Subsidiaries from landlords in the ordinary course of business and subsequently capitalized,

(c) any amounts spent in connection with Investments permitted pursuant to Section 6.07 and expenditures made in connection with the Transactions,

(d) expenditures financed with the proceeds of an issuance of Capital Stock of any Parent Company, or a capital contribution to the Borrowers,

(e) expenditures that are accounted for as capital expenditures by Ultimate Parent or any Subsidiary and that actually are paid for by a Person other than Ultimate Parent or any Subsidiary to the extent neither Ultimate Parent nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person (whether before, during or after such period),

(f) any expenditures which are contractually required to be, and are, advanced or reimbursed to the Loan Parties in Cash by a third party (including landlords) during such period of calculation,

(g) the book value of any asset owned by Ultimate Parent or any Subsidiary prior to or during such period to the extent that such book value is included as a capital expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; provided that (i) any expenditure necessary in order to permit such asset to be reused shall be included as a capital expenditure during the period in which such expenditure actually is made and (ii) such book value shall have been included in capital expenditures when such asset was originally acquired,

(h) that portion of interest on Indebtedness incurred for capital expenditures which is paid in Cash and capitalized in accordance with GAAP,

(i) expenditures made in connection with the replacement, substitution, restoration, upgrade, development or repair of assets to the extent financed with (x) insurance or settlement proceeds paid on account of the loss of or damage to the assets being replaced, substituted, restored, upgraded, developed or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, or

(j) in the event that any equipment is purchased simultaneously with the trade-in of existing equipment, the gross amount of the credit granted by the seller of such equipment for the equipment being traded in at such time.

"**Consolidated Cash Interest Expense**" means, for any period, Consolidated Interest Expense for such period, excluding (a) any amount not paid or payable currently in Cash, (b) amortization of deferred financing costs, (c) Transaction Costs otherwise included in Consolidated Interest Expense and (d) any annual agency fees with respect to any Indebtedness, in each case, to the extent included in Consolidated Interest Expense.

"**Consolidated Depreciation and Amortization Expense**" means, with respect to any Person, for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits, of such Person and its subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"**Consolidated Interest Expense**" means, for any period (a) total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Ultimate Parent and its Subsidiaries on a consolidated basis in accordance with GAAP with respect to all outstanding Indebtedness of Ultimate Parent and its Subsidiaries, (i) including, (A) all commissions, discounts and other fees and charges owed with respect to Indebtedness of Ultimate Parent or any of its Subsidiaries and (B) any commitment fees on the unused portion of the Commitments as set forth in Section 2.12 and (ii) excluding (A) any costs associated with obtaining, or breakage costs in respect of, Hedge Agreements and (B) any fees and expenses associated with any permitted dispositions and asset sales, acquisitions and Investments, equity issuances or issuances of Indebtedness (in each case, whether or not consummated), less (c) any Cash interest income of Ultimate Parent or its Subsidiaries actually received during such period. For avoidance of doubt, Consolidated Interest Expense shall be net of payments made or received under interest rate Hedge Agreements.

"**Consolidated Net Income**" means, for any period, the net income (or loss) of Ultimate Parent and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP; provided that there shall be excluded, without duplication,

(a) the income (or loss) of any Person (other than a Subsidiary of Ultimate Parent) in which any other Person (other than Ultimate Parent or any of its Subsidiaries) has a joint interest, except, with respect to any income, to the extent of the amount of dividends or distributions or other payments (including any ordinary course dividend, distribution or other payment) paid in Cash (or to the extent converted into Cash) to Ultimate Parent or any of its Subsidiaries by such Person during such period,

(b) gains or losses (less all fees and expenses chargeable thereto) attributable to asset sales or dispositions (including asset retirement costs) or returned surplus assets of any Pension Plan outside of the ordinary course of business,

(c) gains or losses from (i) extraordinary items and (ii) nonrecurring or unusual items (including costs of and payments of legal settlements, fines, judgments or orders),

(d) any unrealized or realized net foreign currency translation or transaction gains or losses impacting net income (including currency re-measurements of Indebtedness and any net gains or losses resulting from Hedge Agreements for currency exchange risk associated with the above or any other currency related risk),

(e) any net gains, charges or losses with respect to (i) disposed, abandoned and discontinued operations (other than assets held for sale) and any accretion or accrual of discounted liabilities in connection with store closures or asset retirement obligations and (ii) facilities, stores or distribution centers that have been closed during such period,

(f) any net income or loss (less all fees and expenses or charges related thereto) attributable to the early extinguishment of Indebtedness,

(g) (i) any charges or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, pension plan, any stock subscription or shareholder agreement or any distributor equity plan or agreement and (ii) any charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Capital Stock held by management of any Parent Company, any Borrower or any of the Subsidiaries, in each case, to the extent that (in the case of any Cash charges, costs and expenses) such charges, costs or expenses are funded with net Cash proceeds contributed to the common equity of the Borrower Agent as a capital contribution or as a result of the sale or issuance of Capital Stock (other than Disqualified Capital Stock) of the Borrower Agent,

(h) accruals and reserves that are established within 12 months after the Closing Date that are so required to be established as a result of the Transactions in accordance with GAAP,

(i) any (A) write-off or amortization made in such period of deferred financing costs and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness or (B) good will or other asset impairment charges, write-offs or write-downs, and

(j) (i) effects of adjustments (including, without limitation, the effects of such adjustments pushed down to Ultimate Parent and its Subsidiaries) in such Person's consolidated financial statements pursuant to GAAP (including in the inventory, property and equipment, software, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition or the amortization or write-off of any amounts thereof and (ii) the cumulative effect of changes in accounting principles.

"**Consolidated Total Assets**" means, at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total assets" (or any like caption) on a consolidated balance sheet of Ultimate Parent and its Subsidiaries at such date.

"**Consolidated Total Debt**" means, as at any date of determination, the aggregate principal amount of all funded Indebtedness described in clauses (a), (b), (c), (d) and (f) (with respect to amounts drawn and not reimbursed for a period in excess of five Business Days) of the definition of "Indebtedness" of Ultimate Parent and its Subsidiaries.

"**Contractual Obligation**" means, as applied to any Person, any provision of any Security issued by that Person or of any material indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"**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.

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

"**Cost**" means cost determined according to the accounting policies used in the preparation of the Borrower Agent's most recent audited financial statements prior to the Closing Date (pursuant to which the average cost method of accounting is used for retail inventories and the FIFO method of accounting is being used for wholesale inventories) without regard to intercompany profit or increases for currency exchange rates.

"**Covered Entity**" means any of the following:

(1) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(2) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(3) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"**Covered Party**" has the meaning assigned to it in Section 9.25.

"**Credit Card Notification**" has the meaning provided in Section 2.21(c).

"**Credit Card Receivables Component**" means (a) for purposes of determining the ABL Borrowing Base, the face amount of Eligible Credit Card Receivables multiplied by 90.0% and (b) for purposes of determining the FILO Borrowing Base, the face amount of Eligible Credit Card Receivables multiplied by 5.0%.

"**Credit Exposure**" means, with respect to any Lender at any time, the sum of (a) the outstanding principal amount of such Lender's Loans, (b) its LC Exposure, (c) with respect to any ABL Revolving Lender, its ABL Applicable Percentage of the aggregate principal amount of Swingline Loans outstanding at such time and (d) with respect to any ABL Revolving Lender, its ABL Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time.

"**Credit Extensions**" means each of the (a) ABL Revolving Credit Extensions and (b) FILO Credit Extensions.

"**Credit Facility**" means the ABL Revolving Facility or the FILO Facility.

"**Credit Party**" means any of the Administrative Agent, any Issuing Bank, the Swingline Lender or any other Lender.

"**Customer Credit Liability Reserve**" means a reserve based on the aggregate remaining value at such time of (a) outstanding gift certificates and gift cards sold by the Borrowers and Loan Guarantors entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, and (b) outstanding merchandise credits issued by and customer deposits received by the Borrowers and Loan Guarantors.

"**Customs Broker Agreement**" means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, among any Loan Party, a customs broker or other carrier, and the Administrative Agent, in which the customs broker or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Administrative Agent and agrees, upon notice from the Administrative Agent (which notice shall be delivered only upon the occurrence and during the continuation of an Event of Default), to hold and dispose of the subject Inventory solely as directed by the Administrative Agent.

"**Daily Simple SOFR**" means, for any day (a "**SOFR Rate Day**"), a rate per annum equal to SOFR for the day (such day "**SOFR Determination Date**") that is five (5) U.S. Government Securities Business Day prior to (a) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (b) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

"**DDAs**" means any checking or other demand deposit account maintained by the Loan Parties other than Excluded Accounts. All funds in such DDAs shall be conclusively presumed to be Collateral and proceeds of Collateral and the Administrative Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the DDAs, subject to the Intercreditor Agreement.

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

"**Default**" means any event or condition which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"**Defaulting Lender**" means any Lender that has (a) failed, within one Business Day of the date required to be funded or paid, to (i) fund any portion of its Loans, unless such Lender notifies the Administrative Agent and the Borrower Agent in writing (with respect to such notice to the Administrative Agent, in accordance with the first sentence of Section 2.07(b)) that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default, shall be specifically identified in such writing) has not been satisfied or waived, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, (b) notified any Credit Party or a Loan Party in writing that it does not intend to satisfy any such obligation or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit, (c) failed, within three Business Days after the request by a Credit Party or the Borrower Agent, acting in good faith, to confirm in writing from an authorized officer of such Lender that it will comply with the terms of this Agreement relating to its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit, Swingline Loans and Protective Advances; provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by such Credit Party in form and substance satisfactory to it and the Administrative Agent, (d) become (or any parent company thereof has become) insolvent or been determined by any Governmental Authority having regulatory authority over such Person or its assets, to be insolvent, or the

assets or management of which has been taken over by any Governmental Authority, or (e) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any such proceeding or appointment, or become the subject of a Bail-in Action, unless in the case of any Lender subject to this clause (e), the Borrowers, Administrative Agent, Swingline Lender and each Issuing Bank shall each have determined that such Lender intends, and has all approvals required to enable it (in form and substance satisfactory to each of the Borrowers, Administrative Agent, Swingline Lender and each Issuing Bank), to continue to perform its obligations as a Lender hereunder; provided that a Lender shall not be deemed to be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in such Lender or its parent by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

"**Deposit Account**" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"**Derivative Transaction**" means (a) any interest-rate transaction, including any interest-rate swap, basis swap, forward rate agreement, interest rate option (including a cap collar and floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted), (b) any exchange-rate transaction, including any cross-currency interest-rate swap, any forward foreign-exchange contract, any currency option, and any other instrument linked to exchange rates that gives rise to similar credit risks, (c) any equity derivative transaction, including any equity-linked swap, any equity-linked option, any forward equity-linked contract, and any other instrument linked to equities that gives rise to similar credit risk and (d) any commodity (including precious metal) derivative transaction, including any commodity-linked swap, any commodity-linked option, any forward commodity- linked contract, and any other instrument linked to commodities that gives rise to similar credit risks; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Ultimate Parent or its subsidiaries shall be a Derivative Transaction.

"**Disqualified Capital Stock**" means any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (i) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, on or prior to 91 days following the Maturity Date, (ii) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for (a) debt securities or (b) any Capital Stock that would constitute Disqualified Capital Stock, in each case at any time on or prior to 91 days following the Maturity Date, (iii) contains any repurchase obligation which may come into effect prior to payment in full in Cash of all Obligations or (iv) provides for the scheduled payments of dividends in cash on or prior to 91 days following the Maturity Date; provided that any Capital Stock that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Capital Stock is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Capital Stock upon the occurrence of a change in control or an asset sale occurring prior to 91 days following the Maturity Date shall not constitute Disqualified Capital Stock if such Capital Stock provides that the issuer thereof will not redeem any such Capital Stock pursuant to such provisions prior to the Termination Date.

Notwithstanding the preceding sentence, (A) if such Capital Stock is issued to any plan for the benefit of employees or by any such plan to such employees, in each case in the ordinary course of business of the Borrower Agent or any Subsidiary, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the issuer thereof in order to satisfy applicable statutory or regulatory obligations and (B) no Capital Stock held by any future, present or former employee, director, officer or consultant (or their respective Affiliates or Immediate Family Members) of the Borrower Agent (or any Parent Company or any Subsidiary) shall be considered Disqualified Capital Stock because such stock is redeemable or subject to repurchase pursuant to any management equity subscription agreement, stock option, stock appreciation right or other stock award agreement, stock ownership plan, put agreement, stockholder agreement or similar agreement that may be in effect from time to time.

"**Disqualified Institutions**" means those Persons (the list of all such Persons, the "**Disqualified Institutions List**") that are (i) identified in writing by the Borrower Agent to the Administrative Agent prior to the Closing Date, (ii) competitors of the Borrower Agent and its subsidiaries (other than bona fide fixed income investors or debt funds) that are identified in writing by the Borrower Agent from time to time or (iii) Affiliates of such Persons set forth in clauses (i) and (ii) above (in the case of Affiliates of such Persons set forth in clause (ii) above, other than bona fide fixed income investors or debt funds) that are either (a) identified in writing by the Borrower Agent or (b) clearly identifiable on the basis of such Affiliate's name; provided, that, to the extent Persons are identified as Disqualified Institutions in writing by the Borrower Agent to the Administrative Agent after the Closing Date pursuant to clauses (ii) or (iii)(a), the inclusion of such Persons as Disqualified Institutions shall not retroactively apply to prior assignments or participations in respect of any Loan under this Agreement. Notwithstanding the foregoing, the Borrower Agent, by written notice to the Administrative Agent, may from time to time in its sole discretion remove any entity from the Disqualified Institutions List (or otherwise modify such list to exclude any particular entity), and such entity removed or excluded from the Disqualified Institutions List shall no longer be a Disqualified Institution for any purpose under this Agreement or any other Loan Document.

"**Disqualified Institutions List**" has the meaning as set forth in the definition of "Disqualified Institutions".

"**Disqualified Person**" has the meaning as set forth in Section 9.05.

"**Disregarded Domestic Subsidiary**" means any Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia that is treated as a disregarded entity for U.S. federal income tax purposes that holds directly, or indirectly through one or more disregarded entities, the equity and/or indebtedness treated as equity for U.S. federal income tax purposes, of one or more Foreign Subsidiaries or one or more FSHCO Subsidiaries.

"**Document**" has the meaning set forth in Article 9 of the UCC.

"**Dollars**" or "**$**" refers to lawful money of the United States of America.

"**Domestic Subsidiaries**" means all Subsidiaries incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

"**ECP**" means an "eligible contract participant" as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

"**EEA Financial Institution**" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of

an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Electronic System**" means any electronic system, including e-mail, e-fax, Intralinks®, ClearPar®, Debt Domain, Syndtrak and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

"**Eligible Assignee**" means (a) a Lender, (b) a commercial bank, insurance company, finance company, financial institution, any fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act), (c) any Affiliate of a Lender or (d) an Approved Fund of a Lender; provided that in any event, "Eligible Assignee" shall not include (i) (A) any natural person or (B) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, with respect to this clause (B), such company, investment vehicle or trust may be an Eligible Assignee if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than $25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business, (ii) any Defaulting Lender or any direct or indirect parent thereof, (iii) Ultimate Parent, Holdings or any Borrower or any Subsidiary or Affiliate thereof, (iv) any secured party under the Second Lien Notes Documents or any Affiliate of the foregoing or (v) any Disqualified Institution.

"**Eligible Credit Card Receivables**" means Accounts due to any Loan Party on a non-recourse basis from Visa, MasterCard, American Express Company, Discover, Diners Club and other major credit card or debit card issuer and processors, as arise in the ordinary course of business, which have been earned by performance, and are not excluded as ineligible by one or more of the criteria set forth below (without duplication of any Reserves established in accordance with Section 2.25). Without limiting the foregoing, none of the following shall be deemed to be Eligible Credit Card Receivables:

(a) Accounts due from credit card or debit card processors that have been outstanding for more than five Business Days from the date of sale or for such longer period as may be approved by the Administrative Agent in its reasonable discretion;

(b) Accounts due from credit card or debit card processors with respect to which a Loan Party does not have good, valid and marketable title, free and clear of any Lien (other than (i) Liens granted to the Administrative Agent for its own benefit and the benefit of the other Secured Parties and (ii) solely to the extent not senior to the security interest described in the foregoing clause (b)(i) (other than statutory Liens that are Permitted Encumbrances having priority by applicable law), (A) Permitted Encumbrances (without limiting the ability of the Administrative Agent to change, establish or eliminate any Reserves in its Permitted Discretion on account of any such Permitted Encumbrances) and (B) other Liens permitted pursuant to Sections 6.02(k), 6.02(o), 6.02(t) and 6.02(u) and (as it pertains to any of the foregoing)) (it being the intent that chargebacks in the ordinary course by the credit card processors shall not be deemed violative of this clause);

(c) Accounts due from credit card or debit card processors that are not subject to a First Priority security interest in favor of the Administrative Agent for its own benefit and the benefit of the other Secured Parties, subject to statutory Liens that are Permitted Encumbrances having priority by applicable law (it being the intent that chargebacks in the ordinary course by the credit card processors shall not be deemed violative of this clause);

(d) Accounts due from credit card or debit card processors which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback and except to the extent such claim, counterclaim, offset or chargeback is limited by an agreement that is reasonably satisfactory to the Administrative Agent);

(e) Except as otherwise approved by the Administrative Agent (such approval not to be unreasonably withheld), Accounts due from credit card or debit card processors as to which the credit card or debit card processor has the right under certain circumstances to require any Borrower to repurchase the Accounts from such credit card processor;

(f) Except as otherwise approved by the Administrative Agent (such approval not to be unreasonably withheld), Accounts due from any Person on account of any private label credit card or debit card receivables other than such Accounts under programs between any Borrower and a third party reasonably acceptable to the Administrative Agent where the third party retains the consumer credit exposure;

(g) Accounts due from credit card or debit card processors (other than Visa, MasterCard, American Express Company, Diners Club and Discover) which the Administrative Agent determines in its Permitted Discretion to be uncertain of collection; or

(h) Accounts which are acquired in connection with a Permitted Acquisition to the extent the Administrative Agent shall not have received a Report in respect of such Accounts, which Report shows results reasonably satisfactory to the Administrative Agent; it being agreed that the Administrative Agent shall take such actions as are reasonably required to obtain such a Report (which Report shall be at the expense of the Borrowers and shall not be considered in any limitation on such Reports at the expense of Borrowers provided in Section 5.06 or otherwise) promptly upon the request of any Borrower (or the Borrower Agent on behalf of such Borrower); provided that the Administrative Agent may, in its Permitted Discretion, determine to include such Accounts as Eligible Credit Card Receivables prior to the receipt by Administrative Agent of such Report, without limiting the right of Administrative Agent to subsequently exclude such Accounts based on the results of such Report.

"**Eligible In-Transit Inventory**" means, at any time, without duplication of other Eligible Inventory, Inventory of the Loan Parties:

(a) which has been shipped from (i) a foreign location for receipt by any Loan Party (without any intervening receipt by a third-party processor located outside of the United States) within 60 days of the date of shipment; provided that the aggregate amount, after application of the applicable advance rate as set forth in and in accordance with the definition of "Inventory Component", of such Eligible In-Transit Inventory that may be contributed to the ABL Borrowing Base shall not exceed $60,000,000 or (ii) a domestic location for receipt by any Loan Party within 30 days of the date of shipment, but, in each case, which has not yet been delivered to such Loan Party;

(b) for which the purchase order is in the name of a Loan Party and title has passed to such Loan Party;

(c) for which the document of title reflects any Loan Party as consignee or, if reasonably requested by the Administrative Agent, names the Administrative Agent as consignee, and in each case for Inventory shipped from or held in a foreign location, as to which the Administrative Agent has control over the documents of title which evidence ownership of the subject Inventory (such as, if requested by the Administrative Agent, by the delivery of a Customs Broker Agreement);

(d) for which the document of title, if requested by the Administrative Agent, is negotiable;

(e) which is insured in accordance with the terms of this Agreement; and

(f) which otherwise is not excluded from the definition of Eligible Inventory (except per the lead-in to such definition or by violation of clauses (g), (j) or (m) of that definition).

"**Eligible Inventory**" means, at any time, all Inventory (excluding Eligible In- Transit Inventory) of the Loan Parties; provided that Eligible Inventory shall not include any Inventory (without duplication of any Reserves established in accordance with Section 2.25):

(a) which is not subject to a First Priority perfected Lien in favor of the Administrative Agent (other than a Landlord Lien as to which a Landlord Lien Reserve applies), subject to statutory Liens that are Permitted Encumbrances having priority by applicable law (without limiting the ability of the Administrative Agent to change, establish or eliminate any Reserves in its Permitted Discretion in respect of such Permitted Encumbrances);

(b) which is unmerchantable, damaged, defective or unfit for sale;

(c) which does not conform in all material respects to the representations and warranties contained in this Agreement or the Pledge and Security Agreement (or, to the extent any such representation or warranty is qualified as to materiality, in all respects);

(d) which is not owned only by one or more Loan Parties;

(e) which constitutes work-in-process or supplies, spare parts or other similar items dedicated for internal use by the Loan Parties, bill-and-hold goods or goods that constitute goods held on consignment or goods that are not of a type held for sale in the ordinary course of business;

(f) which is not located in the U.S. or Canada or is in transit with a common carrier from vendors or suppliers (other than Eligible In-Transit Inventory);

(g) which is located at any Specified Location leased by a Loan Party, unless (i) the lessor has delivered to the Administrative Agent a Collateral Access Agreement as to such location or (ii) a Landlord Lien Reserve with respect to such location has been established in accordance with Section 2.25; provided that this clause (g) shall not apply for 90 days after the Closing Date;

(h) which is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) at a Specified Location and is not evidenced by a Document, unless (i) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may reasonably require or (ii) a Landlord Lien Reserve has been established in accordance with Section 2.25; provided that this clause (h) shall not apply for 90 days after the Closing Date;

(i) which is being processed offsite by a third party at a third party location or outside processor, or is in transit (other than Eligible In-Transit Inventory) to or from said third party location or outside processor;

(j) which is the subject of a consignment by any Loan Party as consignor or consignee;

(k) which contains or bears any intellectual property rights licensed to any Loan Party pursuant to a license with any Person other than a Loan Party unless the Administrative Agent may sell or otherwise dispose of such Inventory (at any time) without (i) violating any contract in respect of such license or (ii) infringing the rights of such Person, assistance or interference from, or the payment of money to, such Person (except for customary royalties which may be reserved for in the Permitted Discretion of the Administrative Agent);

(l) which is not reflected in a current perpetual inventory report (other than Eligible In-Transit Inventory) of the Borrower Agent or any of its Subsidiaries;

(m) which is acquired in connection with an acquisition permitted hereunder to the extent the Administrative Agent shall not have received a Report in respect of such Inventory, which Report shows results reasonably satisfactory to the Administrative Agent; it being agreed that the Administrative Agent shall take such actions as are reasonably required to obtain such a Report (which Report shall be at the expense of the Borrowers and shall not be considered in any limitation on such Reports at the expense of the Borrowers provided in Section 5.06 or otherwise) promptly upon the request of any Loan Party (or the Borrower Agent on behalf of such Loan Party); provided that Administrative Agent may, in its judgment, determine to include such Inventory as Eligible Inventory prior to the receipt by Administrative Agent of such Report, without limiting the right of Administrative Agent to subsequently exclude such Inventory based on the results of such Report;

(n) which is not of a type held for sale in the ordinary course of the applicable Loan Party's business; or

(o) which consists of display items or packing or shipping materials, manufacturing supplies or replacement parts.

"**Eligible Trade Receivables**" means, at any time, all Accounts (excluding Eligible Credit Card Receivables) due to any Loan Party arising from the sale of goods of the Loan Parties or the provision of services by the Loan Parties; provided that Eligible Trade Receivables shall not include any Account (without duplication of any Reserves established in accordance with Section 2.25):

(a) which is not subject to a First Priority perfected security interest, subject to statutory Liens that are Permitted Encumbrances having priority by applicable law (without limiting the ability of the Administrative Agent to change, establish or eliminate any Reserves in its Permitted Discretion on account of any such Permitted Encumbrances) in favor of the Administrative Agent for its own benefit and the benefit of the other Secured Parties;

(b) with respect to which more than 120 days have elapsed from the original invoice date thereof, or which is more than 60 days past due, or which has been written off the books of the Loan Parties or otherwise designated as uncollectible; provided that, Accounts owing from Canadian Tire and its Affiliates to the Loan Parties that otherwise constitute Eligible Trade Receivables (without giving effect to this clause (b)) may be eligible so long as (i) with respect to any such Account, (A) no more than 135 days have elapsed from the original invoice date thereof, or (B) which is more than 60 days past due, or (C) which has been written off the books of the Loan Parties or otherwise designated as uncollectible, (ii) Canadian Tire's issuer rating is not below

BBB- (or the equivalent) from S&P or, if applicable, Moody's and (iii) the aggregate amount of Accounts constituting Eligible Trade Receivables in reliance upon this proviso does not exceed $5,000,000;

(c) which is owing by an Account Debtor for which more than 50.0% of the dollar amount of Accounts owing from such Account Debtor and its Affiliates are ineligible pursuant to clause (b) above;

(d) (i) which is owing by an Account Debtor (other than Canadian Tire and its Affiliates) to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to the Loan Parties exceeds 20.0% of the aggregate Eligible Trade Receivables or (ii) which is owing by Canadian Tire and its Affiliates to the extent the aggregate amount of Accounts owing from Canadian Tire and its Affiliates to the Loan Parties exceeds (A) so long as Canadian Tire's issuer rating is not below BBB- (or the equivalent) from S&P or, if applicable, Moody's, 35.0% of the aggregate Eligible Trade Receivables and (B) at all other times (including such times when Canadian Tire does not have an issuer rating from S&P or Moody's), 20.0% of the aggregate Eligible Trade Receivables, but, in the case of any Accounts contemplated by this clause (d), only to the extent of such excess;

(e) which does not conform in all material respects to the representations and warranties contained in this Agreement or in the Pledge and Security Agreement (or, to the extent any such representation or warranty is qualified as to materiality, in all respects);

(f) which (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not invoiced or evidenced by other documentation (including reports) reasonably satisfactory to the Administrative Agent which has been sent to the Account Debtor (it being agreed that the Loan Parties' current practice with respect to electronic purchase orders and confirmations is reasonably satisfactory to the Administrative Agent), (iii) represents a progress billing, (iv) is contingent upon the Loan Parties' completion of any further performance, (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, Cash-on-delivery or any other repurchase or return basis or (vi) relates to payments of interest;

(g) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by the Loan Parties or if such Account was invoiced more than once;

(h) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(i) which is owed by an Account Debtor which has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or Federal bankruptcy laws, (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, or (vi) ceased operation of its business;

(j) which is owed by any Account Debtor which has sold all or a substantially all of its assets;

(k) which is owed by an Account Debtor which (i) does not maintain its chief executive office in the U.S. or Canada or (ii) is not organized under applicable law of the U.S. or Canada or any state or province thereof unless, in any case, such Account is backed by a letter of credit reasonably acceptable to the Administrative Agent which is in the possession of, has been assigned to and is directly drawable by the Administrative Agent;

(l) which is owed in any currency other than Dollars;

(m) which is owed by (i) the government (or any department, agency, public corporation or instrumentality thereof) of any country other than the U.S. unless such Account is backed by a letter of credit reasonably acceptable to the Administrative Agent and, if requested by the Administrative Agent, which is in the possession of the Administrative Agent, or (ii) the government of the U.S., or any department, agency, public corporation or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.), and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's reasonable satisfaction;

(n) which is owed by any Affiliate, employee, officer, director, agent or stockholder of any Loan Party;

(o) which is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted (but, subject to the proviso below, only to the extent of such indebtedness) or is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(p) which is subject to any counterclaim, deduction, defense, setoff or dispute notice of which is provided to Ultimate Parent or any of its Subsidiaries but only to the extent of any such counterclaim, deduction, defense, setoff or dispute or which is for the purpose of reducing or offsetting the value of a related account (*i.e.*, a "contra account"); provided that no Account that otherwise constitutes an Eligible Trade Receivable shall be rendered ineligible by virtue of this clause (p) to the extent, but only to the extent, that the Account Debtor's right of setoff is limited by an enforceable agreement that is reasonably satisfactory to the Administrative Agent;

(q) which is evidenced by any promissory note, chattel paper or instrument;

(r) which is owed by an Account Debtor located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit any Loan Party to seek judicial enforcement in such jurisdiction of payment of such Account, unless such Loan Party has filed such report or is qualified to do business in such jurisdiction;

(s) with respect to which any Loan Party has made any agreement with the Account Debtor for the reduction thereof, other than discounts and adjustments given in the ordinary course of business, or other than any Account which was partially paid and such Loan Party created a new receivable for the unpaid portion of such Account; provided that only the amount of the reduction of any such Account shall be deemed ineligible by virtue of this clause (s);

(t) which does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local, including without limitation the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board;

(u) which the Administrative Agent determines in its Permitted Discretion may not be paid by reason of the Account Debtor's inability to pay; or

(v) which is acquired in connection with an acquisition permitted hereby to the extent the Administrative Agent shall not have received a Report in respect of such Account, which Report shows results reasonably satisfactory to the Administrative Agent; it being agreed that the Administrative Agent shall take such actions as are reasonably required to obtain such a Report (which Report shall be at the expense of Borrowers and shall not be considered in any limitation on such Reports at the expense of Borrowers provided in Section 5.06 or otherwise) promptly upon the request of any Borrower (or the Borrower Agent on behalf of such Borrower); provided that Administrative Agent may, in its Permitted Discretion, determine to include such Accounts as Eligible Trade Receivables prior to the receipt by Administrative Agent of such Report, without limiting the right of Administrative Agent to subsequently exclude such Accounts based on the results of such Report.

"**Employee Benefit Plan**" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Ultimate Parent, any of its Subsidiaries or any of their respective ERISA Affiliates.

"**Environmental Claim**" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities and the common law relating to (a) environmental matters, including those relating to any Hazardous Materials Activity; (b) the generation, use, storage, transportation or disposal of Hazardous Materials; or (c) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Ultimate Parent or any of its Subsidiaries or any Facility.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Ultimate Parent or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"**ERISA Affiliate**" means, as applied to any Person, (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Code of which that Person is a member; and (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code of which that Person is a member.

"**ERISA Event**" means (a) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the 30-day notice period has been waived); (b) the failure to meet the minimum funding standard of Section 412 of the Code, (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) or Section 302 of ERISA of a notice of intent to terminate such plan in a distress termination described in

Section 4041(c) of ERISA; (d) the withdrawal by Ultimate Parent, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Ultimate Parent, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability on Ultimate Parent, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the withdrawal of Ultimate Parent, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Ultimate Parent, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in endangered or critical status under Section 432 of the Code or Section 305 of ERISA, or that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (h) the occurrence of an act or omission which could reasonably be expected to give rise to the imposition on Ultimate Parent, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Pension Plan; (i) the incurrence of liability or the imposition of a Lien pursuant to Section 436 or 430(k) of the Code or pursuant to ERISA with respect to any Pension Plan; or (j) a determination that any Pension Plan is, or is expected to be, considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA.

"**Erroneous Payment Provision**" has the meaning assigned to such term in Article 8.

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

"**Event of Default**" has the meaning assigned to such term in Article 7.

"**Excess Availability**" means, at any time, an amount equal to (a) the ABL Line Cap at such time minus (b) the Availability Block at such time minus (c) the aggregate ABL Revolving Exposures of all ABL Revolving Lenders at such time; provided that for the purposes of calculating Excess Availability in connection with (i) determining the existence of a Weekly Reporting Event, (ii) determining satisfaction of the Payment Conditions and (iii) Section 5.06(b), the Availability Block shall be deemed to equal the greater of (i) 5.0% of the Total Line Cap and (ii) $23,000,000; provided further that for purposes of calculating Excess Availability in connection with determining the existence of a Cash Dominion Event, the Availability Block shall be deemed to equal $0.

"**Excess Unadjusted Availability**" means, at any time, an amount equal to (a) the ABL Line Cap minus (b) the aggregate ABL Revolving Exposures of all ABL Revolving Lenders at such time.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Excluded Accounts**" means any account (a) the balance of which consists exclusively of and is used exclusively for deposit accounts established (or otherwise maintained) by the Borrower Agent and the Subsidiaries that do not have cash balances at any time exceeding $3,000,000 in the aggregate for all such deposit accounts or (b) any Trust Fund Account.

"**Excluded Subsidiary**" means (a) any Immaterial Subsidiary, (b) any Domestic Subsidiary that is (and for so long as such Domestic Subsidiary is) prohibited by law, regulation or contractual obligations (to the extent existing on the Closing Date or on the date such Person becomes a Subsidiary (and not entered

into in contemplation of such Person becoming a Subsidiary or for the primary purpose of being classified as an Excluded Subsidiary hereunder)) from providing a Loan Guaranty or that would (and for so long as it would) require a governmental (including regulatory) consent, approval, license or authorization to provide such Loan Guaranty or where the provision of such Loan Guaranty would result in material adverse tax consequences as reasonably determined by the Parent Borrower, (c) any Foreign Subsidiary, (d) any not-for-profit Subsidiary, (e) any Captive Insurance Subsidiaries, (f) any special purpose entities used for securitization facilities, (g) any Disregarded Domestic Subsidiary, (h) any FSHCO Subsidiary, (i) any direct or indirect Domestic Subsidiary of a Foreign Subsidiary, FSHCO Subsidiary or Disregarded Domestic Subsidiary, and (j) any other Domestic Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower Agent, the burden or cost of providing a Loan Guaranty or a Lien to secure such Loan Guaranty shall outweigh the benefits to be afforded thereby.

"**Excluded Swap Obligation**" means, with respect to any Loan Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Loan Guaranty of such Loan Guarantor of, or the grant by such Loan Guarantor of a security interest to secure, such Swap Obligation (or any Loan 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 Loan Guarantor's failure for any reason to constitute an ECP at the time the Loan Guaranty of such Loan Guarantor or the grant of such security interest becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"**Excluded Taxes**" means, with respect to Administrative Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Borrower or any other Loan Party hereunder, (a) Taxes imposed on (or measured by) its income (however denominated) or franchise Taxes (i) by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of the Administrative Agent or any Lender, in which its applicable lending office is located (or relevant office for receiving payments from or on account of the Borrowers or making funds available to or for the benefit of the Borrowers), or (ii) that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction described in clause (a), (c) in the case of a Lender, any U.S. federal withholding tax that is imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which such Lender acquires such interest in the Loan or Commitment (or designates a new lending office), except to the extent that such 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 any Borrower or any other Loan Party with respect to such withholding tax pursuant to Section 2.17(a), (d) any tax imposed as a result of a Lender's failure to comply with Section 2.17(e), and (e) any U.S. withholding tax under FATCA.

"**Existing Credit Agreement**" means that certain ABL Credit Agreement (as amended, restated, modified or otherwise supplemented from time to time prior to the Closing Date), dated as of August 19, 2015, among, *inter alios*, Holdings, the Borrowers, certain subsidiaries of the Borrowers from time to time party thereto, as guarantors, the lenders from time to time party thereto and JPMCB, as administrative agent and collateral agent.

"**Existing Letter of Credit**" means any letter of credit previously issued for the account of any Borrower or any other Loan Party by a Lender or an Affiliate of a Lender that is (a) outstanding on the Closing Date and (b) listed on Schedule 1.01(b).

"**Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or, except with respect to Articles 5 and 6, heretofore owned, leased, operated or used by Ultimate Parent, any of its Subsidiaries or any of their respective predecessors or Affiliates.

"**FATCA**" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant thereto, including any intergovernmental agreements and any rules or guidance implementing such intergovernmental agreements.

"**Federal Funds Effective Rate**" means, for any day, the rate calculated by the NYFRB based on such day's Federal funds transactions by depositary institutions (as determined in such manner as the NYFRB shall set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as the Federal funds effective rate, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it; provided that, if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"**Fee Letter**" means that certain Fee Letter dated April 25, 2023, by and among the Parent Borrower, Party City and JPMCB, as amended by that certain Omnibus Amendment to Engagement Letter and Fee Letter dated August 1, 2023.

"**FILO Applicable Percentage**" means, with respect to any FILO Lender, a percentage equal to a fraction the numerator of which is such FILO Lender's FILO Commitment and the denominator of which is the aggregate FILO Commitments; provided that for purposes of Section 2.22 and otherwise herein, when there is a Defaulting Lender, any such Defaulting Lender's Commitment shall be disregarded in any such calculations. If the FILO Commitments have expired, the FILO Applicable Percentages of each FILO Lender shall be determined based on the FILO Exposure of the applicable FILO Lenders, giving effect to any assignments and to any FILO Lender's status as a Defaulting Lender at the time of determination.

"**FILO Borrowing Base**" means, at any time, an amount equal to (a) the Trade Receivables Component plus (b) the Inventory Component plus (c) the Credit Card Receivables Component minus (d) the amount of all Reserves (other than any FILO Reserves) as may have been established in accordance with Section 2.25 at such time. The FILO Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.01(l) and Reserves established pursuant to Section 2.25.

"**FILO Commitment**" means, with respect to each FILO Lender, the commitment of such FILO Lender hereunder set forth as its FILO Commitment opposite its name on Schedule 1.01(a) hereto or as may subsequently be set forth in the Register from time to time. As of the Closing Date, the aggregate FILO Commitments are $17,110,500.

"**FILO Credit Extensions**" means FILO Loans.

"**FILO Exposure**" means, with respect to any FILO Lender at any time, the sum of the outstanding principal amount of such Lender's FILO Loans.

"**FILO Facility**" has the meaning assigned to such term in the recitals to this Agreement. The FILO Facility provided hereunder pursuant to the FILO Commitments shall be funded on a first-in basis and repaid on a last-out basis, all as provided herein.

"**FILO Lender**" means each Lender which holds a FILO Commitment and any other Person who becomes a "FILO Lender" in accordance with the provisions of this Agreement.

"**FILO Line Cap**" means at any time, the FILO Commitments then in effect.

"**FILO Loan**" means, collectively, the Loans made by the FILO Lenders with FILO Commitments pursuant to Article 2.

"**FILO Prepayment Conditions**" has the same meaning assigned to "Payment Conditions" hereunder.

"**FILO Reserve**" means, at any time, the amount (if positive) equal to the difference between (a) the aggregate outstanding principal amount of FILO Loans and (b) the FILO Borrowing Base.

"**Financial Covenant**" means the covenant set forth in Section 6.18.

"**Financial Officer**" of any Person means the chief financial officer, treasurer, assistant treasurer, vice president of finance or controller of such Person.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of a Financial Officer of the Borrower Agent that such financial statements fairly present, in all material respects, in accordance with GAAP, the financial condition of Ultimate Parent and its Subsidiaries as at the dates indicated and the results of their operations and their Cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"**Financial Plan**" has the meaning assigned to such term in Section 5.01(h).

"**First Priority**" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is senior in priority to any other Lien to which such Collateral is subject.

"**Fiscal Month**" has the meaning assigned to such term in Section 5.01(l).

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year, such fiscal quarter ending on the later of the retail fiscal quarter and the calendar quarter.

"**Fiscal Year**" means the fiscal year of Ultimate Parent and its Subsidiaries ending on December 31 of each calendar year or the Saturday closest to December 31 of each calendar year.

"**Fixed Charge Coverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Adjusted EBITDA for such Test Period minus (i) Maintenance Capital Expenditures (except such expenditures financed with Indebtedness other than Loans) during such period to (b) Fixed Charges for such Test Period, in all cases calculated for Ultimate Parent, Holdings, Borrower Agent and the Subsidiaries on a Pro Forma Basis.

"**Fixed Charges**" means, with reference to any period, without duplication, the sum of (a) Consolidated Cash Interest Expense, plus (b) the aggregate amount of scheduled principal payments in respect of Indebtedness of Ultimate Parent and its Subsidiaries paid or payable in Cash during such period (other than payments made by Ultimate Parent or any Subsidiary to Ultimate Parent or any Subsidiary), plus (c) the aggregate amount of any mandatory prepayments of principal in respect of the Second Lien Notes and any Indebtedness permitted under Section 6.01(k) or (w) (other than payments made by Ultimate Parent or any Subsidiary to Ultimate Parent or any Subsidiary), plus (d) the aggregate amount of federal, state, local and foreign income taxes paid or payable in Cash during such period, plus (e) the aggregate amount of Restricted Payments under Section 6.05(a)(i)(B) (to the extent not otherwise included pursuant to clause (c)), Section 6.05(a)(ii) and Section 6.05(a)(iii) plus (f) scheduled payments in respect of Capital

Leases paid or payable in Cash during such period, all calculated for such period for Ultimate Parent, Holdings, Borrower Agent and the Subsidiaries, on a consolidated basis.

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

"**Floor**" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to Adjusted Term SOFR. For the avoidance of doubt the Floor for Adjusted Term SOFR under this Agreement shall be 0.00%.

"**Foreign Lender**" means a Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"**Foreign Subsidiary**" means any subsidiary that is not a Domestic Subsidiary.

"**FSHCO Subsidiary**" means any direct or indirect Domestic Subsidiary substantially all of the assets of which consist of the equity and/or indebtedness treated as equity for U.S. federal income tax purposes, of one or more Foreign Subsidiaries.

"**Funding Account**" has the meaning assigned to such term in Section 2.03(vi).

"**GAAP**" means generally accepted accounting principles in the United States of America in effect and applicable to that accounting period in respect of which reference to GAAP is being made, subject to the provisions of Section 1.04.

"**Governmental Authority**" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state or locality of the United States, the United States, or a foreign government.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Granting Lender**" has the meaning assigned to such term in Section 9.05(e).

"**Guarantee**" of or by any Person (the "**Guarantor**") means any obligation, contingent or otherwise, of the Guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation of any other Person (the "**Primary Obligor**") in any manner, whether directly or indirectly, and including any obligation of the Guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other monetary obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the Primary Obligor so as to enable the Primary Obligor to pay such Indebtedness or other monetary obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or monetary obligation, (e) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (f) any Lien on any assets of such Guarantor securing any

Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or monetary other obligation is assumed by such Guarantor (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

"**Guaranteed Obligations**" has the meaning assigned to such term in Section 10.01.

"**Guarantor Percentage**" has the meaning assigned to such term in Section 10.10.

"**Hazardous Materials**" means any chemical, material, substance or waste, or any constituent thereof, exposure to which is prohibited, limited or regulated by any Environmental Law or any Governmental Authority or which may or could pose a hazard to the health and safety or to the indoor or outdoor environment.

"**Hazardous Materials Activity**" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Material, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Material, and any corrective action or response action with respect to any of the foregoing.

"**Hedge Agreement**" means any agreement with respect to any Derivative Transaction between Ultimate Parent or any Subsidiary and any other Person.

"**Hedging Obligations**" means, with respect to any Person, the obligations of such Person under any Hedge Agreement.

"**Holdings**" has the meaning assigned to such term in the preamble to this Agreement.

"**IFRS**" means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**Immaterial Subsidiary**" means, as of any date, any Subsidiary of the Borrower Agent (a) having Consolidated Total Assets in an amount of less than 4.0% of Consolidated Total Assets of Ultimate Parent and its Subsidiaries and (b) contributing less than 4.0% to consolidated revenues of Ultimate Parent and its Subsidiaries, in each case, for the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01(b) or (c); provided that the Consolidated Total Assets (as so determined) and revenue (as so determined) of all Immaterial Subsidiaries shall not exceed 5.0% of Consolidated Total Assets of Ultimate Parent and its Subsidiaries or 5.0% of the consolidated revenues of Ultimate Parent and its Subsidiaries for the relevant Test Period, as the case may be; provided that, prior to the date the Audit Delivery Condition is satisfied, in no event shall any Subsidiary be an Immaterial Subsidiary unless (i) such Subsidiary was an Immaterial Subsidiary under the Existing Credit Agreement immediately prior to the Closing Date or (ii) such Subsidiary has Consolidated Total Assets in an amount less than $10,000 as of the end of the relevant Test Period and contributes less than $10,000 to the consolidated revenues of the Borrower Agent and the Subsidiaries for the relevant Test Period; provided that the Consolidated Total Assets (as so determined) and revenue (as so determined) of all Immaterial Subsidiaries that are deemed Immaterial Subsidiaries in reliance on this clause (ii) shall not, in either case, exceed $50,000.

"**Immediate Family Member**" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"**Indebtedness**", as applied to any Person, means, without duplication, (a) all indebtedness for borrowed money; (b) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (c) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet prepared in accordance with GAAP; (d) any obligation owed for all or any part of the deferred purchase price of property or services (excluding (w) any earn out obligation or purchase price adjustment until such obligation becomes a liability on the balance sheet in accordance with GAAP, (x) other than for purposes of Section 7.01, any such obligations incurred under ERISA, (y) trade accounts payable in the ordinary course of business (including on an inter-company basis), other than trade accounts payable owed to Persons other than Loan Parties which are overdue by more than 90 days and not being contested in good faith by appropriate proceedings, and (z) liabilities associated with customer prepayments and deposits), which purchase price is (i) due more than six months from the date of incurrence of the obligation in respect thereof or (ii) evidenced by a note or similar written instrument; (e) all Indebtedness of others secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is non-recourse to the credit of that Person; (f) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (g) the Guarantee by such Person of the Indebtedness of another; (h) all obligations of such Person in respect of any Disqualified Capital Stock and (i) all net obligations of such Person in respect of any Derivative Transaction, including, without limitation, any Hedge Agreement, whether or not entered into for hedging or speculative purposes; provided that (i) in no event shall obligations under any Derivative Transaction be deemed "Indebtedness" for any calculation of the Total Leverage Ratio, Fixed Charge Coverage Ratio or any other financial ratio under this Agreement except to the extent of any accrued interest in respect of unpaid termination or settlement amounts thereunder and (ii) the amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith. 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, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would otherwise be included in the calculation of Consolidated Total Debt; provided that, notwithstanding anything herein to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Accounting Standards Codification Topic 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose hereunder as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness hereunder but for the application of this proviso shall not be deemed an incurrence of Indebtedness hereunder.

"**Indemnified Taxes**" means Taxes, other than Excluded Taxes, (a) 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 the foregoing clause (a) hereof, Other Taxes.

"**Information**" has the meaning set forth in Section 3.11(a).

"**Initial Investor**" means a Person that, together with its Affiliates, beneficially owns, directly or indirectly, Capital Stock representing at least 8.0% of the total voting power of all of the outstanding voting stock of Holdings, as of the Closing Date.

"Intellectual Property" has the meaning assigned to such term in the Pledge and Security Agreement.

"**Intercompany Note**" means a promissory note substantially in the form of Exhibit M.

"**Intercreditor Agreement**" means that certain Intercreditor Agreement, dated as of the Closing Date, by and between the Administrative Agent and the Second Lien Notes Trustee, substantially in the form of Exhibit N, subject to modifications following the Closing Date in accordance with (and subject to) the terms of Section 6.01(w).

"**Interest Election Request**" means a request by the Borrower Agent in the form of Exhibit I hereto or such other form reasonably acceptable to the Administrative Agent to convert or continue a Borrowing in accordance with Section 2.08.

"**Interest Payment Date**" means (a) with respect to any ABR Loan (including any Swingline Loan), the first day (or, if such day is not a Business Day, the next succeeding Business Day) of each January, April, July and October and the Maturity Date, (b) with respect to any Term SOFR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term SOFR Borrowing with an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months' duration been applicable to such Borrowing and (c) with respect to any Loan, the Maturity Date.

"**Interest Period**" means, with respect to any Term SOFR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter, as the Borrowers may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

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

"**Inventory Component**" means (a) for purposes of determining the ABL Borrowing Base, (i) during the period following delivery of the Borrowing Base Certificates for the Fiscal Month of May in any calendar year until the earlier of (x) the date of actual delivery of the Borrowing Base Certificate for the Fiscal Month of September in any calendar year or (y) the date such Borrowing Base Certificate for the Fiscal Month of September is required to be delivered in accordance with Section 5.01(l), 92.5% and (ii) at any other time, 90%, in each case, of the Net Recovery Percentage of Eligible Inventory and Eligible In-Transit Inventory (in each case, net of Inventory Reserves not already reflected in the determination of Net Recovery Percentage) multiplied by the value of each such category of Inventory and (b) for purposes of determining the FILO Borrowing Base, (i) during the period following delivery of the Borrowing Base Certificates for the Fiscal Month of May in any calendar year until the earlier of (x) the date of actual delivery of the Borrowing Base Certificate for the Fiscal Month of September in any calendar year or (y) the date such Borrowing Base Certificate for the Fiscal Month of September is required to be delivered in accordance with Section 5.01(l), 2.5% and (ii) at any other time, 5.0%, in each case, of the Net Recovery

Percentage of Eligible Inventory and Eligible In-Transit Inventory (in each case, net of Inventory Reserves not already reflected in the determination of Net Recovery Percentage) multiplied by the value of each such category of Inventory; provided that, for purposes of determining the period referred to in clause (a)(i), in the event that a Cash Dominion Event has occurred and is continuing, such period shall be calculated following the delivery of the Borrowing Base Certificate for the first week of June in any calendar year until the earlier of (x) the date of actual delivery of the Borrowing Base Certificate for the first week of October in any calendar year or (y) the date such Borrowing Base Certificate for the first week of October is required to be delivered in accordance with Section 5.01(l).

"**Inventory Reserves**" means (a) such reserves as may be established from time to time in accordance with Section 2.25 with respect to changes in the determination of the saleability, of the Eligible Inventory or which reflect such other factors as negatively affect the market value of the Eligible Inventory and (b) Shrink Reserves. Without limiting the generality of the foregoing, Inventory Reserves may, in the Administrative Agent's Permitted Discretion, include reserves based on: (i) seasonality; (ii) imbalance; (iii) change in Inventory character; (iv) change in Inventory composition; (v) change in Inventory mix; (vi) mark-downs (both permanent and point of sale); (vii) out-of-date and/or expired Inventory; and (viii) Inventory which is to be returned to vendor.

"**Investment**" means (a) any purchase or other acquisition by Ultimate Parent or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than any Loan Party), (b) the acquisition by purchase or otherwise (other than purchases or other acquisitions of inventory, materials, supplies and equipment in the ordinary course of business) of all or a substantial portion of the business, property or fixed assets of any Person or any division or line of business or other business unit of any Person, and (c) any loan, advance (other than (i) advances to current or former employees, officers, directors and consultants of the Borrowers or the Subsidiaries or any Parent Company for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business and (ii) advances made on an inter-company basis in the ordinary course of business for the purchase of inventory) or capital contribution by Ultimate Parent or any of its Subsidiaries to any other Person (other than Loan Party). Subject to Section 5.10, the amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment, but giving effect to any repayments of principal in the case of Investments in the form of loans and any return of capital or return on Investment in the case of equity Investments (whether as a distribution, dividend, redemption or sale but not in excess of the amount of the initial Investment).

"**ISDA Definitions**" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"**Issuing Bank**" means as the context may require, (a) JPMCB, (b) Wells Fargo Bank, National Association, (c) Bank of America, N.A., (d) any other Lender that, at the request of any Borrower and with the consent of the Administrative Agent (not to be unreasonably withheld), agrees to become an Issuing Bank and (e) solely with respect to any Existing Letter of Credit (and any amendment, renewal or extension thereof in accordance with this Agreement), the Lender or Affiliate of a Lender that issued such Existing Letter of Credit. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.06 with respect to such Letters of Credit). At any time there is more than one Issuing Bank, all singular references to the Issuing Bank shall mean any Issuing Bank, either Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or both (or all) Issuing Banks, as the context may require.

"**Issuing Bank Sublimits**" means, as of the Closing Date, (a) $15,828,513, in the case of JPMCB, (b) $28,342,974, in the case of Wells Fargo Bank, National Association and (c) $15,828,513, in the case of Bank of America, N.A.; provided that any Issuing Bank shall be permitted at any time to increase its Issuing Bank Sublimit with the consent of the Borrower Agent, so long as the aggregate amount of Issuing Bank Sublimits does not exceed the ABL Revolving Commitments.

"**Joinder Agreement**" has the meaning assigned to such term in Section 5.12(a).

"**JPMCB**" has the meaning assigned to such term in the preamble to this Agreement.

"**Junior Indebtedness**" means any Subordinated Indebtedness, unsecured Indebtedness for borrowed money and any Indebtedness secured by Liens junior to the Lien of the Administrative Agent with respect to the Collateral.

"**Landlord Lien**" means any Lien of a landlord on Ultimate Parent's or any of its Subsidiary's property, granted by statute or otherwise.

"**Landlord Lien Reserve**" means an amount equal to up to three months' rent for all of the Loan Parties' leased locations or the amount that may be payable for three months to any third party warehouse, trailer storage or other self-storage facility or bailee where Eligible Inventory is located in each Landlord Lien State for retail stores, trailer storage or self-storage facilities and in any state for distribution centers or warehouses (any such leased location, a "**Specified Location**"), in each case, other than any such Specified Locations with respect to which the Administrative Agent shall have received a Collateral Access Agreement in form reasonably satisfactory to the Administrative Agent.

"**Landlord Lien State**" means any state in which, at any time, a landlord's claim for rent or the claims of the owner of a leased trailer or a self-storage facility for rent, fees or other charges has priority by operation of law over the Lien of the Administrative Agent in any of the Collateral consisting of Eligible Inventory, as notified by the Administrative Agent to the Borrowers in writing.

"**LC Collateral Account**" has the meaning assigned to such term in Section 2.06(j).

"**LC Disbursement**" means a payment made by an Issuing Bank pursuant to a drawing on a Letter of Credit.

"**LC Exposure**" means, at any time of determination, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of any Borrower or any other Loan Party at such time, less (c) the amount then on deposit in the LC Collateral Account. The LC Exposure of any ABL Revolving Lender at any time shall be its ABL Applicable Percentage of the total LC Exposure at such time.

"**LCT Election**" has the meaning set forth in Section 1.07.

"**LCT Period**" has the meaning set forth in Section 1.07.

"**LCT Test Date**" has the meaning set forth in Section 1.07.

"**Lenders**" means the Persons listed on the Commitment Schedule, any Additional Lender and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender.

"**Letter of Credit**" means any Standby Letter of Credit or Commercial Letter of Credit issued (or, in the case of an Existing Letter of Credit, deemed to be issued) pursuant to this Agreement, and the term "Letter of Credit" means any one of them or each of them singularly, as the context may require.

"**Letter of Credit Request**" has the meaning assigned to such term in Section 2.06(b).

"**Lien**" means any mortgage, pledge, hypothecation, license, 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 (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capital Lease having substantially the same economic effect as any of the foregoing), in each case, in the nature of security; provided that in no event shall an operating lease in and of itself be deemed a Lien.

"**Limited Condition Acquisition**" means any Permitted Acquisition whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

"**Liquidation**" means the exercise by the Administrative Agent of those rights and remedies accorded to Administrative Agent under the Loan Documents and applicable law as a creditor of the Loan Parties with respect to the realization on the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Administrative Agent, of any public, private or going out of business sale or other disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word "Liquidation" (such as "**Liquidate**") are used with like meaning in this Agreement.

"**Loan Documents**" means this Agreement, any Promissory Notes issued pursuant to the Agreement, any Letters of Credit or Letter of Credit applications, the Collateral Documents and the Intercreditor Agreement. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto.

"**Loan Guarantor**" means (a) Ultimate Parent, (b) Holdings, (c) any other Parent Company, (d) each Subsidiary Guarantor and (e) each Borrower but solely with respect to (x) Secured Hedging Obligations under Hedge Agreements and (y) Banking Services Obligations under arrangements, in the case, to which any other Borrower is (and such Borrower is not) a party.

"**Loan Guaranty**" means Article 10 of this Agreement.

"**Loan Parties**" means (without duplication) Ultimate Parent, Holdings, any other Parent Company, each Borrower, each Subsidiary Guarantor and any other Person who becomes a party to this Agreement as a Loan Party pursuant to a Joinder Agreement, and their respective successors and assigns.

"**Loans**" means ABL Revolving Loans, FILO Loans, Swingline Loans and Protective Advances.

"**Maintenance Capital Expenditures**" means any Consolidated Capital Expenditures of Ultimate Parent and its Subsidiaries that are necessary to (a) repair any damage to any store, distribution center or other facility of Ultimate Parent or any of its Subsidiaries or (b) maintain any store, distribution center or other facility of Ultimate Parent or any of its Subsidiaries in good condition and working order (including any Consolidated Capital Expenditures that are necessary to repair any ordinary wear and tear to such store, distribution center or other facility).

"**Margin Stock**" has the meaning assigned to such term in Regulation U.

"**Material Adverse Effect**" means, a material adverse effect on (i) the business, assets, financial condition or results of operations, in each case, of Ultimate Parent, Holdings, the Borrower Agent and the Subsidiaries, taken as a whole, (ii) the rights and remedies (taken as a whole) of the Administrative Agent, the Issuing Banks or the Lenders under the applicable Loan Documents or (iii) the ability of the Borrowers and the Loan Guarantors (taken as a whole) to perform their payment obligations under the Loan Documents.

"**Material Indebtedness**" means the Second Lien Notes, any Indebtedness permitted under Section 6.01(k) or (w) and Indebtedness (other than Loans and Letters of Credit) or obligations in respect of one or more Derivative Transactions of any one or more of the Loan Parties in an aggregate principal amount that exceeds $25,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Loan Parties in respect of any Derivative Transaction at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party would be required to pay if such Derivative Transaction were terminated at such time.

"**Material Intellectual Property**" means any Intellectual Property owned by a Borrower or any other Loan Party that, in the good faith determination of the Borrower Agent, is material to the business of Ultimate Parent and of its Subsidiaries, taken as a whole (whether owned as of the Closing Date or thereafter acquired).

"**Material Real Estate Asset**" means (a) any fee-owned Real Estate Asset having a fair market value (as reasonably estimated by the Borrower Agent) in excess of $5,000,000 as of such date and (b) any fee-owned Real Estate Asset acquired by any Loan Party after the Closing Date having a fair market value (as reasonably estimated by the Borrower Agent) in excess of $5,000,000 as of the date of acquisition thereof shall be a "Material Real Estate Asset".

"**Maturity Date**" means October 12, 2028, or, with respect to the ABL Revolving Facility, any earlier date on which the aggregate ABL Revolving Commitments are reduced to zero or otherwise terminated pursuant to the terms hereof.

"**Maximum Liability**" has the meaning assigned to such term in Section 10.10.

"**Maximum Rate**" has the meaning assigned to such term in Section 9.19.

"**MIRE Event**" means any increase, extension of the maturity or renewal of any of the Commitments or Loans or any other incremental or additional credit facilities hereunder, but excluding (i) any continuation or conversion of borrowings, (ii) the making of any Loans, or (iii) the issuance, renewal or extension of Letters of Credit.

"**Moody's**" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"**Mortgaged Properties**" means, initially, the owned real properties of the Loan Parties specified on Schedule 1.01(c), and shall include each other parcel of real property and improvements thereto with respect to which a Mortgage is required to be granted pursuant to Section 5.12.

"**Mortgages**" means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, on owned real property of a Loan Party in form and substance reasonably satisfactory to the Administrative Agent.

"**Mudrick Promissory Note**" means the promissory note due October 12, 2024 (or no later than the next business day thereafter) issued by Party City Holdco Inc. in the aggregate principal amount equal to $1.5 million.

"**Multiemployer Plan**" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"**Narrative Report**" means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of Ultimate Parent and its Subsidiaries in the form prepared for presentation to senior management thereof for the applicable Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate.

"**Net Proceeds**" means (a) with respect to any asset sale, the Cash proceeds (including Cash Equivalents and Cash proceeds subsequently received (as and when received) in respect of noncash consideration initially received), net of (i) selling costs and out-of-pocket expenses (including reasonable broker's fees or commissions, legal fees, transfer and similar taxes and the Borrowers' good faith estimate of income taxes paid or payable in connection with such sale), (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustment associated with such asset sale (provided that to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Proceeds), (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money (other than the Loans and any other Indebtedness secured by a Lien that is *pari passu* or junior to the Lien on the Collateral securing the Secured Obligations) which is secured by the asset sold in such asset sale and which is required to be repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset), (iv) Cash escrows (until released from escrow to Ultimate Parent or any of its Subsidiaries) from the sale price for such asset sale and (v) [reserved]; and (b) with respect to any issuance or incurrence of Indebtedness, the Cash proceeds thereof, net of all Taxes paid (or reasonably estimated to be payable) including the amount of Restricted Payments permitted with respect to the payment of Taxes under Section 6.05(a)(i)(B) and customary fees, commissions, costs, underwriting discounts and other expenses incurred in connection therewith.

"**Net Recovery Percentage**" means, with respect to Inventory of any Person, the projected recovery of such Inventory on a "going out of business sale" basis, net of all reasonable costs and expenses of liquidation thereof, as based upon the most recent Inventory appraisal conducted in accordance with this Agreement and expressed as a percentage of Cost of such Inventory.

"**Non-Consenting Lender**" has the meaning assigned to such term in Section 2.19(b).

"**Non-Paying Guarantor**" has the meaning assigned to such term in Section 10.11.

"**NYFRB**" means the Federal Reserve Bank of New York.

"**Obligated Party**" has the meaning assigned to such term in Section 10.02.

"**Obligations**" means all unpaid principal of and accrued and unpaid interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and all other advances to, debts, liabilities and obligations of the Loan Parties to the Lenders or to any Lender, the Administrative Agent, any Issuing Bank or any indemnified party arising under the Loan Documents in respect of any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute, contingent, due or to become due, now existing or hereafter arising.

"**Organizational Documents**" means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, (b) with respect to any limited partnership, its certificate of limited partnership, and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, and (d) with respect to any limited liability company, its articles of organization or certificate of formation, and its operating agreement. In the event any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"**Other Connection Taxes**" means, with respect to any Lender or Administrative Agent, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising solely from (and that would not have existed but for) such recipient

having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to or enforced any Loan Document).

"**Other Taxes**" means any and all present or future stamp, court or documentary, recording, filing or other similar taxes, charges or similar levies arising from any payment made hereunder, from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19(b)).

"**Parent Borrower**" has the meaning assigned to such term in the preamble to this Agreement.

"**Parent Company**" means (a) Ultimate Parent, (b) Holdings and (c) any other Person of which the Borrower Agent is an indirect Wholly-Owned Subsidiary to the extent such Person is a Loan Party.

"**Participant**" has the meaning assigned to such term in Section 9.05(c).

"**Participant Register**" has the meaning assigned to such term in Section 9.05(c).

"**Party City**" has the meaning assigned to such term in the preamble to this Agreement.

"**Paying Guarantor**" has the meaning assigned to such term in Section 10.11.

"**Payment**" has the meaning assigned to such term in Article 8.

"**Payment Conditions**" means, with respect to any transaction, (a) there is no Default or Event of Default existing immediately before or after such transaction, (b) 90-Day Excess Availability and Excess Availability on the date of the proposed transaction (in each case, calculated on a Pro Forma Basis to include the borrowing of any Loans and Swingline Loans, and issuance of any Letters of Credit in connection with the proposed transaction) are equal to or greater than the greater of (i) 25.0% of the Total Line Cap and (ii) $120,000,000, (c) the Fixed Charge Coverage Ratio (calculated on a Pro Forma Basis to include the borrowing of any Loans and Swingline Loans, the issuance of any Letter of Credit and any Fixed Charges in connection with the proposed transaction) as of such date is at least 1.00 to 1.00, (d) the Audit Delivery Condition has been satisfied and (e) the Borrower Agent shall have delivered a certificate of a Responsible Officer to the Administrative Agent certifying as to compliance with the requirements of clauses (a) through (c).

"**Payment Notice**" has the meaning assigned to such term in Article 8.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any employee pension benefit plan, as defined in Section 3(2) of ERISA (other than a Multiemployer Plan), subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which Ultimate Parent or any of its Subsidiaries, or any of their respective ERISA Affiliates, is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"**Perfection Certificate**" has the meaning assigned to such term in the Pledge and Security Agreement.

"**Perfection Certificate Supplement**" has the meaning assigned to such term in the Pledge and Security Agreement.

"**Permitted Acquisition**" means any acquisition by the Borrower Agent or any of its Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of or any business line,

unit, division or any operating stores of, any Person or of a majority of the outstanding Capital Stock of any Person (but in any event including any Investment in a Subsidiary which serves to increase any Borrower's or any Subsidiary's respective equity ownership in such Subsidiary), or any acquisition of or Investment in any joint venture; provided that:

(a) immediately prior to, and after giving effect to such acquisition, the Payment Conditions shall have been satisfied; provided that this clause (a) shall not apply to any acquisition or series of related acquisitions during any Fiscal Year in which the aggregate amount of consideration for such acquisition or series of related acquisitions is less than $25,000,000, so long as the aggregate amount of consideration for such acquisition or series of related acquisitions, together with the aggregate amount of consideration for all other Permitted Acquisitions in such period (excluding any Permitted Acquisition previously subject to the Payment Conditions pursuant to this clause (a)), is less than $35,000,000.

(b) on the date of execution of the purchase agreement in respect of such acquisition, no Event of Default shall have occurred and be continuing or would result therefrom;

(c) the Borrower Agent shall take or cause to be taken with respect to the acquisition of any new Subsidiary of the Borrower Agent, each of the actions required to be taken under Section 5.12, as applicable;

(d) the total consideration paid for by the Loan Parties for (i) the acquisition, directly or indirectly, of any Person that does not become a Guarantor and (ii) if an asset acquisition, assets that are not acquired by any Borrower or Guarantor, when taken together with the total consideration for all such acquired Persons and assets acquired after the Closing Date, shall not exceed the sum of (A) $75,000,000 or, only following satisfaction of the Audit Delivery Condition, if greater, 4.75% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 5.01 at such time and (B) amounts available under clause (q) of Section 6.07; provided that the limitation under this clause (d) shall not apply to any acquisition to the extent (x) such acquisition is made with the proceeds of sales of the Qualified Capital Stock of, or common equity capital contributions to, the Borrower Agent or (y) the Person so acquired (or the Person owning the assets so acquired) becomes a Subsidiary Guarantor even though such Subsidiary Guarantor owns Capital Stock in Persons that are not otherwise required to become Subsidiary Guarantors, if, in the case of this clause (y) for such acquisition, not less than 80.0% of the Consolidated Adjusted EBITDA of the Person(s) acquired (for this purpose and for the component definitions used therein, determined on a consolidated basis for such Persons and their Subsidiaries) is directly generated by Person(s) that become Subsidiary Guarantors (*i.e.*, disregarding all such Consolidated Adjusted EBITDA generated by Subsidiaries of such Subsidiary Guarantors that are not Subsidiary Guarantors);

(e) the Borrowers shall have delivered to the Administrative Agent the final executed documentation relating to such acquisition within one (1) Business Day following the consummation thereof; and

(f) the Borrowers shall have delivered to the Administrative Agent on or prior to such acquisition a certificate of a Responsible Officer stating that any related incurrence of Indebtedness is permitted pursuant to this Agreement, that the conditions set forth in clauses (a) through (d) above have been satisfied and including any supporting calculations to demonstrate compliance with clause (a) above.

"**Permitted Discretion**" means a determination made in good faith and in the exercise of reasonable credit judgment (from the perspective of a secured asset-based lender) in accordance with customary business practices of the Administrative Agent, for comparable asset-based lending transactions.

"**Permitted Encumbrances**" means Liens permitted to exist as set forth in Section 6.02(b) through Section 6.02(j) and Section 6.02(p), Section 6.02(w), Section 6.02(z) and Section 6.02(aa).

"**Permitted Holders**" means (a) each Initial Investor and such Initial Investor's Affiliates and any Affiliates (including at the institutional level) of any fund, account (including any separately managed accounts) or investment vehicle that is controlled, managed, advised or sub-advised by such Initial Investor, an Affiliate of such Initial Investor or by the same investment manager, advisor or sub-advisor as such Initial Investor or an Affiliate of such Initial Investor, (b) the members of management of any Parent Company or such Parent Company's Subsidiaries that have ownership interests in any Parent Company as of the Closing Date, (c) the directors of any Parent Company or such Parent Company's Subsidiaries as of the Closing Date and (d)any Person with which the Persons described in clauses (a), (b) or (c) form a "group" (within the meaning of the federal securities laws) so long as, in the case of this clause (d), such Persons described in clauses (a), (b) or (c) beneficially own more than 50.0% of the relevant voting stock beneficially owned by the group, excluding, in each case and solely in their capacity as such, any Persons that beneficially own (directly or indirectly) interests in Anagram International, Inc., Anagram Holdings, LLC and/or any of the respective subsidiaries thereof.

"**Permitted Liens**" means each Lien permitted pursuant to Section 6.02.

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

"**Plan Asset Regulations**" means 29 CFR § 2510.3-101 *et seq.*, as modified by Section 3(42) of ERISA, as amended from time to time.

"**Plan of Reorganization**" means the Fourth Amended Joint Chapter 11 Plan of Reorganization of Party City Holdco Inc. and Its Debtor Affiliates [Docket No. 1672] and all exhibits, supplements, appendices and schedules thereto, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"**Pledge and Security Agreement**" means that certain Pledge and Security Agreement, dated as of the Closing Date, between the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties.

"**Prime Rate**" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"**Pro Forma Basis**" or "**pro forma effect**" means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Subject Transactions) in accordance with Section 1.08.

"**Promissory Note**" means a promissory note of the Borrowers payable to any Lender or its registered assigns, in substantially the form of Exhibit H hereto, evidencing the aggregate Indebtedness of the Borrowers to such Lender resulting from the Loans made by such Lender.

"**Protective Advance**" has the meaning assigned to such term in Section 2.04(a).

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

"**Public Company Costs**" means costs relating to compliance with the provisions of the Securities Act and the Exchange Act, in each case as applicable to companies with registered equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors' compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors' and officers' insurance, listing fees and all executive, legal and professional fees related to the foregoing.

"**QFC**" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"**QFC Credit Support**" has the meaning assigned to it in Section 9.25.

"**Qualified Capital Stock**" of any Person means any Capital Stock of such Person that is not Disqualified Capital Stock.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10,000,000 at the time the relevant Loan Guaranty or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) in real property then owned by any Loan Party.

"**Recapitalization**" means the repayment, redemption, defeasance, discharge, refinancing or termination in full of, redemption, defeasance, discharge, refinancing or termination to the extent accompanied by any prepayments or deposits required to defease, terminate and satisfy in full such Indebtedness) (a) all amounts, if any, due or owing under the Existing Credit Agreement, and the termination of all commitments thereunder, (b) that certain Senior Secured Superpriority Debtor-In-Possession Term Loan Credit Agreement, dated as of January 19, 2023, among, *inter alios*, Holdings, the Borrowers, the other guarantors party thereto from time to time, the financial institutions and other persons party thereto as the lenders and Ankura Trust Company, LLC, as administrative agent and collateral agent, (c) the 6.125% Senior Notes due 2023 issued by Party City Holdings Inc. in the aggregate principal amount equal to $350,000,000 (including any Registered Equivalent Notes), (d) the Senior Secured First Lien Floating Rate Notes due 2025 issued by Party City Holdings Inc. in the aggregate principal amount equal to $156,669,177 (including any Registered Equivalent Notes), (e) the 8.750% Senior Secured Notes due 2026 issued by the Borrower Agent in the aggregate principal amount equal to $750,000,000 (including any Registered Equivalent Notes), (f) the 6.625% Senior Notes due 2026 issued by Party City Holdings Inc. in the aggregate principal amount equal to $500,000,000 (including any Registered Equivalent Notes) and (g) all amounts, if any, due or owing under that certain the Term Loan Credit Agreement (as amended, restated, modified or otherwise supplemented from time to time prior to the Closing Date) dated as of August 19, 2015, among, inter alios, Holdings, the Parent Borrower, Party City, Deutsche Bank AG New York Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.

"**Reference Time**" with respect to any setting of the then-current Benchmark means (1) if such Benchmark is Term SOFR, 5:00 a.m. (Chicago time) on the day that is two U.S. Government Securities Business Days preceding the date of such setting and (2) if such Benchmark is not Term SOFR, the time determined by the Administrative Agent in its reasonable discretion.

"**Refinancing Indebtedness**" has the meaning assigned to such term in Section 6.01(p).

"**Register**" has the meaning assigned to such term in Section 9.05.

"**Registered Equivalent Notes**" means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

"**Regulation D**" means Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"**Regulation T**" means Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"**Regulation U**" means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"**Regulation X**" means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"**Related Parties**" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, trustees, employees, agents and advisors of such Person and such Person's Affiliates.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"**Relevant Governmental Body**" means with respect to a Benchmark Replacement in respect of Loans denominated in Dollars, the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

"**Report**" means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the Loan Parties' assets from information furnished by or on behalf of the Loan Parties, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent, subject to the provisions of Section 9.13.

"**Required Lenders**" means, at any time, Lenders having Credit Exposure and unused Commitments representing more than 50.0% of the sum of the total Credit Exposure and unused Commitments at such time; provided that the Credit Exposure and unused Commitments of any Defaulting Lender shall be disregarded in the determination of the Required Lenders at any time.

"**Requirements of Law**" means, with respect to any Person, collectively, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Reserves**" means Customer Credit Liability Reserves, Inventory Reserves, Landlord Lien Reserves, the FILO Reserve, any reserve established in connection with Indebtedness at any time that is less than 91 days prior to the maturity date thereof (including as a result of acceleration or otherwise)

(notwithstanding anything to the contrary herein, without any requirement for prior written notice as otherwise required under Section 2.25) and any and all other reserves established in accordance with and subject to Section 2.25, with respect to the ABL Borrowing Base, the FILO Borrowing Base, the ABL Line Cap, the FILO Line Cap, the Total Line Cap or otherwise. Without limiting the generality of the foregoing but subject to Section 2.25, there may be dilution reserves, reserves for unpaid and accrued sales taxes, reserves for banker's liens, rights of setoff or similar rights and remedies as to deposit or investment accounts, reserves for contingent liabilities of any Loan Party, reserves for uninsured or underinsured losses or litigation of any Loan Party, reserves for customs charges, freight and shipping charges related to any Inventory in transit, reserves for other taxes, fees, assessments, and other governmental charges with respect to the Collateral or any Loan Party, reserves for self-insurance and insurance premiums and reserves for royalties and other payments to owners or licensors of intellectual property.

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

"**Responsible Officer**" of any Person means the chief executive officer, the president, any vice president, the chief operating officer, any secretary or assistant secretary or any Financial Officer of such Person and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement. 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 Debt Payment**" has the meaning set forth in Section 6.05(b).

"**Restricted Payment**" means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of the Capital Stock of the Borrower Agent now or hereafter outstanding, except a dividend payable solely in shares of that class of the Capital Stock to the holders of that class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of any shares of any class of the Capital Stock of the Borrower Agent now or hereafter outstanding and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of the Capital Stock of the Borrower Agent now or hereafter outstanding.

"**Revolving Loans**" means collectively, the Loans made by the Lenders with ABL Revolving Commitments pursuant to Article 2.

"**S&P**" means Standard & Poor's Ratings Service, a division of the McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"**Sale and Lease-Back Transaction**" has the meaning assigned to such term in Section 6.10.

"**Sanctioned Country**" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, the so - called Donetsk People's Republic, the so- called Luhansk People's Republic, the Crimea Region of Ukraine, Cuba, Iran, North Korea and Syria).

"**Sanctioned Person**" means, at any time, any Person subject or target of any Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by the U.S. government, including by Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, U.S. Department of Commerce, or by the United Nations Security Council, the European Union, any European Union member state, His Majesty's Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b) (including,

without limitation for purposes of defining a Sanctioned Person, as ownership and control may be defined and/or established in and/or by any applicable laws, rules, regulations, or orders).

"**Sanctions**" means all economic or financial sanctions, trade embargoes or similar restrictions imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, His Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

"**SEC**" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of its functions.

"**Second Lien Notes**" means the notes due 2029 issued by Ultimate Parent in the aggregate principal amount equal to $232,394,231.

"**Second Lien Notes Documents**" means the Indenture under which the Second Lien Notes are issued and all other instruments, agreements and other documents evidencing the Second Lien Notes or providing for any Guarantee or other right in respect thereof.

"**Second Lien Notes Indenture**" means the Indenture for the Second Lien Notes, dated as of the date hereof, between Ultimate Parent, as the issuer, and the Second Lien Notes Trustee, as amended, supplemented or otherwise modified from time to time (to the extent such amendment, supplement or modification is permitted under the Loan Documents).

"**Second Lien Notes Trustee**" means Wilmington Savings Fund Society, FSB, in its capacity as trustee and collateral agent under the Second Lien Notes Indenture, and its permitted successors and assigns.

"**Secured Hedging Obligations**" means all Hedging Obligations under each Hedge Agreement that (a) is in effect on the Closing Date between any Borrower or any other Loan Party and a counterparty that is the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender as of the Closing Date or (b) is entered into after the Closing Date between any Borrower or any other Loan Party and any counterparty that is the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender at the time such Hedge Agreement is entered into, for which such Borrower or Loan Party (as applicable) agrees to provide security, in each case that has been designated to the Administrative Agent in writing by the Borrower Agent as being a Secured Hedging Obligation for the purposes of the Loan Documents.

"**Secured Obligations**" means all Obligations, together with (a) Banking Services Obligations and (b) all Secured Hedging Obligations; provided, however, that the definition of "Secured Obligations" shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

"**Secured Parties**" has the meaning assigned to such term in the Pledge and Security Agreement.

"**Securities**" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing; provided that "Securities" shall not include any earnout agreement or obligation or any employee bonus or other incentive compensation plan or agreement.

"**Securities Act**" means the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder.

"**Settlement**" has the meaning assigned to such term in Section 2.05(c).

"**Settlement Date**" has the meaning assigned to such term in Section 2.05(c).

"**Shrink Reserve**" means an amount estimated by the Administrative Agent in its Permitted Discretion to be equal to that amount which is required in order that the shrink reflected in current stock ledger of the Borrower Agent and the Subsidiaries would be reasonably equivalent to the shrink calculated as part of the Borrower Agent's most recent physical inventory (it being understood and agreed that no Shrink Reserve established by the Administrative Agent shall be duplicative of any shrink as so reflected in the current stock ledger of the Borrower Agent and the Subsidiaries or estimated by the Borrower Agent for purposes of computing the Borrowing Base other than at month's end).

"**SOFR**" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"**SOFR Administrator**" means the NYFRB (or a successor administrator of the secured overnight financing rate).

"**SOFR Administrator's Website**" means the NYFRB's website, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"**SOFR Determination Date**" has the meaning specified in the definition of "Daily Simple SOFR".

"**SOFR Rate Day**" has the meaning specified in the definition of "Daily Simple SOFR".

"**SPC**" has the meaning assigned to such term in Section 9.05(e).

"**Specified Location**" has the meaning set forth in the definition of "Landlord Lien Reserve."

"**Standby Letter of Credit**" means any Letter of Credit other than a Commercial Letter of Credit.

"**stated amount**" means, at any time, the maximum amount for which a Letter of Credit may be honored.

"**Store Exchange**" means the substantially concurrent purchase and sale or exchange of one or more stores, distribution centers and/or other locations (including any inventory, equipment and other assets used or useful at such location) or a combination of the foregoing and Cash and/or Cash Equivalents between any Borrower and/or any of its Subsidiaries on the one hand, and any Person on the other hand.

"**Subject Transaction**" means, with respect to any period, (a) the Transactions, (b) any Permitted Acquisition or the making of other Investments permitted by this Agreement, (c) any disposition of all or substantially all of the assets or stock of a subsidiary (or any business unit, line of business or division of Ultimate Parent or a Subsidiary) permitted by this Agreement, (d) the designation of a subsidiary as an Unrestricted Subsidiary or an Unrestricted Subsidiary as a Subsidiary in accordance with Section 5.10 hereof or (e) any other event that by the terms of the Loan Documents requires pro forma compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a pro forma basis.

"**Subordinated Indebtedness**" means any Indebtedness of Ultimate Parent or any of its Subsidiaries that is expressly subordinated in right of payment to the Obligations.

"**subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50.0% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other subsidiaries of that Person of a combination thereof; provided that in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"**Subsidiary**" means any subsidiary of Ultimate Parent other than an Unrestricted Subsidiary.

"**Subsidiary Borrower**" means (i) Party City and (ii) each Domestic Subsidiary (other than a Disregarded Domestic Subsidiary or FSHCO Subsidiary) that becomes a Subsidiary Borrower pursuant to a Subsidiary Borrower Joinder Agreement, together with its respective successors and assigns; each sometimes being referred to herein individually as a "Subsidiary Borrower".

"**Subsidiary Borrower Joinder Agreement**" means a joinder in substantially the form of Exhibit K hereto, to be executed by each Subsidiary Borrower designated as such after the Closing Date as provided in the definition of "Subsidiary Borrower". Upon receipt of any such Subsidiary Borrower Joinder Agreement, the Administrative Agent shall promptly transmit each such notice to each of the Lenders; provided that any failure to do so by the Administrative Agent shall not in any way affect the status of any such Domestic Subsidiary as a Subsidiary Borrower hereunder.

"**Subsidiary Guarantor**" means (x) on the Closing Date, each Subsidiary of the Borrower Agent (other than (i) the Subsidiary Borrower (except to the extent comprising a Loan Guarantor by operation of clause (iii) of the definition thereof) or (ii) any Excluded Subsidiary) and (y) thereafter, each Subsidiary of either Borrower that thereafter guarantees the Secured Obligations pursuant to the terms of this Agreement (which, for the avoidance of doubt, shall not include any Subsidiary that is an Excluded Subsidiary), in each case, until such time as the respective Subsidiary is released from its obligations under the Loan Guaranty in accordance with the terms and provisions hereof.

"**Subsidiary Guarantor Joinder Agreement**" has the meaning assigned to such term in Section 5.12.

"**Super Majority ABL Revolving Lenders**" means, at any time, ABL Revolving Lenders having ABL Revolving Exposure and unused ABL Revolving Commitments representing more than 66-2/3% of the sum of the total ABL Revolving Exposure and unused ABL Revolving Commitments at such time; provided that the ABL Revolving Exposure and unused ABL Revolving Commitments of any Defaulting Lender shall be disregarded in the determination of the Super Majority ABL Revolving Lenders at any time.

"**Super Majority FILO Lenders**" means, at any time, FILO Lenders having FILO Exposure and unused FILO Commitments representing more than 66-2/3% of the sum of the total FILO Exposure and unused FILO Commitments at such time; provided that the FILO Exposure and unused FILO Commitments of any Defaulting Lender shall be disregarded in the determination of the Super Majority FILO Lenders at any time.

"**Super Majority Lenders**" means, at any time, Lenders having Credit Exposure and unused Commitments representing more than 66-2/3% of the sum of the total Credit Exposure and unused Commitments at such time; provided that the Credit Exposure and unused Commitments of any Defaulting Lender shall be disregarded in the determination of the Super Majority Lenders at any time.

"**Supply Chain Obligations**" of the Loan Parties means any and all obligations of the Loan Parties, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), in connection with Supply Chain Services, in each case, that has been designated to the Administrative Agent in writing by the Borrower Agent as being a Supply Chain Obligation for the purposes of the Loan Documents.

"**Supply Chain Services**" means supply chain finance services including, without limitation, trade payable services and supplier accounts receivable purchases, in each case, to the extent provided to the Loan Parties by any Lender.

"**Supported QFC**" has the meaning assigned to it in Section 9.25.

"**Swap Obligation**" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

"**Swingline Lender**" means JPMCB, in its capacity as lender of Swingline Loans hereunder.

"**Swingline Loan**" has the meaning assigned to such term in Section 2.05(a).

"**Syndication Agent**" means Wells Fargo Bank, National Association and Bank of America, N.A.

"**Tax Group**" has the meaning assigned to such term in Section 6.05(a)(i)(B).

"**Taxes**" means any and all present and future taxes, levies, imposts, duties, deductions, assessments, fees, withholdings (including backup withholding) or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term SOFR**" means:

(a) with respect to any Term SOFR Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator; and

(b) for any calculation with respect to any ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month at approximately 5:00 a.m., Chicago time, on the day that is two U.S. Government Securities Business Days prior to such day, as such rate is published by the CME Term SOFR Administrator.

"**Term SOFR Borrowing**" means, as to any Borrowing, the Term SOFR Loans comprising such Borrowing.

"**Term SOFR Determination Day**" has the meaning assigned to it under the definition of Term SOFR Reference Rate.

"**Term SOFR Loan**" means a Loan that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of "Alternate Base Rate".

"**Term SOFR Reference Rate**" means, for any day and time (such day, the "**Term SOFR Determination Day**"), with respect to any Term SOFR Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period (or with respect to any ABR Loan and for a tenor of one month), the rate per annum published by the CME Term SOFR Administrator and identified by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City

time) on such Term SOFR Determination Day, the "Term SOFR Reference Rate" for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to Term SOFR has not occurred, then, so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such tenor for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the CME Term SOFR Administrator, so long as such first preceding U.S. Government Securities Business Day is not more than five (5) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

"**Termination Date**" has the meaning assigned to such term in the lead-in to Article 5.

"**Test Period**" means a period of four consecutive Fiscal Quarters.

"**Threshold Amount**" means $25,000,000.

"**Total Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt as of the last day of such Test Period (net of the Unrestricted Cash Amount as of such date) to (b) Consolidated Adjusted EBITDA for such Test Period, in each case for Ultimate Parent and its Subsidiaries.

"**Total Line Cap**" means, at any time of determination, an amount equal to the sum of the ABL Line Cap and FILO Line Cap.

"**Trade Receivables Component**" means (x) for purposes of determining the ABL Borrowing Base, the face amount of Eligible Trade Receivables multiplied by 90.0% and (y) for purposes of determining the FILO Borrowing Base, the face amount of Eligible Trade Receivables multiplied by 5.0%.

"**Transaction Costs**" means fees, premiums, expenses and other transaction costs (including original issue discount) payable or otherwise borne by Holdings, the Borrower Agent and its subsidiaries in connection with the Transactions and the transactions contemplated thereby.

"**Transactions**" means, collectively, (a) the execution, delivery and performance by the Loan Parties of the Loan Documents to which they are a party and the making of the Borrowings hereunder, (b) the Recapitalization and (c) the payment of the Transaction Costs.

"**Trust Fund Account**" means any account containing Cash consisting solely of Trust Funds.

"**Trust Fund Certificate**" means a certificate of a Responsible Officer of the Borrower Agent certifying (a) the type and amount of any Trust Funds (other than payroll and employee benefit payments in the nature of discretionary contributions) contained or held in a Blocked Account, (b) that the failure to remit such Trust Funds to the Person entitled thereto could reasonably be expected to result in personal, criminal or civil liability to any director, officer or employee of any Loan Party or any Subsidiary of any Loan Party under any applicable law and (c) (x) that the obligation requiring such Trust Funds is due and payable within 10 Business Days of delivery of such certificate and (y) amounts on deposit in any applicable Trust Fund Account are insufficient to make such payment.

"**Trust Funds**" means any Cash or Cash Equivalents comprised of (a) funds specially and exclusively used or to be used for payroll and payroll taxes and other employee benefit payments to or for the benefit of any Loan Party's employees, (b) funds used or to be used to pay all Taxes required to be collected, remitted or withheld (including, without limitation, federal and state withholding Taxes (including the employer's share thereof)) and (c) any other funds which any Loan Party holds as an escrow or fiduciary for another Person.

"**Type**", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to Adjusted Term SOFR or Alternate Base Rate.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue or perfection of security interests.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"**UK Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"**Ultimate Parent**" has the meaning assigned to such term in the preamble to this Agreement.

"**Unadjusted Benchmark Replacement**" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"**United States**" and "**U.S.**" means the United States of America.

"**Unrestricted Cash Amount**" means, as of any date of determination, the amount of unrestricted Cash and Cash Equivalents of Ultimate Parent and its Subsidiaries held in an account subject to a control agreement in favor of the Administrative Agent; provided that no Cash or Cash Equivalents shall be deemed restricted solely as a result of being pledged to secure the Obligations or other obligations secured on a junior basis to the Secured Obligations; provided, further, that the Unrestricted Cash Amount shall not exceed $75,000,000; provided, further, that in no event shall Cash or Cash Equivalents pledged to secure (a) obligations under any letter of credit (including Letters of Credit but excluding Cash or Cash Equivalents pledged to secure the Obligations generally) or (b) obligations other than the Obligations unless secured on a junior basis to the Secured Obligations, in either case, increase the Unrestricted Cash Amount.

"**Unrestricted Subsidiary**" means any subsidiary of any Borrower designated by such Borrower as an Unrestricted Subsidiary pursuant to Section 5.10 subsequent to the Closing Date.

"**U.S. Government Securities Business Day**" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"**U.S. Special Resolution Regime**" has the meaning assigned to it in Section 9.25.

"**USA PATRIOT Act**" means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

"**Weekly Reporting Event**" means at any time (a) an Event of Default under Sections 7.01(a), 7.01(c) (with respect to breaches of Sections 2.21, 5.01(l) or 6.18), 7.01(f) or 7.01(g) exists or has occurred and is continuing or (b) Excess Availability shall have been less than the greater of (x) 12.5% of the Total Line Cap and (y) $57,500,000 for five consecutive Business Days; provided that the Administrative Agent has notified the Borrower Agent thereof. The occurrence of a Weekly Reporting Event shall be deemed to exist and to be continuing notwithstanding that Excess Availability may thereafter exceed the amount set

forth in the preceding sentence unless and until Excess Availability shall have been at least the greater of (x) 12.5% of the Total Line Cap and (y) $57,500,000 for 30 consecutive calendar days, in which event a Weekly Reporting Event shall no longer be deemed to exist or be continuing.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"**Wholly-Owned Subsidiary**" of any Person shall mean a subsidiary of such Person, 100.0% of the Capital Stock of which (other than directors' qualifying shares or shares required by law to be owned by a resident of that jurisdiction) shall be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

"**Write-Down and Conversion Powers**" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 **Classification of Loans and Borrowings**. For purposes of this Agreement, Loans may be classified and referred to by Class (*e.g.*, a "ABL Revolving Loan") or by Type (*e.g.*, a "Term SOFR Loan") or by Class and Type (*e.g.*, a "Term SOFR ABL Revolving Loan"). Borrowings also may be classified and referred to by Class (*e.g.*, a "ABL Revolving Borrowing") or by Type (*e.g.*, a "Term SOFR Borrowing") or by Class and Type (*e.g.*, a "Term SOFR ABL Revolving Borrowing").

Section 1.03 **Terms Generally**. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any Organizational Document, agreement, instrument or other document herein shall be deemed to include all appendices, exhibits and schedules thereto and shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions or qualifications on such amendments, restatements, amendment and restatements, supplements or modifications set forth herein), (b) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law, (c) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer (i) to the appropriate Articles and Sections of, and Exhibits and Schedules to, this Agreement or (ii) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears, (f) 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" mean "to but excluding" and the word "through" means "to and including", (g) the term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form, (h) 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. For purposes of determining compliance at any time with Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07, 6.08 and 6.11, in the event that any Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, contractual restriction, Investment, disposition or affiliate transaction, as applicable, meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of such Sections 6.01 (other than Sections 6.01(c) and (w)), 6.02 (other than Sections 6.02(t)), 6.04, 6.05, 6.06, 6.07, 6.08 and 6.11, the Borrower, in its sole discretion, may classify or reclassify such transaction or item (or portion thereof) and will only be required to include the amount and type of such transaction (or portion thereof) in any one category and (i) any reference in this Agreement or any other Loan Documents to a merger, consolidation, amalgamation, conveyance, disposal, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, corporation or partnership, or an allocation of assets to a series of or one or more limited liability companies, partnerships or corporations, or the unwinding of such a division or allocation, as if it were a merger, consolidation, amalgamation conveyance, disposal, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, corporation or partnership shall be deemed to constitute the formation of a separate Person, and any such division shall constitute a separate Person hereunder and under the other Loan Documents (and each division of any limited liability company, corporation or partnership that is a subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

Section 1.04 Accounting Terms; GAAP.

(a) Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time and all terms of an accounting or financial nature that are used in calculating the Fixed Charge Coverage Ratio, the Total Leverage Ratio or Consolidated Total Assets shall be construed and interpreted in accordance with GAAP, as in effect on the Closing Date (including, to the extent consistent with GAAP, adjustments resulting from the application of fresh start accounting principles as a result of the emergence of the Loan Parties and the Subsidiaries from the Chapter 11 Cases, including the loss of deferred gross profit related to inventory purchased prior to emergence, and amortization of lease incentives no longer allowed post emergence under fresh start accounting) unless otherwise agreed to by the Borrower Agent and the Required Lenders; provided that if the Borrower Agent notifies the Administrative Agent that the Borrower Agent requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including the conversion to IFRS as described below) on the operation of such provision (or if the Administrative Agent notifies the Borrower Agent that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith; provided, further, that if an amendment is requested by the Borrower Agent or the Required Lenders, then the Borrower Agent and the Administrative Agent shall negotiate in good faith to enter into an amendment of such affected provisions (without the payment of any amendment or similar fees to the Lenders) to preserve the original intent thereof in light of such change in GAAP or the application thereof subject to the approval of the Required Lenders (not to be unreasonably withheld, conditioned or delayed); provided, further, that all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (previously

referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Ultimate Parent or any subsidiary at "fair value," as defined therein and (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof; provided, further, that, notwithstanding anything to the contrary contained in this Agreement (including this Section 1.04 and Section 5.01(l) and the definitions of "Inventory Component" and "Borrowing Base" and any sub-components thereof), until the earlier of (x) June 30, 2024 and (y) the Administrative Agent's receipt of an appraisal of the applicable Loan Parties' Inventory satisfactory to the Administrative Agent in its Permitted Discretion, any calculations of the Inventory Component for the purpose of determining the Borrowing Base and its sub-components will exclude the impact of fresh start accounting adjustments under GAAP but only for so long as the delivery of each Borrowing Base Certificate under Section 5.01(l) prior to the earlier such date is accompanied by reconciliations of fresh start accounting and accounting that is otherwise compliant with GAAP. If the Borrower Agent notifies the Administrative Agent that it is required to report under IFRS or has elected to do so through an early adoption policy, upon the execution of an amendment hereof in accordance herewith to accommodate such change, "GAAP" shall mean international financial reporting standards pursuant to IFRS (provided that after such conversion, the Borrower Agent cannot elect to report under GAAP).

(b) [Reserved].

(c) Notwithstanding anything to the contrary contained in paragraph (a) above or the definition of Capital Lease, in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that they were in existence on the Closing Date) that would constitute Capital Leases on the Closing Date shall be considered Capital Leases and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith (provided that all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such accounting change shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such accounting change).

Section 1.05 **Effectuation of Transactions**. Each of the representations and warranties of the Loan Parties contained in this Agreement (and all corresponding definitions) are made after giving effect to the Transactions, unless the context otherwise requires.

Section 1.06 **Timing of Payment of Performance**. When payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

Section 1.07 **Limited Condition Acquisitions**. When calculating the availability under any basket or ratio under this Agreement or compliance with any provision of this Agreement (other than the Financial Covenant or the satisfaction of conditions for the borrowing of Revolving Loans) in connection with any Limited Condition Acquisition and any actions or transactions related thereto, in each case, at the option of the Borrower Agent (the Borrower Agent's election to exercise such option, an "**LCT Election**"), the date of determination for availability under any such basket or ratio and whether any such action or transaction is permitted (or any requirement or condition therefor is complied with or satisfied (excluding any requirement or condition based upon 90-Day Excess Availability or Excess Availability but including as to the absence of any continuing Default or Event of Default)) hereunder shall be deemed to be the date

(the "**LCT Test Date**") the definitive agreements for such Limited Condition Acquisition are entered into, and if, after giving pro forma effect to the Limited Condition Acquisition and any actions or transactions related thereto (including any incurrence of Indebtedness and the use of proceeds thereof) and any related pro forma adjustments, Ultimate Parent or any of its Subsidiaries would have been permitted to take such actions or consummate such transactions on the relevant LCT Test Date in compliance with such ratio, test or basket (and any related requirements and conditions), such ratio, test or basket (and any related requirements and conditions) shall be deemed to have been complied with (or satisfied) for all purposes (in the case of Indebtedness, for example, whether such Indebtedness is committed, issued or incurred at the LCT Test Date or at any time thereafter); provided that any such Limited Condition Acquisition which is a Permitted Acquisition shall be consummated prior to the date which is 150 days following such LCT Test Date (each such period, a "**LCT Period**").

For the avoidance of doubt, if the Borrower Agent has made an LCT Election, (1) if any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would at any time during the applicable LCT Period have been exceeded or otherwise failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated Adjusted EBITDA or Consolidated Total Assets of the Borrower Agent or the Person subject to such Limited Condition Acquisition, such baskets, tests or ratios will not be deemed to have been exceeded or failed to have been complied with as a result of such fluctuations, (2) if any related requirements and conditions (including as to the absence of any continuing Default or Event of Default) for which compliance or satisfaction was determined or tested as of the LCT Test Date would at any time during the applicable LCT Period not have been complied with or satisfied (including due to the occurrence or continuation of an Default or Event of Default), such requirements and conditions will not be deemed to have been failed to be complied with or satisfied (and such Default or Event of Default shall be deemed not to have occurred or be continuing, solely for purposes of determining whether the applicable Limited Condition Acquisition and any actions or transactions related thereto (including any incurrence of Indebtedness (other than Revolving Loans) and the use of proceeds thereof) are permitted hereunder) and (3) in calculating the availability under any ratio, test or basket in connection with any action or transaction unrelated to such Limited Condition Acquisition following the relevant LCT Test Date and prior to the date on which such Limited Condition Acquisition is consummated, any such ratio, test or basket shall be determined or tested giving pro forma effect to such Limited Condition Acquisition and any actions or transactions related thereto (including any incurrence of Indebtedness (other than Revolving Loans) and the use of proceeds thereof) and any related pro forma adjustments unless the definitive agreement (or notice) for such Limited Condition Acquisition is terminated or expires (or is rescinded) without consummation of such Limited Condition Acquisition; provided that, with respect to this clause (3), for the purposes of Sections 6.05 and 6.07 (other than Section 6.07(r)) only, Consolidated Net Income shall not include any Consolidated Net Income of or attributed to the target company or assets associated with any such Limited Condition Acquisition unless and until the closing of such Limited Condition Acquisition shall have actually occurred. Notwithstanding anything to the contrary herein, the Borrower Agent may not make an LCT Election in connection with a Limited Condition Acquisition or any action or transaction related thereto if the applicable LCT Test Date would be prior to the date that the Audit Delivery Condition is satisfied.

Section 1.08 Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Total Leverage Ratio, the Fixed Charge Coverage Ratio or any test of availability under the Credit Facility and compliance with covenants determined by reference to Consolidated Adjusted EBITDA (including any component definitions thereof) or Consolidated Total Assets, shall be calculated in the manner prescribed by this Section 1.08; provided that notwithstanding anything to the contrary in clauses (b), (c), (d) or (e) of this Section 1.08, (i) when calculating any such ratio or test for purposes of the incurrence of any Indebtedness, cash and Cash Equivalents resulting from the incurrence of any such Indebtedness shall be excluded from the pro forma calculation of any applicable ratio or test, (ii) for any

calculation of availability under the Credit Facility, any extension of credit hereunder (including, without limitation, the making of Loans) made in connection with the Subject Transaction requiring such calculation shall be assumed (x) to have been made on the first day of the period for which availability is being tested and/or measured and (y) to have remained outstanding at all times during the period for which availability is being tested and/or measured and (iii) for the purposes of determining compliance with the Financial Covenant as evidenced by a Compliance Certificate, any Subject Transaction occurring after the last day of the relevant Test Period and prior to the delivery of the Compliance Certificate with respect thereto shall be disregarded. In addition, whenever a financial ratio or test is to be calculated on a pro forma basis, the reference to the "Test Period" for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements (which internal financial statements, for the avoidance of doubt, shall include an unaudited consolidated balance sheet, unaudited consolidated cash flow statement and unaudited consolidated statement of income of Ultimate Parent and its Subsidiaries, to the extent such financial statements are applicable with respect to the calculation of such financial ratio or test) of Ultimate Parent and its Subsidiaries are available (as determined in good faith by the Borrower Agent).

(b) For purposes of calculating any financial ratio or test or compliance with any covenant determined by reference to Consolidated Adjusted EBITDA or Consolidated Total Assets, Subject Transactions (with any incurrence or repayment of any Indebtedness in connection therewith to be subject to clause (d) of this Section 1.08) that (i) have been made during the applicable Test Period or (ii) if applicable as described in clause (a) above, have been made subsequent to such Test Period and prior to or substantially concurrently with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Subject Transactions (and any increase or decrease in Consolidated Adjusted EBITDA, Consolidated Total Assets and the component financial definitions used therein attributable to any Subject Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Consolidated Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into Ultimate Parent or any of its Subsidiaries since the beginning of such Test Period shall have made any Subject Transaction that would have required adjustment pursuant to this Section 1.08, then such financial ratio or test (or Consolidated Total Assets) shall be calculated to give pro forma effect thereto in accordance with this Section 1.08.

(c) Whenever pro forma effect is to be given to a Subject Transaction, the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower Agent and, in the case of any "Test Period" determined by reference to the financial statements most recently delivered pursuant to Section 5.01(b) or Section 5.01(c), as set forth in a certificate of a responsible financial or accounting officer of the Borrower Agent (with supporting calculations), and may include, for the avoidance of doubt, the amount of "run-rate" cost savings, operating expense reductions and synergies resulting from or relating to, any Subject Transaction (including the Transactions) which is being given pro forma effect that have been realized or are projected in good faith to result (in the good faith determination of the Borrower Agent) (calculated on a pro forma basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and "**run-rate**" means the full recurring projected benefit (including any savings or other benefits expected to result from the elimination of a public target's Public Company Costs) net of the amount of actual savings or other benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of any financial ratios or tests (and in respect of any subsequent pro forma calculations in which such Subject Transaction is given pro forma effect) and during any applicable subsequent Test Period in which the effects thereof are expected to be realized) relating to such Subject Transaction; provided that (A) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower Agent, (B) such amounts result from actions taken or actions with

respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower Agent) no later than eighteen (18) months after the date of such Subject Transaction, (C) no amounts shall be added pursuant to this clause (c) to the extent duplicative of any amounts that are otherwise added back in computing Consolidated Adjusted EBITDA (or any other components thereof), whether through a pro forma adjustment or otherwise, with respect to such period and (D) the aggregate amount of any such amounts added back pursuant to this clause (c) (other than in connection with any mergers, business combinations, acquisitions or divestures) shall not exceed, together with any amounts added back pursuant to clauses (x) and (xi) of the definition of Consolidated Adjusted EBITDA, 25.0% of Consolidated Adjusted EBITDA in any four-Fiscal Quarter period (calculated before giving effect to any such add-backs and adjustments).

(d) In the event that Ultimate Parent or any Subsidiary incurs (including by assumption or guarantees) or repays (including by purchase, redemption, repayment, retirement or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid (other than any repayment from the proceeds of other Indebtedness) under any revolving credit facility unless such Indebtedness has been permanently repaid (and related commitments terminated) and not replaced), (i) during the applicable Test Period or (ii) subject to paragraph (a), subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving pro forma effect to such incurrence (including the intended use of proceeds) or repayment of Indebtedness, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period.

(e) If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Fixed Charge Coverage Ratio is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness); provided, in the case of repayment of any Indebtedness, to the extent actual interest related thereto was included during all or any portion of the applicable Test Period, the actual interest may be used for the applicable portion of such Test Period.

Section 1.09 **Times of Day**. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.10 **Rounding**. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.11 **Currency Generally**. For purposes of determining compliance with Sections 6.01, 6.02 and 6.05 with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder).

Section 1.12 **Interest Rates; Benchmark Notification.** The interest rate on a Loan denominated in Dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.14(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof,

including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.13 **Cashless Rollover.** Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, to the extent that any Lender or its Affiliate is a lender under the Existing Credit Agreement, the refinancing of such Lender's or such Affiliate's applicable percentage of credit extensions under the Existing Credit Agreement shall be effected by means of a "cashless roll" (or, if necessary between Lenders and their Affiliates, deemed assignments on the Closing Date) and the Borrowers hereby agree that any requirement hereunder or under any other Loan Document to make Loans on the Closing Date in Dollars shall be satisfied by such "cashless roll" (or deemed assignments) in accordance with the Plan of Reorganization.

ARTICLE 2
THE CREDITS

Section 2.01 **Loans and Commitments**. Subject to the terms and conditions set forth herein:

(a) each ABL Revolving Lender agrees, severally and not jointly, to make ABL Revolving Loans in Dollars to the Borrowers from time to time during the Availability Period in an aggregate principal amount requested by a Borrower (or the Borrower Agent on behalf of such Borrower) that will not result in (i) such Lender's ABL Revolving Exposure exceeding such Lender's ABL Revolving Commitment, or (ii) the total ABL Revolving Exposures exceeding the ABL Line Cap less the Availability Block; and

(b) each FILO Lender agrees, severally and not jointly, to make FILO Loans in Dollars to the Borrowers on the Closing Date in an aggregate principal amount equal to such FILO Lender's FILO Commitment.

Within the foregoing limits and subject to the terms and conditions set forth herein (including the Administrative Agent's authority, in its sole discretion, to make Protective Advances pursuant to the terms of Section 2.04), the Borrowers may borrow, repay and reborrow ABL Revolving Loans. Amounts borrowed in respect of the FILO Commitments and subsequently repaid or prepaid may not be reborrowed. All Borrowers shall be jointly and severally liable as borrowers for all Borrowings of each Borrower regardless of which Borrower received the proceeds thereof.

Section 2.02 **Loans and Borrowings**.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. Any Protective Advance and any Swingline Loan shall be made in accordance with the procedures set forth in Sections 2.04 and 2.05, respectively.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Term SOFR Loans as any Borrower (or the Borrower Agent on behalf of such Borrower) may request in accordance herewith. Each Swingline Loan and each Protective Advance shall be an ABR Loan. Each Lender at its option may make any Term SOFR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that (i) any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement, (ii) such Term SOFR Loan shall be deemed to have been made and held by such Lender, and the obligation of the Borrowers to repay such Term SOFR Loan shall nevertheless be to such Lender for the account of such domestic or foreign branch or Affiliate of such Lender and (iii) in exercising such option, such Lender shall use reasonable efforts to minimize increased costs to the Borrowers resulting therefrom (which obligation of such Lender shall not require it to take, or refrain from taking, actions that it determines would result in increased costs for which it will not be compensated hereunder or that it otherwise determines would be disadvantageous to it and in the event of such request for costs for which compensation is provided under this Agreement, the provisions of Section 2.15 shall apply); provided, further, that any such domestic or foreign branch or Affiliate of such Lender shall not be entitled to any greater indemnification under Section 2.17 with respect to such Term SOFR Loan than that which the applicable Lender was entitled on the date on which such Loan was made (except in connection with any indemnification entitlement arising as a result of a Change in Law after the date on which such Loan was made).

(c) At the commencement of each Interest Period for any Term SOFR Borrowing, such Borrowing shall comprise an aggregate principal amount that is an integral multiple of $100,000 and not less than $1,000,000. Each ABR Borrowing when made shall be in a minimum principal amount of $100,000; provided that an ABR Borrowing may be made in a lesser aggregate amount that is equal to the entire unused balance of the ABL Revolving Commitments that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of ten different Interest Periods in effect for Term SOFR Borrowings at any time outstanding.

(d) Notwithstanding any other provision of this Agreement, no Borrower (or the Borrower Agent on behalf of any Borrower) shall or shall be entitled to, request, or to elect to convert or continue, any Term SOFR Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(e) (x) ABL Revolving Loans to the Borrowers (other than Swingline Loans and Protective Advances) shall be made by the ABL Revolving Lenders pro rata in accordance with their respective ABL Revolving Commitments and (y) FILO Loans to the Borrowers shall be made by the FILO Lenders pro rata in accordance with their respective FILO Commitments.

(f) The failure of (x) any ABL Revolving Lender to make any ABL Revolving Loan (other than Swingline Loans) to the Borrowers shall neither relieve any other ABL Revolving Lender of its obligation to fund its ABL Revolving Loan to the Borrowers in accordance with the provisions of this Agreement nor increase the obligation of any such other ABL Revolving Lender and (y) any FILO Lender to make any FILO Loan to the Borrowers shall neither relieve any other FILO Lender of its obligation to fund its FILO Loan to the Borrowers in accordance with the provisions of this Agreement nor increase the obligation of any such other FILO Lender.

Section 2.03 **Requests for Borrowings**. To request a Borrowing of Loans, a Borrower (or the Borrower Agent on behalf of any Borrower) shall notify the Administrative Agent of such request either in writing by delivery of a Borrowing Request (by hand delivery, fax or other electronic transmission (including ".pdf" or ".tif")) signed by such Borrower (or the Borrower Agent on behalf of any Borrower) or by telephone (a) in the case of a Term SOFR Borrowing, not later than 12:00 noon, New York City time, three U.S. Government Securities Business Days before the date of the proposed Borrowing or (b) in the

case of an ABR Borrowing (including any such notice of an ABR Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e)), not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing (or, in each case, such later time as shall be acceptable to the Administrative Agent). Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, fax or other electronic transmission (including ".pdf" or ".tif") to the Administrative Agent of a written Borrowing Request signed by such Borrower (or the Borrower Agent on behalf of any Borrower). Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.01:

(i) the aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing or a Term SOFR Borrowing;

(iv) for Borrowings to be made on the Closing Date, whether such Borrowing is to be an ABL Revolving Loan and/or FILO Loan;

(v) in the case of a Term SOFR Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(vi) the location and number of the Borrowers' account or any other designated account(s) to which funds are to be disbursed (the "**Funding Account**").

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term SOFR Borrowing, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each applicable Lender of the details thereof and of the amount of such Lender's ABL Applicable Percentage or FILO Applicable Percentage of the applicable Loans to be made as part of the requested Borrowing.

Section 2.04 Protective Advances.

(a) Subject to the limitations set forth below (and notwithstanding anything to the contrary in Section 4.02), the Administrative Agent is authorized by the Borrowers and the ABL Revolving Lenders, from time to time in the Administrative Agent's sole discretion in the exercise of its commercially reasonable judgment (but shall have absolutely no obligation to), to make ABL Revolving Loans to the Borrowers, on behalf of all ABL Revolving Lenders at any time that any condition precedent set forth in Section 4.02 has not been satisfied or waived, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the ABL Revolving Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrowers pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03) and other sums, in each case to the extent due and payable (and not in dispute by the Borrower Agent (acting in good faith)) under the Loan Documents (each such ABL Revolving Loan, a "**Protective Advance**"). Any Protective Advance may be made in a principal amount that would cause the aggregate ABL Revolving Exposure to exceed the ABL Borrowing Base; provided that no Protective Advance may be made to the extent that, after giving effect to such Protective Advance (together with the outstanding principal amount of any outstanding Protective Advances), the aggregate principal amount of Protective Advances outstanding hereunder would exceed 5.0% of the ABL Borrowing

Base as determined on the date of such proposed Protective Advance; and provided, further, that the aggregate amount of Credit Extensions (including the aggregate amount of outstanding Protective Advances) shall not exceed the Aggregate Commitments. No Protective Advance may remain outstanding for more than 45 days without the consent of the Required Lenders unless a Liquidation is taking place. Each Protective Advance shall be secured by the Liens in favor of the Administrative Agent in and to the Collateral and shall constitute Obligations hereunder. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. The making of a Protective Advance on any one occasion shall not obligate the Administrative Agent to make any Protective Advance on any other occasion. At any time that the conditions precedent set forth in Section 4.02 have been satisfied or waived, the Administrative Agent may request the ABL Revolving Lenders to make an ABL Revolving Loan to repay a Protective Advance. At any other time, the Administrative Agent may require the ABL Revolving Lenders to fund their risk participations described in Section 2.04(b).

(b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default or Event of Default), each ABL Revolving Lender shall be deemed, without further action by any party hereto, unconditionally and irrevocably to have purchased from the Administrative Agent without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its ABL Applicable Percentage. From and after the date, if any, on which any ABL Revolving Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such ABL Revolving Lender, such ABL Revolving Lender's ABL Applicable Percentage of all payments of principal and interest and all proceeds of Collateral (if any) received by the Administrative Agent in respect of such Protective Advance.

Section 2.05 Swingline Loans.

(a) The Administrative Agent, the Swingline Lender and the ABL Revolving Lenders agree that in order to facilitate the administration of this Agreement and the other Loan Documents, promptly after a Borrower (or the Borrower Agent on behalf of any Borrower) requests an ABL Revolving Loan that is also an ABR Loan, the Swingline Lender may elect to have the terms of this Section 2.05(a) apply to such Borrowing Request by advancing, on behalf of the ABL Revolving Lenders and in the amount requested, same day funds to the applicable Borrower, on the date of the applicable Borrowing to the Funding Account (each such Loan made solely by the Swingline Lender pursuant to this Section 2.05(a) is referred to in this Agreement as a "**Swingline Loan**"), with settlement among them as to the Swingline Loans to take place on a periodic basis as set forth in Section 2.05(c). Each Swingline Loan shall be subject to all the terms and conditions applicable to other ABR Loans funded by the ABL Revolving Lenders, except that all payments thereon shall be payable to the Swingline Lender solely for its own account. The aggregate amount of Swingline Loans outstanding at any time shall not exceed $40,000,000.

(b) Upon the making of a Swingline Loan (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan), each ABL Revolving Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Swingline Lender, without recourse or warranty, an undivided interest and participation in such Swingline Loan in proportion to its ABL Applicable Percentage of the ABL Revolving Commitment. The Swingline Lender may, at any time, require the ABL Revolving Lenders to fund their participations. From and after the date, if any, on which any ABL Revolving Lender is required to fund its participation in any Swingline Loan purchased hereunder, the Administrative Agent shall promptly distribute to such ABL Revolving Lender, such ABL Revolving Lender's ABL Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Swingline Loan.

(c) The Administrative Agent, on behalf of the Swingline Lender, shall request settlement (a "**Settlement**") with the ABL Revolving Lenders on at least a weekly basis or on any date that the Administrative Agent elects, by notifying the ABL Revolving Lenders of such requested Settlement by facsimile, telephone, or e-mail no later than 12:00 noon, New York City time on the date of such requested Settlement (the "**Settlement Date**"). Each ABL Revolving Lender (other than the Swingline Lender, in the case of the Swingline Loans) shall transfer the amount of such ABL Revolving Lender's ABL Applicable Percentage of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 2:00 p.m., New York City time, on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.02 have then been satisfied. Such amounts transferred to the Administrative Agent shall be applied against the amounts of the Swingline Lender's Swingline Loans and, together with Swingline Lender's ABL Applicable Percentage of such Swingline Loan, shall constitute ABL Revolving Loans of such ABL Revolving Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any ABL Revolving Lender on such Settlement Date, the Swingline Lender shall be entitled to recover from such ABL Revolving Lender on demand such amount, together with interest thereon, as specified in Section 2.07.

Section 2.06 Letters of Credit.

(a) General. On and after the Closing Date, each Existing Letter of Credit shall be deemed to be a Letter of Credit issued hereunder for all purposes of this Agreement and the other Loan Documents and for all purposes hereof will be deemed to have been issued on the Closing Date. Subject to the terms and conditions set forth herein, (i) each Issuing Bank agrees, in each case in reliance upon the agreements of the other ABL Revolving Lenders set forth in this Section 2.06, (A) from time to time on any Business Day during the period from the Closing Date to but not including the fifth Business Day prior to the Maturity Date, upon the request of the Borrower Agent, to issue Letters of Credit denominated in Dollars only and issued on sight basis only for the account of any Borrower (or any Subsidiary; provided that a Borrower will be the applicant) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.06(b), and (B) to honor drafts under the Letters of Credit, and (ii) the ABL Revolving Lenders severally agree to participate in the Letters of Credit issued pursuant to Section 2.06(d). With respect to Commercial Letters of Credit, each Issuing Bank shall on the first Business Day of each week submit to the Administrative Agent, by facsimile, a report detailing the daily aggregate total of Commercial Letters of Credit for the previous calendar week.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower Agent shall deliver to the applicable Issuing Bank and the Administrative Agent, at least two Business Days in advance of the requested date of issuance (or such shorter period as is acceptable to Administrative Agent and the applicable Issuing Bank), a request to issue a Letter of Credit, which shall specify that it is being issued under this Agreement, in the form of Exhibit F attached hereto (each a "**Letter of Credit Request**"). To request an amendment, extension or renewal of a Letter of Credit, the Borrower Agent shall submit such a request to the applicable Issuing Bank (with a copy to the Administrative Agent) at least two Business Days in advance of the requested date of amendment, extension or renewal, identifying the Letter of Credit to be amended, renewed or extended, and specifying the proposed date (which shall be a Business Day) and other details of the amendment, extension or renewal. Requests for issuance, amendment, renewal or extension must be accompanied by such other information as shall be necessary to issue, amend, renew or extend such Letter of Credit. If requested by Administrative Agent or the applicable Issuing Bank, the Borrower Agent also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower Agent to, or entered into

by the applicable Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. A Letter of Credit shall be issued, amended, renewed or extended only if (and on issuance, amendment, renewal or extension of each Letter of Credit the Borrowers shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall, subject to Sections 2.09(b) and 2.23(f), not exceed $60,000,000, and (ii) the aggregate amount of Credit Extensions shall not exceed the Total Line Cap. Promptly after the delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Bank will also deliver to the Borrower Agent and the Administrative Agent a true and complete copy of such Letter of Credit or amendment. Upon receipt of such Letter of Credit or amendment, the Administrative Agent shall notify the ABL Revolving Lenders, in writing, of such Letter of Credit or amendment, and if so requested by an ABL Revolving Lender, the Administrative Agent will provide such ABL Revolving Lender with copies of such Letter of Credit or amendment. Notwithstanding the foregoing or anything to the contrary contained herein, no Issuing Bank shall be obligated to issue or modify any Letter of Credit if, immediately after giving effect thereto, the outstanding LC Exposure in respect of all Letters of Credit issued by such Person and its Affiliates would exceed such Issuing Bank's Issuing Bank Sublimit. Without limiting the foregoing and without affecting the limitations contained herein, it is understood and agreed that the Borrower may from time to time request that an Issuing Bank issue Letters of Credit in excess of its individual Issuing Bank Sublimit in effect at the time of such request, and each Issuing Bank agrees to consider any such request in good faith. Any Letter of Credit so issued by an Issuing Bank in excess of its individual Issuing Bank Sublimit then in effect shall nonetheless constitute a Letter of Credit for all purposes of this Agreement, and shall not affect the Issuing Bank Sublimit of any other Issuing Bank, subject to the limitations on the aggregate LC Exposure set forth in clause (i) of this Section 2.06(b).

(c) Expiration Date.

(i) Each Standby Letter of Credit shall expire not later than the earlier of (A) the date one year after the date of the issuance of such Letter of Credit and (B) the date that is five Business Days prior to the Maturity Date; provided that any Standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to one year in duration (none of which, in any event, shall extend beyond the date referred to in clause (B) of this paragraph (c)(i) unless Cash collateralized or backstopped pursuant to arrangements reasonably satisfactory to the Issuing Bank thereof).

(ii) Each Commercial Letter of Credit shall expire on the earlier of (A) 180 days after the date of the issuance of such Letter of Credit and (B) the date that is five Business Days prior to the Maturity Date.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the ABL Revolving Lenders, the applicable Issuing Bank hereby grants to each ABL Revolving Lender, and each ABL Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such ABL Revolving Lender's ABL Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each ABL Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, such ABL Revolving Lender's ABL Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrowers for any reason. Each ABL Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or

Event of Default or reduction or termination of the ABL Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Notwithstanding the terms of Section 2.02, if any Letters of Credit remain outstanding upon the termination of the ABL Revolving Commitments, to the extent the ABL Revolving Commitments exceed the aggregate ABL Revolving Exposure upon such termination of the ABL Revolving Commitments, the Issuing Banks shall be deemed to have sold to each ABL Revolving Lender, and each ABL Revolving Lender shall be deemed unconditionally and irrevocably to have so purchased from the Issuing Banks, without recourse or warranty, an undivided interest and participation, to the extent of such ABL Revolving Lender's ABL Applicable Percentage in the lesser of (i) such Excess Availability and (ii) such undivided interest and participation of each ABL Revolving Lender in such outstanding Letters of Credit, each drawing thereunder and the obligations of the Borrowers under this Agreement and the other Loan Documents with respect thereto. Any action taken or omitted by any Issuing Bank under or in connection with a Letter of Credit, if taken or omitted in the absence of gross negligence or willful misconduct, shall not create for such Issuing Bank any resulting liability to any ABL Revolving Lender.

(e) Reimbursement. If the applicable Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such LC Disbursement by paying to the Administrative Agent (or, in the case of Commercial Letters of Credit, the applicable Issuing Bank) an amount equal to such LC Disbursement not later than 12:00 noon, New York City time, on the Business Day immediately following the date the Borrower Agent receives notice under paragraph (g) of this Section of such LC Disbursement (or, if such notice is received less than two hours prior to the deadline for requesting ABR Borrowings pursuant to Section 2.03, on the second Business Day immediately following the date the Borrower Agent receives such notice); provided that the Borrowers (or the Borrower Agent on behalf of Borrower) may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.05 that such payment be financed with an ABR Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing or Swingline Loan. If the Borrowers fail to make such payment when due, the Administrative Agent shall notify each ABL Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof and such ABL Revolving Lender's ABL Applicable Percentage thereof. Promptly following receipt of such notice, each ABL Revolving Lender shall pay to the Administrative Agent its ABL Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.07 with respect to Loans made by such ABL Revolving Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the ABL Revolving Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the ABL Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that ABL Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such ABL Revolving Lenders and such Issuing Bank as their interests may appear.

(f) Obligations Absolute. The Borrowers' obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the applicable Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder. Neither the Administrative Agent, the Lenders nor any

Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of such Issuing Bank; provided that the foregoing shall not be construed to excuse such Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by the Borrowers that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of applicable Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The applicable Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly notify the Administrative Agent and the Borrower Agent by telephone (confirmed by facsimile) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse such Issuing Bank and the ABL Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If an Issuing Bank shall make any LC Disbursement, then, unless the Borrowers shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to ABL Revolving Loans that are ABR Loans; provided that if the Borrowers fail to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any ABL Revolving Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank shall be for the account of such ABL Revolving Lender to the extent of such payment.

(i) Replacement of an Issuing Bank. An Issuing Bank may be replaced with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) at any time by written agreement among the Borrowers, the Administrative Agent and the successor Issuing Bank. The Administrative Agent shall notify the ABL Revolving Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Banks, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to

Letters of Credit then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization.

(i) If any Event of Default shall occur and be continuing, then on the Business Day that the Borrower Agent receives notice from the Administrative Agent or the Required Lenders demanding the deposit of Cash collateral pursuant to this paragraph (j), upon such demand, the Borrowers shall deposit, in an interest-bearing account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the ABL Revolving Lenders (the "**LC Collateral Account**"), an amount in Cash equal to 105.0% of the LC Exposure as of such date; provided that the obligation to deposit such Cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrowers described in Section 7.01(f) or (g).

(ii) Any such deposit under clause (i) above shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations in accordance with the provisions of this paragraph (j). The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account and the Borrowers hereby grant the Administrative Agent a security interest in the LC Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Required Lenders), be applied to satisfy other Secured Obligations. If the Borrowers are required to provide an amount of Cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (together with all interest and other earnings with respect thereto, to the extent not applied as aforesaid) shall be returned promptly to the Borrowers but in no event later than three Business Days, after such Event of Default has been cured or waived.

(k) Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank shall, in addition to its notification obligations set forth elsewhere in this Section, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, amendments and renewals, all expirations and cancelations and all disbursements and reimbursements, (ii) reasonably prior to the time that such Issuing Bank issues, amends, renews or extends any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the stated amount of the Letters of Credit issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which any Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such LC Disbursement, and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Issuing Bank.

Section 2.07 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to (x) with respect to ABL Revolving Loans, such ABL Revolving Lender's respective ABL Applicable Percentage and (y) with respect to FILO Loans, such FILO Lender's respective FILO Applicable Percentage; provided that Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the Borrowers by promptly crediting the amounts so received, in like funds, to the Funding Account or as otherwise directed by the Borrowers (or the Borrower Agent on behalf of Borrowers); provided that ABL Revolving Loans (or to the extent applicable, FILO Loans) made to finance the reimbursement of (i) an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank and (ii) a Protective Advance shall be retained by the Administrative Agent to be applied as contemplated by Section 2.04 (and the Administrative Agent shall deliver to the Borrowers a reasonably detailed accounting of such application).

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrowers 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 Borrowers severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrowers, the interest rate applicable to Loans comprising such Borrowing at such time. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing and the Borrowers' obligation to repay the Administrative Agent such corresponding amount pursuant to this Section 2.07(b) shall cease. If the Borrowers pay such amount to the Administrative Agent, the amount so paid shall constitute a repayment of such Borrowing by such amount. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or any Borrower or any other Loan Party may have against any Lender as a result of any default by such Lender hereunder.

Section 2.08 Type; Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term SOFR Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrowers may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term SOFR Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrowers may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders, based upon their respective ABL Applicable Percentages and FILO Applicable Percentages and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings or Protective Advances, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrowers (or the Borrower Agent on behalf of Borrowers) shall notify the Administrative Agent of such election either delivered in writing (by hand delivery, fax or other electronic transmission (including, ".pdf" or ".tif")) or by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were

requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery, fax or other electronic transmission (including, ".pdf" or ".tif") to the Administrative Agent of a written Interest Election Request signed by the Borrower Agent.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii), (iv) and (v) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the applicable Loans are ABL Revolving Loans and/or FILO Loans;

(iv) whether the resulting Borrowing is to be an ABR Borrowing or a Term SOFR Borrowing; and

(v) if the resulting Borrowing is a Term SOFR Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Term SOFR Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower Agent fails to deliver a timely Interest Election Request with respect to a Term SOFR Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Term SOFR Borrowing with an Interest Period of one month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower Agent, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term SOFR Borrowing and (ii) unless repaid, each Term SOFR Borrowing shall be converted to an ABR Borrowing at the end of the then-current Interest Period applicable thereto.

Section 2.09 Termination and Reduction of Commitments.

(a) Unless previously terminated in accordance with (and to the extent permitted by) this Section 2.09, all Commitments shall terminate on the Maturity Date.

(b) Upon delivering the notice required by Section 2.09(d), the Borrowers may at any time terminate the ABL Revolving Commitments upon (i) the payment in full in Cash of all outstanding Loans, together with accrued and unpaid interest thereon, (ii) the cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a Cash deposit (or if reasonably satisfactory to the Administrative Agent, a backup standby letter of credit) equal to 105.0% of the LC Exposure as of such date) and (iii) the payment in full

of all accrued and unpaid fees and all reimbursable expenses and other Obligations then due, together with accrued and unpaid interest (if any) thereon.

(c) Upon delivering the notice required by Section 2.09(d), the Borrowers may from time to time reduce the ABL Revolving Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of $1,000,000 and not less than $1,000,000 and (ii) the Borrowers shall not reduce the ABL Revolving Commitments if, after giving effect to any concurrent prepayment of the ABL Revolving Loans in accordance with Section 2.10 or Section 2.11, the sum of the ABL Revolving Exposures would exceed the ABL Line Cap less the Availability Block.

(d) The Borrower Agent shall notify the Administrative Agent of any election to terminate or reduce the ABL Revolving Commitments under paragraph (b) or (c) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the ABL Revolving Lenders of the contents thereof. Each notice delivered by the Borrower Agent pursuant to this Section shall be irrevocable; provided that a notice of termination of the ABL Revolving Commitments delivered by the Borrower Agent may state that such notice is conditioned upon the effectiveness of other transactions, in which case such notice may be revoked by the Borrower Agent (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the ABL Revolving Commitments pursuant to this Section 2.09 shall be permanent. Upon any reduction of the ABL Revolving Commitments, the ABL Revolving Commitment of each ABL Revolving Lender shall be reduced by such ABL Revolving Lender's ABL Applicable Percentage of such reduction amount.

Section 2.10 Repayment of Loans; Evidence of Debt.

(a) The Borrowers hereby unconditionally promise to pay (on a joint and several basis) (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the applicable Maturity Date and (ii) to the Administrative Agent the then unpaid amount of each Protective Advance on the earliest of (A) the Maturity Date of the ABL Revolving Facility, (B) within three Business Days following receipt of written demand therefor by the Administrative Agent and (C) 45 days (or such longer period as may be consented to by Required Lenders) after such Protective Advance is made; provided that on each date that an ABL Revolving Loan is made while any Protective Advance is outstanding, the Borrowers shall repay all Protective Advances with the proceeds of such ABL Revolving Loan then outstanding. On the Maturity Date of the ABL Revolving Facility, the Borrowers shall cancel and return all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, furnish to the Administrative Agent a Cash deposit (or if reasonably satisfactory to the Administrative Agent, a backup standby letter of credit) equal to 105.0% of the LC Exposure as of such date) and make payment in full in Cash of all accrued and unpaid fees and all reimbursable expenses and other Obligations then due, together with accrued and unpaid interest (if any) thereon.

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

(c) The Administrative Agent shall maintain the Register pursuant to Section 9.05(b)(iv) in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) Subject to Section 9.05(b)(iv), the entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that, the failure of any Lender or the Administrative Agent to maintain such accounts or any manifest error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement; provided, further, that in the event of any inconsistency between the accounts maintained by the Administrative Agent pursuant to paragraph (c) of this Section and any Lender's records, the accounts of the Administrative Agent shall govern.

(e) Any Lender may request that Loans made by it be evidenced by a Promissory Note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a Promissory Note payable to such Lender and its registered assigns. Thereafter, the Loans evidenced by such Promissory Note and interest thereon shall at all times (including after assignment pursuant to Section 9.05) be represented by one or more Promissory Notes in such form payable to the payee named therein and its registered assigns.

(f) Notwithstanding anything to the contrary contained herein, the Borrower shall repay to the Administrative Agent for the ratable account of the FILO Lenders (i) on the last Business Day of each March, June, September and December, commencing with December 29, 2023, an aggregate principal amount equal to 5.55% of the aggregate principal amount of all FILO Loans outstanding on the Closing Date after giving effect to any Borrowing of FILO Loans on such date and (ii) on the Maturity Date for the FILO Loans, the aggregate principal amount of all FILO Loans outstanding on such date.

Section 2.11 Prepayment of Loans.

(a) Upon prior notice in accordance with paragraph (e) of this Section, the Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part without premium or penalty (but subject to Section 2.16). Prepayments made pursuant to this Section 2.11(a), first, shall be applied ratably to the Swingline Loans and to outstanding LC Disbursements, second, shall be applied ratably to the outstanding Loans (other than FILO Loans) and third, shall be applied ratably to the outstanding FILO Loans. Notwithstanding the provisions of this Section 2.11(a), except as provided in Section 2.09, Section 2.10(f) and Section 2.11(b), only if the FILO Prepayment Conditions are met may the Borrowers repay or prepay amounts owed with respect to the FILO Loans.

(b) Except for Protective Advances permitted under Section 2.04, in the event that the aggregate amount of the Credit Exposure of the Lenders exceeds the Borrowing Base, the Borrower Agent shall (i) first prepay the ABL Revolving Loans or Swingline Loans and/or reduce LC Exposure, in an aggregate amount equal to such excess by taking any of the following actions as it shall determine at its sole discretion: (A) prepayment of ABL Revolving Loans or Swingline Loans or (B) with respect to such excess LC Exposure, deposit of Cash in the LC Collateral Account or "backstopping" or replacement of such Letters of Credit, in each case, in an amount equal to 105.0% of such excess LC Exposure (but in any event, such payments of ABL Revolving Loans or Swingline Loans and such deposits of Cash or "backstopping" or replacements of Letters of Credit shall in the aggregate be equal to such excess) and (ii) if, after giving effect to the actions taken in Section 2.11(b)(i) such deficiency has not been eliminated, prepay the FILO Loans in an amount necessary to eliminate such deficiency; provided that (1) for the purposes of calculating the ABL Borrowing Base solely for purposes of this Section 2.11(b), the FILO Reserve shall be deemed to be zero, (2) if the circumstances described in this clause (b) are the result of the imposition of or increase in a Reserve, the Borrowers shall not be required to make the initial prepayment or deposit until the fifth Business Day following the date on which Administrative Agent notifies the Borrower Agent of such imposition or increase and (3) the LC Exposure may not be reduced to less than zero; and

(c) At all times after the occurrence and during the continuance of a Cash Dominion Event and notification thereof by the Administrative Agent to the Borrower Agent (subject to the provisions of Section 2.18(b) and to the terms of the Pledge and Security Agreement), on each Business Day, at or before 1:00 p.m., New York City time, the Administrative Agent shall apply all immediately available funds credited to the Administrative Agent Account or otherwise received by Administrative Agent for application to the Obligations or Secured Obligations (in the case of clause sixth below), first to pay any fees, indemnities or expense reimbursements then due to the Administrative Agent, the Issuing Banks and the Lenders constituting Obligations, pro rata, second to pay interest due and payable in respect of any ABL Revolving Loans (including Swingline Loans), any FILO Loans and any Protective Advances that may be outstanding, pro rata, third to prepay the principal of any Protective Advances that may be outstanding, pro rata, fourth to prepay the principal of the ABL Revolving Loans (including Swingline Loans) and to Cash collateralize at 105.0% of the aggregate face amount of outstanding LC Exposure, pro rata, fifth, to pay or prepay the principal of the FILO Loans, sixth, to pay any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers on a pro rata basis and eighth, as the Borrowers may direct.

(d) [Reserved].

(e) The Borrower Agent shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed in writing) of any prepayment under paragraph (a) of this Section (i) in the case of prepayment of a Term SOFR Borrowing, not later than 12:00 p.m., New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 p.m., New York City time, on the day of prepayment, or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 p.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing pursuant to paragraph (a) of this Section shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02(c). Each prepayment of a Borrowing pursuant to pursuant to paragraph (a) of this Section shall be applied as provided in paragraph (a) of this Section.

Section 2.12 Fees.

(a) The Borrowers jointly and severally agree to pay to the Administrative Agent for the account of each ABL Revolving Lender a commitment fee, which shall accrue at a rate equal to 0.50% per annum on the average daily amount of the Available Commitment of such ABL Revolving Lender during the period from and including the Closing Date through the date on which such ABL Revolving Lender's Commitments terminate. Accrued commitment fees shall be payable in arrears on the first day (or, if such day is not a Business Day, on the next succeeding Business Day) of each January, April, July and October for the quarterly period then ended and on the date on which the ABL Revolving Commitments terminate. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the last day but excluding the first day).

(b) The Borrowers jointly and severally agree to pay (i) to the Administrative Agent for the account of each ABL Revolving Lender a participation fee with respect to its participations in Standby Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Term SOFR Loans that are ABL Revolving Loans on the daily amount of such Lender's LC Exposure in respect of Standby Letters of Credit (excluding any portion thereof attributable to unreimbursed LC Disbursements), during the period from and including the Closing Date through the later

of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure in respect of Standby Letters of Credit, (ii) to the Administrative Agent for the account of each ABL Revolving Lender a participation fee with respect to its participations in Commercial Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Term SOFR Loans that are ABL Revolving Loans, on the daily amount of such Lender's LC Exposure in respect of Commercial Letters of Credit (excluding any portion thereof attributable to unreimbursed LC Disbursements), during the period from and including the Closing Date through the later of the date on which such Lender's Commitment terminates and the date on which such ABL Revolving Lender ceases to have any LC Exposure in respect of Commercial Letters of Credit, and (iii) to each Issuing Bank, for its own account, a fronting fee, in respect of each Letter of Credit issued by such Issuing Bank for the period from the date of issuance of such Letter of Credit through the expiration date of such Letter of Credit (or if terminated on an earlier date, to the termination date of such Letter of Credit), computed at a rate equal to 0.125% per annum of the daily stated amount of such Letter of Credit, as well as such Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued to but excluding the first day (or, if such day is not a Business Day, on the next succeeding Business Day) of each January, April, July and October shall be payable in arrears for the quarterly period then ended on the first day of such calendar quarter; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this paragraph shall be payable within 30 days after demand (accompanied by reasonable back-up documentation therefor). All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

(c) The Borrowers jointly and severally agree to pay to the Administrative Agent, for its own account, the agency and administration fees set forth in the Fee Letter, payable in the amounts and at the times specified therein or as so otherwise agreed upon by the Borrowers and the Administrative Agent, or such agency fees as may otherwise be separately agreed upon by the Borrowers and the Administrative Agent in writing.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the applicable Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances except as otherwise provided in the Fee Letter.

Section 2.13 Interest.

(a) The Loans comprising each ABR Borrowing (including each Swingline Loan and each Protective Advance) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Term SOFR Borrowing shall bear interest at Adjusted Term SOFR for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee payable by the Borrowers hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, to the fullest extent permitted by law, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal or interest of any Loan, 2.00% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section, or (ii) in the case of any other amount, 2.00% plus the rate applicable to Loans that are ABR Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant

to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Term SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and, in each case, shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted Term SOFR or Term SOFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.14 Alternate Rate of Interest.

(a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 2.14, if prior to the commencement of any Interest Period for a Term SOFR Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error), that adequate and reasonable means do not exist for ascertaining Adjusted Term SOFR or Term SOFR, as applicable (including because the Term SOFR Reference Rate is not available or published on a current basis), for Dollars and such Interest Period, provided that no Benchmark Transition Event shall have occurred at such time; or

(ii) the Administrative Agent is advised by the Required Lenders that Adjusted Term SOFR for Dollars and such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for Dollars and such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower Agent and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower Agent and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower Agent delivers a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term SOFR Borrowing in Dollars and any Borrowing Request that requests a Term SOFR Borrowing may be revoked by the Borrower Agent and, failing that, shall instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for an ABR Borrowing (to the extent of the affected Term SOFR Loans or affected Interest Periods); provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted. Furthermore, if any Term SOFR Loan in Dollars for an affected Interest Period is outstanding on the date of the Borrower Agent's receipt of the notice from the Administrative Agent referred to in this Section 2.14(a) with respect to Adjusted Term SOFR for such Interest Period, then until (x) the Administrative Agent notifies the Borrower Agent and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower Agent delivers a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, any Term SOFR Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day (to the extent of the affected Term SOFR Loans or affected Interest Periods).

(b) Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Obligation shall be deemed not to be a "Loan Document" for purposes of this Section 2.14), if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, in connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) The Administrative Agent will promptly notify the Borrower Agent and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (e) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower Agent's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower Agent may revoke any request for a Term SOFR Borrowing to be made, or any request for a conversion to or continuation of Term SOFR Loans to be converted or continued, during any Benchmark Unavailability Period and, failing that, the Borrower Agent will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate. Furthermore, if any Term SOFR Loan is outstanding on the date of the Borrower Agent's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to Term SOFR, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, any Term SOFR Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day.

Section 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in Adjusted Term SOFR) or Issuing Bank;

(ii) subject any Administrative Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Borrower or any other Loan Party hereunder to any Taxes (other than (A) Indemnified Taxes and (B) Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or Issuing Bank any other condition (other than Taxes) affecting this Agreement or Term SOFR Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, continuing, converting into or maintaining any Term SOFR Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise) in an amount deemed by such Lender or Issuing Bank, as applicable, to be material, then, within 30 days after the Borrower's receipt of the certificate contemplated by paragraph (c) of this Section, the Borrowers will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered; provided that the Borrowers shall not be liable for such compensation if (x) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto, (y) the Lender invokes Section 2.20 or (z) such circumstances in clause (ii) above resulting from a market disruption are not generally affecting the banking market.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding liquidity or capital requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of, or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law other than due to Taxes, which shall be dealt

exclusively pursuant to Section 2.17 (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy and liquidity), then within 30 days of receipt by the Borrowers of the certificate contemplated by paragraph (c) of this Section the Borrowers will pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section and setting forth in reasonable detail the manner in which such amount or amounts was determined shall be delivered to the Borrowers and shall be conclusive absent manifest error.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank, as applicable, notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.16 **Break Funding Payments**. In the event of (a) the conversion or prepayment of any principal of any Term SOFR Loan other than on the last day of an Interest Period applicable thereto (whether voluntary, mandatory, automatic, by reason of acceleration or otherwise), (b) the failure to borrow, convert, continue or prepay any Term SOFR Loan on the date or in the amount specified in any notice delivered pursuant hereto or (c) the assignment of any Term SOFR Loan of any Lender other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrowers pursuant to Section 2.19, then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event (other than loss of profit). A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section and the basis therefor and setting forth in reasonable detail the manner in which such amount or amounts was determined shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

Section 2.17 **Taxes**.

(a) Any and all payments by or on account of any obligation of any Loan Party hereunder shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable law; provided that if any withholding agent shall be required under applicable law (as determined in the good faith discretion of the applicable withholding agent) to deduct or withhold any Taxes from such payments, then (i) if such Taxes are Indemnified Taxes, the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.17) the Administrative Agent, Lender or any Issuing Bank (as applicable) receives an amount equal to the sum it would have received had no such deductions or withholding for Indemnified Taxes been made, (ii) such withholding agent shall make such deductions or withholding and (iii) such withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law. If at any time a Loan Party becomes aware that it is required by applicable law to make any deduction or withholding from any sum payable hereunder, such Loan Party shall promptly notify the Administrative Agent upon becoming aware of the same. In addition, each Lender, the Administrative Agent or Issuing Bank shall promptly notify a Loan Party upon

becoming aware of any circumstances as a result of which a Loan Party (or any applicable withholding agent) is or would be required to make any deduction or withholding from any sum payable hereunder.

(b) Without duplication of other amounts paid by the Borrower under this Section 2.17, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Each Loan Party shall indemnify Administrative Agent, each Lender and each Issuing Bank, within ten days after written demand therefor, for the full amount of any Indemnified Taxes paid by Administrative Agent, such Lender or such Issuing Bank, as applicable, on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest payable or paid by such Administrative Agent, Lender or Issuing Bank and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that if the Loan Party reasonably believes that such Taxes were not correctly or legally asserted, the Administrative Agent, Lender or Issuing Bank, as applicable, will use reasonable efforts to cooperate with the Loan Party to obtain a refund of such Taxes (which shall be repaid to the Loan Party in accordance with Section 2.17(f)) so long as such efforts would not, in the sole determination of Administrative Agent, such Lender or Issuing Bank result in any additional costs, expenses or risks or be otherwise disadvantageous to it; provided, further, that the Loan Party shall not be required to compensate Administrative Agent or any Lender pursuant to this Section 2.17 for any amounts incurred in any fiscal year for which Administrative Agent or such Lender does not furnish notice of such claim within six months from the end of such fiscal year; provided, further, that if the circumstances giving rise to such claim have a retroactive effect (*e.g.*, in connection with the audit of a prior tax year), then the beginning of such six month period shall be extended to include such period of retroactive effect. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender or an Issuing Bank (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by a Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party 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 the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. 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 Agent and the Administrative Agent, at the time or times reasonably requested by the Borrower Agent or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Agent 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 Agent or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Agent or the Administrative Agent as will enable the Borrower Agent or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(i) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower Agent 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 Agent or the Administrative Agent), two 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 entitled to do so, deliver to the Borrower Agent 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 Agent 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 (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) 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 L-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower Agent or a Subsidiary Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit L-2 or Exhibit L-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 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 L-4 on behalf of each such partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Agent 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 Agent or the Administrative Agent), 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 Agent 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 Agent and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Agent 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 Agent and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(E) On or before the date the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall provide to the Borrower Agent, two duly-signed, properly completed copies of the documentation prescribed in clause (i) or (ii) below, as applicable (together with all required attachments thereto): (i) IRS Form W-9 or any successor thereto, or (ii) (A) IRS Form W-8ECI or any successor thereto, and (B) with respect to payments received on account of any Lender, a U.S. branch withholding certificate on IRS Form W-8IMY or any successor thereto evidencing its agreement with the Borrower Agent to be treated as a U.S. Person for U.S. federal withholding purposes. At any time thereafter, the Administrative Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower Agent.

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

(f) If the Administrative Agent or a Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.17, it shall pay over an amount equal to such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or such Lender in good faith in its reasonable discretion, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the Administrative Agent or a Lender be required to pay any amount to a Loan Party pursuant to this paragraph (f) the payment of which would place the Administrative Agent or Lender in a less favorable net after Tax position than the Administrative Agent or Lender would have been in if the Tax subject to indemnification had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section shall not be construed to require the Administrative Agent or any Lender to make available its Tax

returns (or any other information relating to its Taxes which it deems confidential) to such Loan Party or any other Person.

(g) Survival. Each party's obligations under this Section 2.17 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 obligations under any Loan Document.

(h) For purposes of this Section 2.17, the term "Lender" includes any Issuing Bank and the term "applicable law" includes FATCA.

Section 2.18 Payments Generally; Allocation of Proceeds; Sharing of Set-offs.

(a) Unless otherwise specified, the Borrowers shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 1:30 p.m., New York City time, on the date when due, in immediately available funds, without set-off (except as otherwise provided in Section 2.17) or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrowers by the Administrative Agent, except payments to be made directly to the applicable Issuing Bank or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16 or 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as provided in Section 2.05 with respect to Swingline Loans, in Section 2.04 with respect to Protective Advances and in Section 2.20, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans of a given Class, each payment of the commitment fees, each reduction of the Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type (and of the same Class) shall be allocated pro rata among the Lenders in accordance with their respective ABL Applicable Percentages and FILO Applicable Percentages, as the case may be. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole dollar amount. All payments hereunder shall be made in Dollars. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment. At all times that a Cash Dominion Event has occurred and is continuing, solely for purposes of determining the amount of Loans available for borrowing purposes, checks and Cash or other immediately available funds from collections of items of payment and proceeds of any Collateral shall be applied in whole or in part against the Obligations, on the day of receipt, subject to actual collection.

(b) Subject in all respects to the provisions of the Intercreditor Agreement, all proceeds of Collateral received by the Administrative Agent after an Event of Default has occurred and is continuing and all or any portion of the Loans shall have been accelerated hereunder pursuant to Section 7.01, shall upon election by the Administrative Agent or at the direction of the Required Lenders be applied, first, on a pro rata basis, to pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent or any Issuing Bank from the Borrowers constituting Obligations, second, on a pro rata basis, to pay any fees or expense reimbursements then due to the Lenders from the Borrowers constituting Obligations, third, to pay interest due and payable in respect of any ABL Revolving Loans, any Swingline Loans and any Protective Advances, on a pro rata basis, fourth, to pay the principal of the Protective Advances, on a

pro rata basis, fifth, to prepay principal on the ABL Revolving Loans and Swingline Loans and unreimbursed LC Disbursements, on a pro rata basis, sixth, to pay an amount to the Administrative Agent equal to 105.0% of the LC Exposure on such date, to be held in the LC Collateral Account as Cash collateral for such Obligations, on a pro rata basis, seventh, to pay the interest due and payable to any Lender in respect of any FILO Loans, eighth, to pay or prepay to any Lender the principal of the FILO Loans, ninth, to pay any amounts owing with respect to Banking Services Obligations to the extent they constitute Secured Obligations and Secured Hedging Obligations, on a pro rata basis, to the extent a Reserve has been established in such amounts, tenth, to pay any amounts owing with respect to Banking Services Obligations to the extent they constitute Secured Obligations and Secured Hedging Obligations, on a pro rata basis, to the extent such amounts have not been paid pursuant to the immediately preceding ninth clause, eleventh, to the payment of any Supply Chain Obligations, on a pro rata basis, twelfth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers on a pro rata basis, thirteenth, as provided for under the Intercreditor Agreement, and fourteenth, to the Borrowers or as the Borrowers shall direct. Notwithstanding the foregoing amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements, Swingline Loans or Protective Advances resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements, Swingline Loans or Protective Advances and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for Cash at face value) participations in the Revolving Loans and sub-participations in LC Disbursements, Swingline Loans and Protective Advances of other Lenders at such time outstanding to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements, Swingline Loans and Protective Advances; 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 paragraph shall not be construed to apply to (x) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or participations in LC Disbursements, Swingline Loans or Protective Advances to any permitted assignee or participant, including any payments made or deemed made in connection with Sections 2.23 and 9.02(c). The Borrowers consent to the foregoing and agree, to the extent they may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrowers rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrowers in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrowers (or the Borrower Agent on behalf of Borrowers) prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the applicable Issuing Bank hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable Issuing Bank, as applicable, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as applicable, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.07(b) or Section 2.18(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.19 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15 or such Lender determines it can no longer make or maintain Term SOFR Loans pursuant to Section 2.20, or if the Borrowers are required to pay any Indemnified Taxes or any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.15 or such Lender determines it can no longer make or maintain Term SOFR Loans pursuant to Section 2.20, (ii) if the Borrowers are required to pay any Indemnified Taxes or any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, (iii) if any Lender is a Defaulting Lender, or (iv) if in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender directly affected thereby" with respect to which Required Lender consent has been obtained, any Lender is a non-consenting Lender (each such Lender, a "**Non-Consenting Lender**"), then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, (x) so long as no Event of Default under Section 7.01(a), 7.01(f) or 7.01(g) has occurred and is continuing, terminate the Commitments of such Lender and repay all Obligations of the Borrowers owing to such Lender relating to the Loans and participations held by such Lender as of such termination date or (y) replace such Lender by requiring such Lender to assign and delegate (and such Lender shall be obligated to assign and delegate), without recourse (in accordance with and subject to the restrictions contained in Section 9.05), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Lender shall have received payment of an amount equal to the outstanding principal of its Revolving Loans and participations in LC Disbursements, Swingline Loans and Protective Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and (ii) in the case of any assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments and (iii) such assignment does not conflict with applicable law. A Lender (other than a Defaulting Lender) shall not be required to make any such assignment and delegation, and the Borrowers may not terminate the Commitments of such Lender, if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. Nothing in this Section 2.19 shall be deemed to prejudice any rights that the Borrowers may have against any Lender that is a Defaulting Lender. Each Lender agrees that if it is replaced pursuant to Section 2.19, it shall execute and deliver to the Administrative Agent an Assignment and Assumption to evidence such sale and purchase and shall deliver to the Administrative Agent any Promissory Note (if the assigning Lender's Loans are evidenced by Promissory Notes) subject to such Assignment and Assumption; provided that the failure of any Lender replaced pursuant to this Section 2.19 to execute an Assignment and Assumption or deliver such Promissory Notes shall not render such sale and

purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Promissory Notes shall be deemed cancelled upon such failure.

Section 2.20 **Illegality**. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for such Lender or its applicable lending office to make or maintain any Term SOFR Loans, then, on notice thereof by such Lender to the Borrowers (or the Borrower Agent on behalf of Borrowers) through the Administrative Agent, any obligations of such Lender to make or continue Term SOFR Loans or to convert ABR Borrowings to Term SOFR Borrowings shall be suspended until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall upon demand from such Lender (with a copy to the Administrative Agent), either convert all Term SOFR Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the determination of such Lender, otherwise be materially disadvantageous to it.

Section 2.21 **Cash Receipts**.

(a) Attached hereto as Schedule 2.21(a) is a schedule of all DDAs, that, to the knowledge of the Responsible Officers of the Loan Parties, are maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each depository, in each case as of the Closing Date, (i) the name and address of such depository and (ii) the account number(s) maintained with such depository.

(b) Attached hereto as Schedule 2.21(b) is a list describing all arrangements to which any Loan Party is a party as of the Closing Date with respect to the payment to such Loan Party of the proceeds of all credit card charges for sales by such Loan Party.

(c) Each Loan Party shall (within 90 days after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion)) (i) deliver to the Administrative Agent notifications, in form reasonably satisfactory to the Administrative Agent, executed on behalf of such Loan Party and addressed to such Loan Party's credit card clearinghouses and processors (each, a "**Credit Card Notification**"); (ii) instruct each depository institution for a DDA to cause all amounts on deposit and available at the close of each Business Day in such DDA (net of such minimum balance, not to exceed $20,000, as may be required to be maintained in the subject DDA by the depository institution at which such DDA is maintained), to be swept to one of the Loan Parties' concentration accounts no less frequently than on a daily basis, such instructions to be irrevocable unless otherwise agreed to by the Administrative Agent; and (iv) enter into a blocked account agreement with respect to each of the Loan Parties' concentration accounts (each, a "**Blocked Account Agreement**"), in form reasonably satisfactory to the Administrative Agent, with the Administrative Agent and any bank with which such Loan Party maintains a concentration account into which the DDAs are swept (collectively, the "**Blocked Accounts**"), which concentration accounts as of the Closing Date are listed on Schedule 2.21(c) annexed hereto. Any such Blocked Account Agreement with respect to a concentration account acquired by a Loan Party in connection with an Investment permitted hereunder or otherwise acquired after the Closing Date, must be entered into so long as no Cash Dominion Event exists, within 90 days, and at any time a Cash Dominion Event exists, within ten days, in each case following the date such concentration account is acquired (or such longer period as the Administrative Agent may agree to in its sole discretion).

(d) Each Credit Card Notification and Blocked Account Agreement shall require, after the delivery of notice of a Cash Dominion Event from the Administrative Agent to the Borrower Agent and

the other parties to such instrument or agreement (which the Administrative Agent may, or upon the request of the Required Lenders shall, provide upon its becoming aware of such a Cash Dominion Event), the ACH or wire transfer no less frequently than once per Business Day (unless the Termination Date shall have occurred), of all available Cash balances and Cash receipts, including the then contents or then entire ledger balance of each Blocked Account (net of such minimum balance), not to exceed $500,000 per account or $3,000,000 in the aggregate for all such accounts (the "**Minimum Balance Amount**"), as may be required to be maintained in the subject Blocked Account by the bank at which such Blocked Account is maintained (the "**Required Minimum Balances**"), to an account maintained by the Administrative Agent (the "**Administrative Agent Account**"). All amounts received in the Administrative Agent Account shall be applied (and allocated) by the Administrative Agent in accordance with Section 2.11(c); provided that if the circumstances described in Section 2.18(b) are applicable, all such amounts shall be applied in accordance with such Section 2.18(b). Each Loan Party agrees that it will not cause any proceeds of any Blocked Account to be otherwise redirected. At all times Cash and Cash Equivalents shall only be held in Blocked Accounts, DDAs or Excluded Accounts, and at any time a Cash Dominion Event exists and is continuing, such amounts shall be swept from the Blocked Accounts to the Administrative Agent Account as provided herein, except for Required Minimum Balances in an amount not to exceed the Minimum Balance Amount.

(e) The Loan Parties may close DDAs or Blocked Accounts and/or open new DDAs or Blocked Accounts, subject (in the case of opening any new Blocked Accounts) to the contemporaneous (or such longer period as the Administrative Agent may agree in its sole discretion) execution and delivery to the Administrative Agent of a Blocked Account Agreement consistent with the provisions of this Section 2.21 and otherwise reasonably satisfactory to the Administrative Agent. Unless consented to in writing by the Administrative Agent, the Loan Parties shall not enter into any agreements with credit card clearing houses or processors other than the ones listed on Schedule 2.21(b) to the Seventh Amendment unless contemporaneously therewith (or such longer period as the Administrative Agent may agree), a Credit Card Notification is executed and delivered to the applicable credit card clearing house and/or processor and a copy thereof is delivered to the Administrative Agent and the Borrower Agent delivers a supplement to Schedule 2.21(b) to the Seventh Amendment describing such arrangement at the time of delivery of the Compliance Certificate pursuant to Section 5.01(d) for the fiscal period in which such Credit Card Notification was executed.

(f) The Administrative Agent Account shall at all times be under the sole dominion and control of the Administrative Agent. Each Loan Party hereby acknowledges and agrees that (i) such Loan Party has no right of withdrawal from the Administrative Agent Account, (ii) the funds on deposit in the Administrative Agent Account shall at all times continue to be collateral security for all of the Secured Obligations, and (iii) the funds on deposit in the Administrative Agent Account shall be applied as provided in this Agreement and the Intercreditor Agreement. In the event that, notwithstanding the provisions of this Section 2.21, any Loan Party receives or otherwise has dominion and control of any proceeds or collections required to be transferred to the Administrative Agent Account pursuant to Section 2.21(d), such proceeds and collections shall be held in trust by such Loan Party for the Administrative Agent, and shall promptly be deposited into the Administrative Agent Account or dealt with in such other fashion as such Loan Party may be instructed by the Administrative Agent.

(g) Upon a Cash Dominion Event and for so long as the same is continuing, Administrative Agent shall direct that all amounts in the Blocked Accounts be paid to the Administrative Agent Account. So long as no Cash Dominion Event has occurred and is continuing in respect of which the Administrative Agent has delivered notice thereof as contemplated by paragraph (d) of this Section 2.21, the Loan Parties may direct, and shall have sole control over, the manner of disposition of funds in the Blocked Accounts.

(h) Any amounts held or received in the Administrative Agent Account (including all interest and other earnings with respect thereto, if any) at any time (i) when the Termination Date has occurred or (ii) all Events of Default and Cash Dominion Events have been cured, shall (subject in the case of clause (i) to the provisions of the Intercreditor Agreement) be remitted to an account of the Borrowers designated by the Borrowers.

(i) Following the occurrence of a Cash Dominion Event (other than by reason of an Event of Default pursuant to Section 7.01(a), 7.01(f) or 7.01(g)), in the event that a Blocked Account or the Administrative Agent Account contains Trust Funds (other than payroll and employee benefit payments in the nature of discretionary contributions), the Borrower Agent (acting in good faith) may, within 30 days after such Trust Funds are received in such Blocked Account or Administrative Agent Account, deliver to the Administrative Agent a Trust Fund Certificate (together with such supporting information as may be requested by the Administrative Agent). Notwithstanding anything to the contrary herein or in any other Loan Document, within five Business Days following receipt of a Trust Fund Certificate, the Administrative Agent shall remit the lesser of (a) such Trust Funds specified in the Trust Fund Certificate or (b) the Excess Availability on the date of such remittance, at the option of the Administrative Agent to (x) the applicable Loan Party or (y) directly to the applicable Person entitled to such Trust Funds as specified in the Trust Fund Certificate on behalf of the applicable Loan Party. If any such amounts are remitted to a Loan Party, such Loan Party shall apply all such funds solely for the purposes set forth in the applicable Trust Fund Certificate on or prior to the date due and any failure of such Loan Party to apply all such funds solely for such purposes shall constitute an immediate Event of Default.

Section 2.22 **Defaulting Lender**. Notwithstanding any provisions of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) Fees shall cease to accrue on the unfunded portion of the Commitment of such Defaulting Lender pursuant to Section 2.12(a) and, subject to clause (d)(iv) below, on the participation of such Defaulting Lender in Letters of Credit pursuant to Section 2.12(b).

(b) The Commitment and the LC Exposure of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders or Super Majority Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02); provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender disproportionately and adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(c) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of a Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.11, Section 2.18, Article 7 or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 9.09), shall be applied at such time or times as may be determined by the Administrative Agent and, where relevant, the Borrower Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to any applicable Issuing Banks and Swingline Lenders hereunder; third, if so reasonably determined by the Administrative Agent or reasonably requested by the applicable Issuing Bank or Swingline Lender, to be held as Cash collateral for future funding obligations of that Defaulting Lender of any participation in any Swingline Loan or Letter of Credit; fourth, as the Borrower Agent may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower Agent, to be held in a deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans

under this Agreement; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or Swingline Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank or any Swingline Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower Agent as a result of any judgment of a court of competent jurisdiction obtained by the Borrower Agent against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Exposure in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or LC Exposure were made or created at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Revolving Loans of, and LC Exposure owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Exposure owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash collateral pursuant to this Section 2.22(c) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(d) If any Swingline Loans or LC Exposure exists or Protective Advance is outstanding at the time a Lender becomes a Defaulting Lender then:

(i) all or any part of such Swingline Loans, LC Exposure and Protective Advances shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent the sum of all non-Defaulting Lenders' Credit Exposures plus the amount of the Applicable Percentage of the Defaulting Lender (determined immediately prior to its being a Defaulting Lender) of Swingline Loans and Protective Advances that it has funded and are outstanding as of the date that it became a Defaulting Lender plus the Defaulting Lender's LC Exposure does not exceed the total of all non-Defaulting Lenders' Commitments; or

(ii) if the reallocation described in paragraph (i) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any other right or remedy available to them hereunder or under law, within two Business Days following notice by the Administrative Agent, Cash collateralize 105.0% of such Defaulting Lender's LC Exposure and any obligations of such Defaulting Lender to fund participations in any Swingline Loan or Protective Advance (after giving effect to any partial reallocation pursuant to paragraph (i) above and any Cash collateral provided by the Defaulting Lender) or make other arrangements reasonably satisfactory to the Administrative Agent and to the applicable Issuing Bank and/or Swingline Lender with respect to such LC Exposure and obligations to fund participations. Cash collateral (or the appropriate portion thereof) provided to reduce LC Exposure or other obligations shall be released promptly following (A) the elimination of the applicable LC Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 2.19)) or (B) the Administrative Agent's good faith determination that there exists excess Cash collateral.

(iii) if the LC Exposure of the non-Defaulting Lenders are reallocated pursuant to this Section 2.22(d), then the fees payable to the Lenders pursuant to Sections 2.12(a) and (b), as the case may be, shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; or

(iv) if any Defaulting Lender's LC Exposure is not Cash collateralized, prepaid or reallocated pursuant to this Section 2.22(d), then, without prejudice to any rights or remedies of the applicable Issuing Bank or any Lender hereunder, all letter of credit fees payable under Section 2.12(b)

with respect to such Defaulting Lender's LC Exposure shall be payable to the applicable Issuing Bank until such Defaulting Lender's LC Exposure is Cash collateralized.

(e) So long as any Lender is Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and no Issuing Bank shall be required to issue, extend, create, incur, amend or increase any Letter of Credit unless it is reasonably satisfied that the related exposure will be 105.0% covered by the Commitments of the non-Defaulting Lenders and/or Cash collateral will be provided by the Borrowers in accordance with Section 2.22(d), and participating interests in any such newly issued, extended or created Letter of Credit or newly made Swingline Loan shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.22(d)(i) (and Defaulting Lenders shall not participate therein).

(f) In the event that the Administrative Agent, the Borrowers, the Issuing Banks and the Swingline Lender each agree that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the ABL Applicable Percentage of Swingline Loans and Protective Advances and LC Exposure of the ABL Revolving Lenders shall be readjusted to reflect the inclusion of such Lender's ABL Revolving Commitment (if any) and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) or participations in Loans as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans or participations in accordance with its ABL Applicable Percentage; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.23 Incremental Credit Extensions.

(a) The Borrower Agent may, at any time from time to time after Closing Date, deliver a written request to Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders) to increase the aggregate ABL Revolving Commitments in an aggregate principal amount of up to $100,000,000, specifying the amount requested (each such increase of ABL Revolving Commitments, an "**ABL Revolving Commitment Increase**; any ABL Revolving Commitment Increase is sometimes referred to herein as a "**Commitment Increase**"); provided that (i) such request shall be for an increase of not less than $10,000,000, (ii) except as otherwise specifically agreed by any Lender prior to the Closing Date, or separately agreed from time to time between the Borrower Agent and any Lender, no Lender shall be obligated to provide such increase in its Commitment and the determination to increase the Commitment of a Lender shall be within the sole and absolute discretion of such Lender, (iii) no Commitment Increase shall require the approval of any existing Lender other than the existing Lender (if any) providing all or part of such increase and (iv) any such Commitment Increase will be on terms identical to those applicable to the ABL Revolving Facility (other than any terms which are applicable only after the then-existing Maturity Date for the ABL Revolving Facility).

(b) Commitment Increases may be provided by any existing Lender, or by any other lender (any such other lender being called an "**Additional Lender**"); provided that the Administrative Agent (such consent not to be unreasonably withheld) and (if such consent would be required under Section 9.05(b) for an assignment of Revolving Loans or Commitments, as applicable to such Additional Lender) the Swingline Lender and each Issuing Bank shall have consented (such consent not to be unreasonably withheld) to such Additional Lender's providing such Commitment Increases.

(c) Each Lender or Additional Lender providing a portion of the Commitment Increase shall execute and deliver to the Administrative Agent and the Borrower Agent all such documentation

(including an amendment to this Agreement or any other Loan Document) as may be reasonably required by the Administrative Agent to evidence and effectuate such Commitment Increase. On the effective date of such Commitment Increase, (i) the Commitment Schedule shall be amended, without the consent of any other Lenders, to reflect such Commitment Increase and the Administrative Agent is authorized and directed to so revise the Commitment Schedule and distribute it to each Lender and the Borrower Agent, (ii) such revised Commitment Schedule shall replace the then existing Commitment Schedule and become part of this Agreement and (iii) each Additional Lender added as a new ABL Revolving Lender pursuant to any such increase in the aggregate ABL Revolving Commitments shall become a ABL Revolving Lender for all purposes in connection with this Agreement.

(d) As a condition precedent to such Commitment Increase, (i) upon its request, the Administrative Agent shall have received an opinion of counsel to the Borrowers in form and substance reasonably satisfactory to the Administrative Agent, as well as reaffirmation agreements, supplements and/or amendments to the Collateral Documents (including in the case of the Mortgages, mortgage amendments and date down endorsements with respect to the applicable insurance policies) as it shall reasonably require, (ii) the Administrative Agent shall have received an administrative questionnaire, in the form provided to such Additional Lender by the Administrative Agent (the "**Administrative Questionnaire**") and such other documents as it shall reasonably require for an Additional Lender and the Administrative Agent and the applicable Lenders shall have received all fees required to be paid in respect of such Commitment Increase and (iii) Administrative Agent shall have received a certificate of each Borrower signed by an authorized officer of such Borrower (A) certifying and attaching a copy of the resolutions adopted by the Borrowers approving or consenting to such Commitment Increase, and (B) in the case of the Borrower Agent, certifying that, before and after giving effect to such Commitment Increase, no Event of Default exists or has occurred and is continuing.

(e) Upon each increase in the ABL Revolving Commitments pursuant to this Section 2.23, (i) each ABL Revolving Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each lender providing a portion of the ABL Revolving Commitment Increase (each a "**ABL Revolving Commitment Increase Lender**") in respect of such increase, and each such ABL Revolving Commitment Increase Lender will automatically and without further act be deemed to have assumed, a portion of such ABL Revolving Lender's participations hereunder in outstanding Letters of Credit and Swingline Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (A) participations hereunder in Letters of Credit and (B) participations hereunder in Swingline Loans held by each ABL Revolving Lender (including each such ABL Revolving Commitment Increase Lender) will equal the percentage of the aggregate ABL Revolving Commitments of all ABL Revolving Lenders represented by such ABL Revolving Lender's ABL Revolving Commitment and (ii) if, on the date of such increase, there are any ABL Revolving Loans outstanding, such ABL Revolving Loans shall on or prior to the effectiveness of such ABL Revolving Commitment Increase be prepaid from the proceeds of additional ABL Revolving Loans made hereunder (reflecting such increase in ABL Revolving Commitments) by the ABL Revolving Commitment Increase Lenders, as shall be necessary in order that, after giving effect to such prepayments and borrowings pursuant to this subclause (ii), all ABL Revolving Loans will be held ratably by the ABL Revolving Lenders (including the ABL Revolving Commitment Increase Lenders) in accordance with their respective ABL Revolving Commitments immediately after giving effect to the applicable ABL Revolving Commitment Increase, which prepayment shall be accompanied by accrued interest on the ABL Revolving Loans being prepaid and any costs incurred by any ABL Revolving Lender in accordance with Section 2.16. The Administrative Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements and the prepayment notice requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to this clause (e).

(f) Effective on the date of each increase in the aggregate ABL Revolving Commitments pursuant to this Section 2.23, (i) each reference in this Agreement to an amount of Excess

Availability (other than as a percentage of the Aggregate Commitments or as a percentage of any other amount) shall, automatically and without any further action, be deemed to be increased so that the ratio of each amount of Excess Availability to the amount of the aggregate ABL Revolving Commitments after such increase in the aggregate ABL Revolving Commitments remains the same as the ratio of such the amount of Excess Availability to the amount of the aggregate ABL Revolving Commitments prior to such increase in the aggregate ABL Revolving Commitments and (ii) the maximum amount of LC Exposure permitted hereunder shall increase by an amount, if any, agreed upon by Administrative Agent, Issuing Banks and the Borrowers.

(g) This Section 2.23 shall supersede any provisions in Section 2.18 or 9.02 to the contrary.

Section 2.24 Joint and Several Liability of Borrowers.

(a) Notwithstanding anything in this Agreement or any other Loan Documents to the contrary, each Borrower, jointly and severally, in consideration of the financial accommodations to be provided by the Administrative Agent and Lenders under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations, it being the intention of the parties hereto that all of the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them. Borrowers shall be liable for all amounts due to Administrative Agent and Lenders under this Agreement, regardless of which Borrower actually receives the Loans or Letters of Credit hereunder or the amount of such Loans received or the manner in which the Administrative Agent or any Lender accounts for such Loans, LC Exposure or other extensions of credit on its books and records. The Obligations of Borrowers with respect to Loans made to one of them, and the Obligations arising as a result of the joint and several liability of one of the Borrowers hereunder with respect to Loans made to the other of the Borrowers hereunder, shall be separate and distinct obligations, but all such other Obligations shall be primary obligations of all Borrowers.

(b) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation.

(c) The obligations of each Borrower under this Section 2.24 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower. The joint and several liability of the Borrowers hereunder shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, membership, constitution or place of formation of any Borrower or any of the Lenders.

(d) The provisions of this Section 2.24 hereof are made for the benefit of the Lenders and their successors and assigns, and subject to Article 8 hereof, may be enforced by them from time to time against any Borrower as often as occasion therefor may arise and without requirement on the part of Administrative Agent or any Lender first to marshal any of its claims or to exercise any of its rights against the other Borrowers or to exhaust any remedies available to it against the other Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.24 shall remain in effect until the Termination Date. If at any time, any payment, or any part thereof, made in respect of any of the Obligations is rescinded or must otherwise be restored or returned by Administrative Agent or any Lender upon the insolvency, bankruptcy

or reorganization of any Borrower, or otherwise, the provisions of this Section 2.24 hereof will forthwith be reinstated and in effect as though such payment had not been made.

(e) Notwithstanding any provision to the contrary contained herein or in any of the other Loan Documents, to the extent the obligations of a Borrower shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers) then the obligations of such Borrower hereunder shall be limited to the maximum amount that is permissible under applicable law (whether federal, state or provincial and including, without limitation, the Bankruptcy Code of the United States).

(f) With respect to the Obligations arising as a result of the joint and several liability of Borrowers hereunder with respect to Loans, Letters of Credit or other extensions of credit made to the other Borrowers hereunder, to the maximum extent permitted by applicable law, each Borrower waives, until the payment in full in Cash of all Obligations, any right to enforce any right of subrogation or any remedy which Administrative Agent or any Lender now has or may hereafter have against any Borrower, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to Administrative Agent or any Lender. Any claim which any Borrower may have against any other Borrower with respect to any payments to Administrative Agent or Lenders hereunder or under any of the other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in Cash of all Obligations. Upon the occurrence of any Event of Default and for so long as the same is continuing, to the maximum extent permitted under applicable law, Administrative Agent and Lenders may proceed directly and at once, without notice (to the extent notice is waivable under applicable law), against (i) with respect to Obligations of Borrowers, either or all of them or (ii) with respect to Obligations of any Borrower, to collect and recover the full amount, or any portion of the applicable Obligations, without first proceeding against the other Borrowers or any other Person, or against any security or collateral for the Obligations. Each Borrower consents and agrees that Administrative Agent and Lenders shall be under no obligation to marshal any assets in favor of Borrower(s) or against or in payment of any or all of the Obligations. Subject to the foregoing, in the event that a Loan, Letter of Credit or other extension of credit is made to, or with respect to business of, one Borrower and any other Borrower makes any payments with respect to such Loan, Letter of Credit or extension of credit, the first Borrower shall promptly reimburse such other Borrower for all payments so made by such other Borrower.

Section 2.25 **Reserves; Changes to Eligibility Criteria**. The Administrative Agent may at any time and from time to time in the exercise of its Permitted Discretion upon three Business Days' prior written notice to the Borrowers, which notice shall include a reasonably detailed description of such Reserve being established or change to any eligibility criteria being made (during which period (x) the Administrative Agent shall, if requested, discuss any such Reserve or change with the Borrowers and (y) the Borrowers may take such action as may be required so that the event, condition or matter that is the basis for such Reserve or change thereto no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser change thereto, in a manner and to the extent reasonably satisfactory to the Administrative Agent), (x) establish and increase or decrease Reserves in accordance with the terms hereof or (y) modify eligibility standards under the definition of Eligible Trade Receivables, Eligible Credit Card Receivables, Eligible Inventory or Eligible In-Transit Inventory; provided that following the delivery of any such prior written notice to the Borrowers in respect of any such change as contemplated under this Section 2.25, there shall be no making of Loans, issuance, amendment or modification of Letters of Credit or any other extensions of credit hereunder that would result in Excess Availability being less than the amount by which the ABL Line Cap would be reduced after the imposition of such change; provided further that if consultation with the Borrowers and/or notice to the Borrowers is not practicable or if failure to implement any such Reserve or change within a shorter time period would, in the good faith judgment of the Administrative Agent, reasonably be expected to result in a Material

Adverse Effect or materially and adversely affect the Collateral or the rights of the Lenders under the Loan Documents, such Reserve or change may be implemented within a shorter time as determined by the Administrative Agent in its Permitted Discretion; provided further that no prior written notice in respect of establishing a Reserve or changing an eligibility criteria shall be required during the continuance of an Event of Default. In exercising such Permitted Discretion, the Administrative Agent may consider any of the following: (a) changes after the Closing Date in demand for, pricing of, or product mix of Inventory; (b) changes after the Closing Date in any concentration of risk with respect to a Loan Party's Accounts or Inventory; and (c) any other factors arising after the Closing Date that change in any material respect the credit risk of lending to a Borrower on the security of a Loan Party's Accounts or Inventory. Notwithstanding any other provision of this Agreement to the contrary, (a) in no event shall Reserves or changes in eligibility criteria with respect to any component of the Borrowing Base duplicate Reserves or adjustments already accounted for determining eligibility criteria and (b) in no event shall Reserves be imposed on the first 5.0% of dilution of Accounts and thereafter shall not exceed more than 1.0% for each incremental percentage increase in dilution over 5.0%.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

Each of Ultimate Parent and Holdings (solely to the extent applicable to either or both), the Borrower Agent and the other Loan Parties represents and warrants to the Lenders that:

Section 3.01 **Organization; Powers**. Each of the Loan Parties and each of its Subsidiaries is (a) duly organized, validly existing and in good standing (to the extent such concept exists in the relevant jurisdiction) under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and, (c) is qualified to do business in, and is in good standing (to the extent such concept exists in the relevant jurisdiction) in, every jurisdiction where its ownership, lease or operation of properties or conduct of its business requires such qualification; except, in each case referred to in this Section 3.01 (other than clause (a) with respect to Borrowers and clause (b) with respect to the Loan Parties) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.02 **Authorization; Enforceability**. After giving effect to the Confirmation Order and the Plan of Reorganization, the Transactions are within each applicable Loan Party's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational action of such Loan Party. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and dealing.

Section 3.03 **Governmental Approvals; No Conflicts**. After giving effect to the Confirmation Order and the Plan of Reorganization, the execution and delivery of the Loan Documents and the performance by any Loan Party thereof (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) for filings necessary to perfect Liens created pursuant to the Loan Documents and (iii) such consents, approvals, registrations, filings, or other actions the failure to be obtained or made which could not be reasonably expected to have a Material Adverse Effect, (b) will not violate any (i) of its Organizational Documents or (ii) any Requirements of Law applicable to any Loan Party which, in the case of this clause (ii), could reasonably be expected to have a Material Adverse Effect and (c) will not violate or result in a default under (i) the Second Lien Notes or (ii) any other Contractual

Obligation of any of the Loan Parties which in the case of this clause (ii) could reasonably be expected to result in a Material Adverse Effect.

Section 3.04 Financial Condition; No Material Adverse Effect.

(a) The Borrower Agent has heretofore furnished to the Lenders its consolidated balance sheet and related consolidated statements of operations and Cash flows and stockholders' equity as of and for (i) the fiscal year ended December 31, 2021, reported on by Ernst & Young LLP, independent public accountants, and (ii) the fiscal quarter ended on March 31, 2023, certified by its chief financial officer. Other than as disclosed in the current report dated June 5, 2023 set forth on Form 8-K and filed with the SEC by Ultimate Parent on June 9, 2023, such financial statements present fairly, in all material respects, the financial position and results of operations and Cash flows of the Borrower Agent and its consolidated subsidiaries as of such dates and for such periods in accordance with GAAP, subject to the absence of footnotes and normal year-end adjustments in the case of the statements referred to in clause (ii).

(b) Since July 21, 2023, no event, change or condition has occurred that has had, or would reasonably be expected to have, a Material Adverse Effect.

Section 3.05 Properties.

(a) As of the date of this Agreement, Schedule 3.05 sets forth the address of each parcel of real property (or each set of parcels that collectively comprise one operating property) that is owned or leased by each Loan Party.

(b) Ultimate Parent and each of its Subsidiaries has good and valid fee simple title to or rights to purchase, or valid leasehold interests in, or easements or other limited property interests in, all its Real Estate Assets (including any Mortgaged Properties) and has good and marketable title to its personal property and assets, in each case, except for defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and except where the failure to have such title would not reasonably be expected to have a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(c) To the knowledge of each Responsible Officer of the Borrowers, as of the Closing Date, neither Ultimate Parent nor any Subsidiary is obligated under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Mortgaged Property or any interest therein.

(d) Ultimate Parent and each of its Subsidiaries has good and marketable title to or a valid license or right to use, all Intellectual Property necessary for the present conduct of its business, without, to the knowledge of Ultimate Parent and its Subsidiaries, any infringement, misuse, misappropriation, or violation, individually or in the aggregate, of the rights of others, and free from any burdensome restrictions on the present conduct of its business, except where such failure to own or license or where such infringement, misuse, misappropriation or violation or restrictions would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.06 Litigation and Environmental Matters.

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower Agent, threatened in writing against or affecting the Loan Parties or any of the Subsidiaries which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for any matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (i) no Loan Party nor any of its Subsidiaries has received

notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability and (ii) no Loan Party nor any of its Subsidiaries (A) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law or (B) has become subject to any Environmental Liability.

(c) Neither Ultimate Parent nor any of its Subsidiaries has treated, stored, transported or disposed of Hazardous Materials at or from any currently or formerly operated real estate or facility relating to its business in a manner that would reasonably be expected to have a Material Adverse Effect.

Section 3.07 **Compliance with Laws**. Ultimate Parent and its Subsidiaries is in compliance with all Requirements of Law applicable to it or its property, except, in each case, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.08 **Investment Company Status**. No Loan Party is an "investment company" as defined in, or is required to be registered under, the Investment Company Act of 1940.

Section 3.09 **Taxes**. Ultimate Parent and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it that are due and payable, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent that the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. No tax liens have been filed on any assets of Ultimate Parent or its Subsidiaries constituting Collateral except for Permitted Liens pursuant to Section 6.02. No claims are being asserted with respect to any such taxes, except to the extent that the assertion of such claims, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.10 **ERISA**. No ERISA Event has occurred in the five-year period prior to the date on which this representation is made or deemed made and is continuing or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under all Pension Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87), taking into account only each Pension Plan the present value of the accumulated benefit obligation of which exceeded the fair market value of the assets of such Pension Plan, did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Pension Plans, in the aggregate.

Section 3.11 **Disclosure**.

(a) As of the Closing Date, all written information (other than forward-looking information and information of a general economic or industry-specific nature, that has been or made be made available) concerning Ultimate Parent, Holdings, the Borrowers, the Subsidiaries, the Transactions or otherwise prepared by or on behalf of the foregoing or their representatives and made available to any Lender or the Administrative Agent in connection with the Transactions on or before the Closing Date (the "**Information**"), when taken as a whole, does not or will not, when furnished, contain any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (after giving effect to all supplements and updates thereto from time to time).

(b) Any forward-looking information that has been made available to any Lenders or the Administrative Agent in connection with the Transactions on or before the Closing Date has been prepared in good faith based upon assumptions believed by the Borrower Agent to be reasonable at the time

furnished (it being recognized that such forward-looking information is not to be viewed as facts and are subject to significant uncertainties and contingencies many of which are beyond the Borrower Agent's control, that no assurance can be given that any particular financial projections will be realized, that actual results may differ from projected results and that such differences may be material).

(c) As of the Closing Date, the information included in the Beneficial Ownership Certification provided on or prior to the Closing Date to any Lender in connection with this Agreement is true and correct in all respects.

Section 3.12 **Borrowing Base Certificate**. The information set forth in each Borrowing Base Certificate is true and correct in all material respects and has been prepared in the accordance with the requirements of this Agreement.

Section 3.13 **Solvency**. Immediately after (x) the consummation of the Transactions to occur on the Closing Date and (y) the making of each Loan hereunder or the issuance, amendment, modification, renewal or extension of each Letter of Credit and, in each case, after giving effect to the application of the proceeds of the Loans borrowed hereunder, (i) the sum of the debt (including contingent liabilities) of Ultimate Parent and its Subsidiaries, taken as a whole, does not exceed the fair value of the present assets of Ultimate Parent and its Subsidiaries, taken as a whole; (ii) the present fair saleable value of the assets of Ultimate Parent and its Subsidiaries, taken as a whole, is not less than the amount that will be required to pay the probable liabilities (including contingent liabilities) of Ultimate Parent and its Subsidiaries, taken as a whole, on their debts as they become absolute and matured; (iii) the capital of Ultimate Parent and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of Ultimate Parent or its Subsidiaries, taken as a whole, contemplated as of the Closing Date and the date credit is extended hereunder as described in the preceding clause (y); and (iv) Ultimate Parent and its Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

Section 3.14 **Use of Proceeds**. The proceeds of the Loans and the Letters of Credit have been used and will be used, whether directly or indirectly as set forth in Section 5.11.

Section 3.15 **Capitalization and Subsidiaries**. Schedule 3.15 sets forth, in each case as of the Closing Date, (a) a correct and complete list of the name and relationship to the Borrower Agent of each of its Subsidiaries and each other Loan Party, and (b) the type of entity of the Borrower Agent, each of its Subsidiaries, each other Loan Party and each other subsidiary of Ultimate Parent.

Section 3.16 **Security Interest in Collateral**. The provisions of this Agreement and the other Loan Documents create legal, valid and enforceable Liens on all the Collateral in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, subject, as to enforceability, to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and dealing, and upon the making of such filings and taking of such other actions required to be taken hereby or by the applicable Loan Documents (including the filings of appropriate financing statements with the office of the Secretary of State of the state of organization of each Loan Party, the filing of appropriate short-form intellectual property security agreements with the U.S. Patent and Trademark Office and the U.S. Copyright Office, and the proper recordation of Mortgages and fixture filings with respect to any Material Real Estate Assets, in each case in favor of the Administrative Agent for the benefit of the Secured Parties and the delivery to the Administrative Agent of any stock certificates or promissory notes required to be delivered pursuant to the applicable Loan Documents), such Liens constitute perfected and continuing First Priority Liens on the

Collateral, securing the Secured Obligations, subject only to Permitted Liens expressly permitted hereunder to be prior to the Liens purported to be created by the Collateral Documents.

Section 3.17 **Labor Disputes**. As of the Closing Date, except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes, lockouts or slowdowns against Ultimate Parent or any of its Subsidiaries pending or, to the knowledge of Ultimate Parent or any of its Subsidiaries, threatened, (b) the hours worked by and payments made to employees of Ultimate Parent and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters and (c) all payments due from Ultimate Parent or any of its Subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Loan Party or such Subsidiary to the extent required by GAAP.

Section 3.18 **Federal Reserve Regulations**.

(a) On the Closing Date, none of the Collateral is Margin Stock. Not more than 25% of the value of the assets of Holdings, Ultimate Parent and its Subsidiaries, taken as a whole, is represented by Margin Stock.

(b) None of Ultimate Parent, Holdings, any Borrower or any of their respective Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(c) No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately for any purpose that entails a violation of, or that is inconsistent with, the provisions of Regulation T, U or X.

Section 3.19 **Burdensome Restrictions**. None of Ultimate Parent, Holdings, the Borrowers, the Subsidiary Guarantors or the Subsidiaries thereof are subject to any agreement prohibiting the creation or assumption of any Lien upon any of their properties or assets, whether now owned or hereafter acquired except to the extent explicitly permitted under Section 6.04.

Section 3.20 **Anti-Corruption Laws and Sanctions.**

(a) Each Loan Party has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by such Loan Party, the Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party, the Subsidiaries and their respective officers and directors and to the knowledge of such Loan Party, its employees, agents, advisors and Affiliates are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in such Borrower being designated as a Sanctioned Person. None of (a) Ultimate Parent, Holdings, any Borrower, any of their respective subsidiaries, any of their respective directors, officers or employees, or (b) (to the knowledge of any Loan Party), any agent, any Affiliate or any advisor of, in each case, any Loan Party or any subsidiary thereof that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person.

(b) No part of the proceeds of any Loan or any Letter of Credit or any borrowing or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

Section 3.21 **Plan Assets; Prohibited Transactions**. None of Ultimate Parent, Holdings, the Borrower or any of its Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of

Credit hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

Section 3.22 **Affected Financial Institution**. No Loan Party is an Affected Financial Institution.

Section 3.23 **Insurance**. Schedule 3.23 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and the Subsidiaries as of the Closing Date as required under Section 5.05. As of the Closing Date, all premiums in respect of such insurance have been paid. Each Parent Company and each Borrower maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies, such insurance coverage with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Parent Companies, the Borrowers and the Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, the Borrowers maintain or cause to be maintained replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses.

ARTICLE 4
CONDITIONS

Section 4.01 **Closing Date**. The obligations of the Lenders to make Loans and of any Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received from each of the Loan Parties a counterpart of this Agreement signed on behalf of such party (if applicable), the Pledge and Security Agreement, the Intercreditor Agreement, each Promissory Note (to the extent requested at least three Business Days prior to the Closing Date) and each other Loan Document to be executed on the Closing Date signed on behalf of such party.

(b) Legal Opinions. The Administrative Agent shall have received, on behalf of itself, the Lenders and each Issuing Bank on the Closing Date, a favorable written opinion of (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel for Holdings, the Borrowers and each other Loan Party and (ii) local or other counsel reasonably satisfactory to the Administrative Agent as specified on Schedule 4.01(b) (other than local counsel opinions relating to the Mortgages which shall be delivered as provided in Section 5.13), in each case (A) dated the Closing Date, (B) addressed to each Issuing Bank on the Closing Date, the Administrative Agent and the Lenders and (C) in form and substance reasonably satisfactory to the Administrative Agent and covering such matters relating to the Loan Documents as the Administrative Agent shall reasonably request.

(c) Financial Statements and Pro Forma Financial Statements. The Administrative Agent shall have received (i) audited consolidated financial statements of the Parent Borrower for Fiscal Year 2021, (ii) the unaudited consolidated balance sheet and related statement of income, stockholders' equity and cash flows of the Parent Borrower for each Fiscal Month ended on or after July 31, 2023 and at least 35 days prior to the Closing Date and (iii) a projected pro forma consolidated balance sheet and related statement of income stockholders' equity and cash flows of the Parent Borrower for the period beginning on the Closing Date and ending on December 31, 2027; provided that (i) each such pro forma financial statement shall be prepared in good faith by the Borrower Agent and (ii) no such pro forma financial

statement shall be required to include adjustments for purchase accounting (including adjustments of the type contemplated by Financial Accounting Standards Board Accounting Standards Codification 805, Business Combinations (formerly SFAS 141R)).

(d) Plan of Reorganization.

(i) The Plan of Reorganization shall be in form and substance acceptable to the Lenders in all respects.

(ii) The Plan of Reorganization shall not have been modified or amended in any manner that could reasonably be expected to be adverse to the Lenders without the consent of the Lenders.

(iii) All conditions precedent to the effectiveness of the Plan of Reorganization shall have been satisfied or waived to the satisfaction of the Administrative Agent, the Plan of Reorganization effective date shall have occurred or shall occur substantially contemporaneously with the Closing Date and the substantial consummation (as defined in Section 1101 of the Bankruptcy Code) of the Plan of Reorganization in accordance with its terms shall occur substantially contemporaneously with the Closing Date.

(e) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Closing Date and executed by a Secretary, Assistant Secretary or other senior officer, which shall (A) certify that attached thereto is a true and complete copy of the resolutions of its board of directors, members or other governing body authorizing the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrowers, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (B) identify by name and title and bear the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and (C) certify that attached thereto is a true and complete copy of the certificate or articles of incorporation or organization (or memorandum of association) of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement and that such documents or agreements have not been amended since the date of the last amendment thereto shown on the certificate or articles of incorporation or organization referred to above (except as otherwise attached to such certificate and certified therein as being the only amendments thereto as of such date) and (ii) a good standing certificate (to the extent such concept exists in the relevant jurisdiction) as of a recent date for each Loan Party from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction.

(f) Representations and Warranties. The representations and warranties set forth in Article 3 shall be true and correct in all material respects; provided that in the case of any representation and warranty which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the respective date or for the respective period, as the case may be.

(g) Fees. The Administrative Agent shall have received all fees required to be paid by the Borrowers, and all expenses for which invoices have been presented at least three Business Days prior to the Closing Date (including the reasonable fees and expenses of legal counsel), on or before the Closing Date.

(h) Governmental Approvals. After giving effect to the Confirmation Order, the Administrative Agent shall have received all governmental approvals necessary in connection with the financing contemplated hereby and the continuing operations of the Parent Companies, the Borrowers and

the Subsidiaries (including shareholder approvals, if any) on terms satisfactory to the Administrative Agent and be in full force and effect as of the Closing Date.

(i) Lien and Judgment Searches. The Administrative Agent shall have received the results of recent Lien and judgment searches reasonably required by the Administrative Agent, and such search shall reveal no material judgments and no Liens on any of the assets of the Loan Parties except for Permitted Liens or Liens discharged on or prior to the Closing Date pursuant to a pay-off letter or other documentation reasonably satisfactory to the Administrative Agent.

(j) Recapitalization. On the Closing Date, (w) Ultimate Parent having issued the Second Lien Notes, (x) the Recapitalization shall have been or, substantially concurrently with the initial funding of the Loans hereunder shall be, consummated, (y) the Administrative Agent shall have received satisfactory pay-off letters or other documentation reasonably satisfactory to the Administrative Agent for all existing Indebtedness to be repaid or otherwise discharged in connection with the Recapitalization, confirming that all Liens upon any of the property of the Loan Parties constituting Collateral will be terminated concurrently with such payment (or deemed payment) and all letters of credit issued or guaranteed as part of such Indebtedness shall have been cash collateralized, supported by a Letter of Credit or deemed issued under this Agreement and (z) the receipt by the Administrative Agent of a copy of the Second Lien Notes Documents certified as accurate, true and complete by a Responsible Officer of the Borrower Agent.

(k) Material Adverse Effect. Since January 17, 2023, there shall not have occurred any event, change, occurrence or effect that has had or could reasonably be expected to have a Material Adverse Effect.

(l) Financial Officer's Certificate. The Administrative Agent shall have received a certificate in substantially the form of Exhibit J from a Financial Officer of the Borrower Agent certifying as to the matters set forth therein.

(m) Borrowing Base Certificate. The Administrative Agent shall have received prior to the Closing Date a Borrowing Base Certificate which calculates the Borrowing Base as of the last day of the month most recently ended at least 15 days prior to the Closing Date.

(n) Pledged Stock; Stock Powers; Pledged Notes. Subject to Section 5.13(b), the Administrative Agent (or its bailee) shall have received (i) the certificates representing the Capital Stock pledged pursuant to the Pledge and Security Agreement, together with an undated stock or similar power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof, and (ii) each promissory note (if any) pledged to the Administrative Agent (or its bailee) pursuant to the Pledge and Security Agreement endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(o) Perfection Certificate. The Administrative Agent shall have received a completed Perfection Certificate dated the Closing Date and signed by a Responsible Officer of the Borrower Agent, together with all attachments contemplated thereby.

(p) Filings, Registrations and Recordings. Each document (including any UCC financing statement and short-form intellectual property security agreements, as applicable) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Permitted Liens explicitly permitted hereunder to be senior to the Liens purported to be created by the Collateral Documents), shall be in proper form for filing, registration or recordation.

The Administrative Agent, on behalf of the Lenders, shall have a security interest in the Collateral of the type and priority described in the Collateral Documents (except for the Mortgages).

(q) Insurance. The Administrative Agent shall have received evidence of insurance coverage in compliance with the terms of Section 5.05 hereof and Section 4.07 of the Pledge and Security Agreement and in form and substance reasonably satisfactory to the Administrative Agent.

(r) Inventory Appraisals. The Administrative Agent shall have received an appraisal of the applicable Loan Parties' Inventory from one or more firms satisfactory to the Administrative Agent, which appraisal shall be (i) dated on or after April 30, 2023 and (ii) satisfactory to the Administrative Agent in its sole discretion.

(s) Field Examination. The Administrative Agent or its designee shall have conducted a field examination of the Loan Parties' Accounts, Inventory and related working capital matters and of the Loan Parties' related data processing and other systems, which shall be dated on or after April 30, 2023 the results of which shall be satisfactory to the Administrative Agent in its sole discretion.

(t) Organizational and Capital Structure. The Administrative Agent shall have received a structure chart evidencing the capitalization structure and equity ownership of Ultimate Parent and each of its direct and indirect subsidiaries after giving effect to the Transactions, in form and substance satisfactory to the Administrative Agent in its sole discretion.

(u) USA PATRIOT Act; Beneficial Ownership Certification. (i) No later than five days in advance of the Closing Date, the Administrative Agent and each Lender shall have received all documentation and other information reasonably requested by it that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, not less than ten days in advance of the Closing Date and (ii) to the extent any Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five days prior to the Closing Date, any Lender that has requested, in a written notice to the Borrower Agent at least five days prior to the Closing Date, a Beneficial Ownership Certification in relation to any such Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(v) Legal Due Diligence. Counsel to the Administrative Agent shall have completed a legal due diligence review, the findings of which are satisfactory to the Administrative Agent and the Lenders, including but not limited to compliance with all applicable requirements of Regulation T, Regulation U and Regulation X.

Section 4.02 Each Credit Event. On and after the Closing Date, the obligation of each Lender to make a Loan on the occasion of any Borrowing, and of any Issuing Bank to issue, amend, modify, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03 or, in the case of the issuance of a Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance of such Letter of Credit as required by Section 2.06(b).

(b) The representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents (including, without limitation, the material adverse change and litigation representations) shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit (other than an amendment, modification, extension or renewal of a Letter of Credit without any increase in the stated amount of such

Letter of Credit), as applicable, in each case with the same effect as though such representations and warranties had been made on and as of the date of such Borrowing; provided that to the extent that a representation and warranty specifically refers to an earlier date, it shall be true and correct in all material respects as of such earlier date.

(c) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, modification, renewal or extension of such Letter of Credit (other than an amendment, modification, extension or renewal of a Letter of Credit without any increase in the stated amount of such Letter of Credit), as applicable, no Event of Default or Default shall have occurred and be continuing.

(d) After giving effect to any Borrowing or the issuance, amendment, modification, renewal or extension of any Letter of Credit (other than an amendment, modification, extension or renewal of a Letter of Credit without any increase in the stated amount of such Letter of Credit), (i) the Credit Exposure of all Lenders at such time then outstanding shall not exceed the Total Line Cap and (ii) the ABL Revolving Exposure of all ABL Revolving Lenders at such time then outstanding shall not exceed the ABL Line Cap less the Availability Block.

Each Borrowing and each issuance, amendment, modification, renewal or extension of a Letter of Credit (to the extent applicable above) shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in paragraphs (b), (c) and (d) of this Section.

ARTICLE 5
AFFIRMATIVE COVENANTS

Until the date that all the Commitments have expired or terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document (other than contingent indemnification obligations for which no claim or demand has been made) have been paid in full in Cash and all Letters of Credit have expired or terminated (or have been collateralized or back stopped by a letter of credit in a manner reasonably satisfactory to the Administrative Agent and the Issuing Banks) and all LC Disbursements shall have been reimbursed (such date, the "**Termination Date**"), each of Ultimate Parent and Holdings (solely as to the extent applicable to either or both), the Borrowers and their respective Subsidiaries covenant and agree, jointly and severally, with the Lenders that:

Section 5.01 **Financial Statements and Other Reports**. The Borrower Agent will deliver to the Administrative Agent for delivery to each Lender:

(a) Monthly Reports. Within 35 days after the end of each of the first two Fiscal Months of each Fiscal Quarter ending after the Closing Date (but no later than the date the following items are delivered (or are required to be delivered) to lenders and/or lender-representatives in connection with other Indebtedness), (i) the consolidated balance sheet of Ultimate Parent and its subsidiaries as at the end of such month and the related consolidated statements of income, stockholders' equity and cash flows of Ultimate Parent and its subsidiaries for such month and for the period from the beginning of the then current Fiscal Year to the end of such month, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, to the extent the corresponding figures for the corresponding periods of the previous Fiscal Year are available, all in reasonable detail, together with a Financial Officer Certification with respect thereto and (ii) prior to the date that the Audit Delivery Condition is satisfied, written financial and operational updates (including with respect to the ongoing audit process) in form reasonably acceptable to the Administrative Agent;

(b) Quarterly Financial Statements. As soon as available, and in any event within 45 days (or 60 days in the case of the Fiscal Quarter ending September 30, 2023), after the end of each of the

first three Fiscal Quarters of each Fiscal Year (but no later than the date the following items are delivered (or are required to be delivered) to lenders and/or lender-representatives in connection with other Indebtedness) commencing with the Fiscal Quarter ending September 30, 2023, the unaudited consolidated balance sheet of Ultimate Parent and its subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of Ultimate Parent and its subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, and the corresponding figures from the Financial Plan for the current Fiscal Year setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto;

(c) Annual Financial Statements. Subject to Section 5.13(a), as soon as available, and in any event within 90 days after the end of each Fiscal Year or, solely in the case of the Fiscal Year ending December 31, 2023, on or before September 30, 2024 (but, in each case, no later than the date the following items are delivered (or are required to be delivered) to lenders and/or lender-representatives in connection with other Indebtedness), (i) the audited consolidated balance sheet of Ultimate Parent and its subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Ultimate Parent and its subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of BDO USA, P.A. or other independent certified public accountants of recognized national standing (which report shall be unqualified as to "going concern" and scope of audit (except for qualifications pertaining to debt maturities occurring within 12 months of such audit), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Ultimate Parent and its subsidiaries as at the dates indicated and the results of their operations and their Cash flows for the periods indicated in conformity with GAAP and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with GAAP);

(d) Compliance Certificate. Together with each delivery of financial statements of Ultimate Parent and its subsidiaries pursuant to Section 5.01(a), Section 5.01(b), Section 5.01(c) and Section 5.13(a), (i) a duly executed and completed Compliance Certificate certifying (A) that no Default or Event of Default has occurred and is continuing (or if one is, describing in reasonable detail such Default or Event of Default and the steps being taken to cure, remedy or waive the same), (B) setting forth reasonably detailed calculations of the Fixed Charge Coverage Ratio and Consolidated Adjusted EBITDA (including, without limitation, add-backs included in the calculation thereof) as of the end of the period to which such financial statements relate and (C) attached thereto are pro forma financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such financial statements in such form as would be presentable to the auditors of Ultimate Parent and (ii) a list of each subsidiary of Ultimate Parent that identifies each subsidiary as a Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate or a confirmation that there is no change in such information since the later of the Closing Date and the date of the last such list;

(e) Notice of Default. Promptly upon any Responsible Officer of Ultimate Parent, Holdings or any Borrower obtaining knowledge (i) of any Default or Event of Default or that notice has been given to any Borrower with respect thereto or (ii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a detailed notice specifying the nature and period of existence of such condition, event or change, or specifying the notice given or action taken by any such Person and the nature of such claimed Default or Event of Default, event or condition, and what action the Borrowers have taken, are taking and propose to take with respect thereto;

(f) Notice of Litigation or Other Material Events. Promptly upon any Responsible Officer of any Borrower obtaining knowledge of (i) the institution of, or threat of, any Adverse Proceeding not previously disclosed in writing by the Loan Parties to the Lenders, (ii) any material development in any Adverse Proceeding or (iii) any other material event that, in the case of clauses (i) through (iii), could reasonably be expected to have a Material Adverse Effect, or, in the case of clauses (i) or (ii) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other non-privileged information as may be reasonably available to the Loan Parties to enable the Lenders and their counsel to evaluate such matters;

(g) ERISA. Promptly upon any Responsible Officer of any Borrower becoming aware of the occurrence of any ERISA Event, a written notice specifying the nature thereof;

(h) Financial Plan. As soon as practicable and in any event no later than 90 days after the beginning of each Fiscal Year, a consolidated plan and financial forecast for each Fiscal Month of such Fiscal Year (a "**Financial Plan**"), including a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Ultimate Parent and its subsidiaries and projected Excess Availability and Excess Unadjusted Availability, in each case, for each such Fiscal Year, prepared in reasonable detail and further information reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such Financial Plan, setting forth, with appropriate discussion, the principal assumptions upon which such financial plan is based; provided that any Financial Plan to be provided hereunder shall include a breakdown between wholesale and retail operations and in reasonable detail;

(i) Information Regarding Collateral. The Borrower Agent will furnish to the Administrative Agent prompt written notice (in any event, within 15 calendar days (or such later date as agreed by the Administrative Agent in its sole discretion)) of any change (i) in any Loan Party's legal name, (ii) in any Loan Party's identity or corporate structure, (iii) in any Loan Party's jurisdiction of organization or (iv) in any Loan Party's Federal Taxpayer Identification Number or organizational identification number;

(j) Annual Collateral Verification. Together with the delivery of each Compliance Certificate delivered in conjunction with financial statements delivered pursuant to Section 5.01(c), the Borrower Agent shall deliver to the Administrative Agent a Perfection Certificate Supplement and a report setting forth the information required to be delivered pursuant to Section 4.12 of the Pledge and Security Agreement, in each case, either confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Closing Date or the date of the most recent certificate or most recent report delivered pursuant to this Section and/or identifying such changes;

(k) Other Information. (i) Promptly upon their becoming available (or, in the case of documents contemplated by Section 5.01(k)(i)(B)(2), substantially concurrently with the delivery of such documents to the Second Lien Notes Trustee and in the case of documents contemplated by Section 5.01(k)(i)(C), on the date such documents are executed), copies of (A) all financial statements, reports, notices and proxy statements sent or made available generally by the Borrower Agent or any Parent Company to its security holders acting in such capacity or by any Subsidiary of Ultimate Parent to its security holders other than Ultimate Parent or another Subsidiary of Ultimate Parent, (B) all regular and periodic reports and all registration statements (other than on Form S-8 or similar form) and prospectuses, if any, that are either (1) filed by Ultimate Parent or any of its Subsidiaries with any securities exchange or with the SEC or any governmental or private regulatory authority or (2) required to be delivered under the terms of the Second Lien Notes Documents, (C) any amendment, supplement, modification, consent or waiver in respect of any documents governing Material Indebtedness, (D) material notices provided to or by any Loan Party in respect of any documents governing Material Indebtedness (to the extent not otherwise provided hereunder) and (E) all press releases and other statements made available generally by Ultimate

Parent or any of its Subsidiaries to the public concerning material developments in the business of Ultimate Parent or any of its Subsidiaries and (ii) such other information and data with respect to Ultimate Parent or any of its Subsidiaries as from time to time may be reasonably requested by the Administrative Agent or any Lender;

(l) Borrowing Base Certificate. As soon as available but in any event on or prior to the 20th calendar day after the later of (i) the last day of each calendar month and (ii) the last day of each retail month (based on the Borrower Agent's 52/53 week year end (the period ending on such later date, a "**Fiscal Month**")) (or more frequently as the Borrower Agent may elect, so long as the frequency of delivery is maintained by the Borrower Agent for the immediately following 60 day period), a Borrowing Base Certificate as of the close of business on the last day of the immediately preceding fiscal month (or in the case of a voluntary delivery of a Borrowing Base Certificate at the election of the Borrower Agent's, a subsequent date), together with such supporting information in connection therewith to the extent required under Section 1.04(a) and otherwise as the Administrative Agent may reasonably request, which may include, without limitation, (A) Inventory reports by category and location, together with a reconciliation to the corresponding Borrowing Base Certificate, (B) a reasonably detailed calculation of Eligible Inventory, (C) a reconciliation of the Loan Parties' Inventory between the amounts shown in the Borrower Agent's stock ledger and any Inventory reports delivered pursuant to clause (A) above, (D) a reasonably detailed calculation of Eligible Trade Receivables and Eligible Credit Card Receivables, (E) a reasonably detailed aging of the Loan Parties' Accounts and a reconciliation to the corresponding Borrowing Base Certificate and (F) a reasonably detailed report on restrictions on the sale of Inventory related to intellectual property owned by a third party; provided that (1) upon the occurrence and during the continuance of a Weekly Reporting Event, the Borrower Agent shall deliver a Borrowing Base Certificate and such supporting information as is reasonably practicable to provide on a weekly basis on Thursday of each week (or if Thursday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Saturday and (2) any Borrowing Base Certificate delivered other than with respect to month's end may be based on such estimates by the Borrower Agent of shrink and other amounts as the Borrower Agent may deem necessary; provided, further, that a revised Borrowing Base Certificate based on the Borrowing Base Certificate most recently delivered shall be delivered within five Business Days after the (1) consummation of a sale or other disposition (or merger, consolidation or amalgamation that constitutes a sale or disposition) of any Capital Stock of a Loan Party to any Person other than a Loan Party that results in the disposition of Collateral with an aggregate value in excess of the lesser of (x) $20,000,000 and (y) 5.0% of the Borrowing Base in effect at such time, or (2) the designation of a subsidiary as an Unrestricted Subsidiary to the extent such subsidiary directly or indirectly owns or controls (immediately prior to such designation) Collateral with an aggregate value in excess of the lesser of (x) $20,000,000 and (y) 5.0% of the Borrowing Base in effect at such time, together, in each case, with such supporting information as may be reasonably requested by the Administrative Agent; and

(m) Other Information. Such (x) other certificates, reports and information (financial or otherwise) as the Administrative Agent may reasonably request from time to time in connection with Ultimate Parent or its Subsidiaries' financial condition or business and (y) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

Documents required to be delivered pursuant to this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower Agent (x) posts such documents (other than with respect to documents required to be delivered pursuant to Section 5.01(l)), (y) provides a link thereto on the Borrower Agent's website on the Internet at the website address listed on Schedule 9.01 or (z) with respect to the items required to be delivered pursuant to Section 5.01(k) above in respect of information filed with any securities exchange or the SEC or any governmental or private regulatory authority (other than Form 10-K and 10-Q reports satisfying the requirements in Section 5.01(b)

and (c), as applicable), makes such items available on the website of such exchange authority or the SEC or other applicable governmental or private regulatory authority; (ii) on which such documents are posted on the Borrower Agent's behalf on IntraLinks/SyndTrak or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); or (iii) the date on which executed certificates or other documents are faxed to the Administrative Agent (or electronically mailed to an address provided by the Administrative Agent); provided that, other than with respect to items required to be delivered pursuant to Section 5.01(k) above, the Borrower Agent shall promptly notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents.

Notwithstanding the foregoing, the obligations in clauses (a), (b) and (c) of this Section 5.01 may be satisfied with respect to financial information of Ultimate Parent and its subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Form 10-K or 10-Q, as applicable, of the Borrower Agent or any Parent Company, as applicable, filed with the SEC; provided that, with respect to each of subclauses (A) and (B) of this paragraph, (i) to the extent such information relates to a direct or indirect parent of the Borrower Agent (other than Ultimate Parent and Holdings), such information is accompanied by unaudited consolidating or other information that explains in reasonable detail the differences between the information relating to such direct or indirect parent, on the one hand, and the information relating to Ultimate Parent and its subsidiaries on a standalone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under Section 5.01(c), such materials are, to the extent applicable, accompanied by a report and opinion of BDO USA, P.A. or other independent certified public accountants meeting the requirements of such Section.

Section 5.02 **Existence**. Except as otherwise permitted under Section 6.08, Ultimate Parent, Holdings and each Borrower will, and will cause each of the Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, Intellectual Property, licenses and permits material to its business except to the extent (other than with respect to the preservation of existence of the Borrowers) failure to do so could not reasonably be expected to result in a Material Adverse Effect; provided that no Parent Company, Borrower or Subsidiary shall be required to preserve any such existence, right or franchise, Intellectual Property, licenses and permits if such Person's board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lenders.

Section 5.03 **Payment of Taxes**. Each Parent Company and each Borrower will, and will cause each of the Subsidiaries to, pay all material Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon; provided that no such Tax need be paid if (a) it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (i) adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made therefor, and (ii) in the case of a Tax which has or may become a Lien against any of the Collateral, such contest proceedings operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim or (b) failure to pay or discharge the same could not reasonably be expected to result in a Material Adverse Effect.

Section 5.04 **Maintenance of Properties**. Each Parent Company and each Borrower will, and will cause each of the Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear and casualty and condemnation excepted, all property reasonably necessary to the normal conduct of business of Ultimate Parent and its Subsidiaries and from time to time will make or cause to be made all needed and appropriate repairs, renewals and replacements thereof except as expressly permitted by this Agreement or where the failure to maintain such properties could not reasonably be expected to have a Material Adverse Effect.

Section 5.05 **Insurance**. The Borrowers will maintain or cause to be maintained, with financially sound and reputable insurers, such insurance coverage with respect to liabilities, losses or damage in respect of the assets, properties and businesses of each Parent Company, the Borrowers and the Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, the Borrowers will maintain or cause to be maintained replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) name the Administrative Agent on behalf of the Lenders as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy (including any business interruption insurance policy), contain a lender loss payable clause or endorsement, reasonably satisfactory in form and substance to the Administrative Agent that names the Administrative Agent, on behalf of the Lenders as the lender loss payee thereunder and provides for at least 30 days' prior written notice to the Administrative Agent of any modification or cancellation of such policy (or ten days' prior written notice for any cancellation due to non-payment of premiums). With respect to each improved Mortgaged Property is located in an area identified by the Federal Emergency Management Agency (or any successor agency thereto) as a "special flood hazard area" with respect to which flood insurance has been made available under the Flood Insurance Laws, the applicable Loan Party (a) shall obtain and maintain with financially sound and reputable insurance companies (except to the extent that any insurance company insuring such Mortgaged Property of such Loan Party ceases to be financially sound and reputable after the Closing Date, in which case such Loan Party shall promptly replace such insurance company with a financially sound and reputable insurance company), such flood insurance in an amount sufficient to comply with all applicable rules and regulations promulgated under the Flood Insurance Laws and otherwise in compliance with all applicable rules and regulations under the Flood Insurance Laws and (b) promptly upon request of the Administrative Agent or any Lender, shall deliver to the Administrative Agent or such Lender as applicable, evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent or such Lender, including, without limitation, evidence of annual renewals of such flood insurance.

Section 5.06 **Inspections**.

(a) Each Parent Company and each Borrower will, and will cause each of the Subsidiaries to, permit any authorized representatives designated by Administrative Agent to visit and inspect any of the properties of any such Person, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants (provided that such Borrower may, if it so chooses, be present at or participate in any such discussion), all upon reasonable notice, reasonable coordination in and at such reasonable times during normal business hours and as often as may reasonably be requested; provided that, excluding such visits and inspections during the continuation of an Event of Default, (x) only the Administrative Agent on behalf of the Lenders may exercise the rights of the Administrative Agent and the Lenders under this Section 5.06(a), (y) the Administrative Agent shall not exercise such rights more often than one time during any calendar year, and (z) only one such time per calendar year shall be at the expense of Borrowers; provided, further, that when an Event of Default exists, the Administrative Agent (or any of its respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and upon reasonable advance notice; provided that notwithstanding anything to the contrary herein, neither any Parent Company, the Borrower Agent nor any Subsidiary shall be required to disclose, permit the inspection, examination or making of copies or abstracts of, or any discussion of, any document, information, or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative

Agent or any Lender (or their respective representatives or contractors) is prohibited by applicable law or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

(b) At reasonable times during normal business hours, with reasonable coordination and upon reasonable prior notice that the Administrative Agent requests, independently of or in connection with the visits and inspections provided for in clause (a) above, each Parent Company, each Borrower and the Subsidiaries will grant access to the Administrative Agent (including employees of Administrative Agent or any consultants, accountants, lawyers and appraisers retained by the Administrative Agent) to such Person's books, records, accounts and Inventory so that the Administrative Agent or an appraiser or consultants retained by the Administrative Agent may conduct an inventory appraisal subject to the terms and conditions set forth below in this clause (b). From time to time the Administrative Agent may conduct (or engage third parties to conduct) such field examinations, verifications and evaluations as the Administrative Agent may deem necessary or appropriate; provided that, Administrative Agent (i) shall conduct (x) one field examination and two inventory appraisals with respect to the Collateral in the initial consecutive 12-month period after the date of this Agreement and (y) (xx) one field examination and one inventory appraisal with respect to the Collateral in each consecutive 12-month period subsequent to the initial consecutive 12-month period after the date of this Agreement and (yy) one additional field examination and one additional inventory appraisal with respect to the Collateral in any such consecutive 12-month period referred to in sub-clause (y)(xx) during which Excess Availability is less than the greater of (A) 15.0% of the Total Line Cap and (B) $69,000,000 for more than five consecutive Business Days until the date Excess Availability shall have been at least the greater of (x) 15.0% of the Total Line Cap and (y) $69,000,000 for 30 consecutive calendar days, and (ii) may conduct such other field examinations and inventory appraisals at any time upon the occurrence and during the continuance of an any Event of Default, in each case, in a form and from a third party appraiser or consultant, reasonably satisfactory to the Administrative Agent. For the avoidance of doubt, no field examination or inventory appraisal conducted in connection with a Report pursuant to an acquisition (including the joinder of Anagram International, Inc., Anagram Holdings, LLC and/or the subsidiaries thereof as Loan Parties) shall accrue towards and/or count against the number of field examinations and/or inventory appraisals that the Administrative Agent shall have the right to conduct in accordance with the proviso to the immediately preceding sentence. All such appraisals, field examinations and other verifications and evaluations shall be at the sole expense of the Loan Parties, and the Administrative Agent shall provide the Borrower Agent with a reasonably detailed accounting of all such expenses. In addition, the Administrative Agent may conduct one additional inventory appraisal and field examination in each consecutive 12-month period after the date of this Agreement as the Administrative Agent may reasonably request at the expense of the Lenders.

(c) The Loan Parties acknowledge that the Administrative Agent, after exercising its rights of inspection, (x) may prepare and distribute to the Lenders certain Reports pertaining to the Loan Parties' assets for internal use by the Administrative Agent and the Lenders, subject to the provisions of Section 9.13 hereof and (y) shall promptly distribute copies of any final reports from a third party appraiser or third party consultant delivered in connection with any field exam or appraisal to the Lenders.

Section 5.07 **Maintenance of Book and Records**. Each Parent Company, each Borrower will, and will cause the Subsidiaries to, maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP shall be made of all material financial transactions and matters involving the assets and business of each Parent Company, each Borrower and the Subsidiaries, as the case may be.

Section 5.08 **Compliance with Laws and Material Contract Obligations**. Each Parent Company and each Borrower (a) will comply, and shall cause each of the Subsidiaries to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws, Sanctions, USA PATRIOT Act and Anti-Corruption Laws), with the performance noncompliance with which could reasonably be expected to have a Material Adverse Effect and (b)(i)

perform and observe all of its material covenants and material contractual obligations, (ii) take all reasonable and necessary action to prevent the termination or cancellation of any material contracts to which it is a party in accordance with the terms of such agreement or otherwise (except for the expiration of any material contract in accordance with its terms and not as a result of a breach or default thereunder) and (iii) in its reasonable business judgment, enforce against the relevant material contract counterparty each material covenant or obligation of such agreement to which it is a party in accordance with its terms, including enforcing the rights and remedies under the such material contract to maximize the amount of liquidated damages available to such Person thereunder.

Section 5.09 Environmental.

(a) Environmental Disclosure. The Borrower Agent will deliver to the Administrative Agent and the Lenders:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of a Parent Company, the Borrower Agent or any of the Subsidiaries or by independent consultants, governmental authorities or any other Persons, with respect to significant environmental matters at any Borrower or with respect to any Environmental Claims, in each case, that might reasonably be expected to have a Material Adverse Effect;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported by any Loan Party or any of the Subsidiaries to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws that could reasonably be expected to have a Material Adverse Effect, (B) any remedial action taken by a Loan Party or any of the Subsidiaries or any other Persons of which any Loan Party or any Subsidiary has knowledge in response to (1) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (2) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect, and (C) any Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that reasonably could be expected to cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by a Parent Company, the Borrower Agent or any of the Subsidiaries, a copy of any and all written communications with respect to (A) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect, (B) any Release required to be reported by a Parent Company, the Borrower Agent or any of the Subsidiaries to any federal, state or local governmental or regulatory agency that reasonably could be expected to have a Material Adverse Effect, and (C) any request made to a Parent Company, the Borrower Agent or any of the Subsidiaries for information from any governmental agency that suggests such agency is investigating whether a Parent Company, the Borrower Agent or any of the Subsidiaries may be potentially responsible for any Hazardous Materials Activity which is reasonably expected to have a Material Adverse Effect;

(iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets, or property by a Parent Company, the Borrower Agent or any of the Subsidiaries that could reasonably be expected to expose a Parent Company, the Borrower Agent or any of the Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (B) any proposed action to

be taken by a Parent Company, the Borrower Agent or any of the Subsidiaries to modify current operations in a manner that could reasonably be expected to subject a Parent Company, the Borrower Agent or any of the Subsidiaries to any additional material obligations or requirements under any Environmental Law; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Administrative Agent in relation to any matters disclosed pursuant to this Section 5.09(a).

(b) Hazardous Materials Activities, Etc. Each Loan Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Loan Party or its Subsidiaries that could reasonably be expected to have a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against such Loan Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder, in each case, where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.10 **Designation of Subsidiaries**. The board of directors of the Borrower Agent may at any time designate any subsidiary of any Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Subsidiary; provided that (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing, (ii) after giving effect to such designation, the Fixed Charge Coverage Ratio is at least 1.00 to 1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01, (iii) no Borrower may be designated as an Unrestricted Subsidiary, (iv) no subsidiary may be designated as an Unrestricted Subsidiary if it is a "Subsidiary" for the purpose of any Indebtedness constituting Material Indebtedness, (v) as of the date of the designation thereof, no Unrestricted Subsidiary shall own any Capital Stock in a Parent Company, the Borrower Agent or its Subsidiaries or hold any Indebtedness of, or any Lien on any property of a Parent Company, the Borrower Agent or its Subsidiaries, (vi) the holder of any Indebtedness of any Unrestricted Subsidiary shall not have any recourse to the a Parent Company, Borrower Agent or its Subsidiaries with respect to such Indebtedness and (vii) no Subsidiary that owns, or exclusively licenses from a third party, any Material Intellectual Property at the time of designation may be designated after the Closing Date as an Unrestricted Subsidiary. The designation of any subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower Agent therein at the date of designation in an amount equal to the portion (proportionate to the Borrower Agent's equity interest in such subsidiary) of the fair market value of the net assets of such Subsidiary (and such designation shall only be permitted to the extent such Investment is permitted under Section 6.07); provided, that upon a redesignation of such Unrestricted Subsidiary as a Subsidiary, the Borrower Agent shall be deemed to continue to have a permanent Investment in a Subsidiary in an amount (if positive) equal to (a) the Borrower Agent's "Investment" in such Subsidiary at the time of such redesignation, less (b) the portion (proportionate to the Borrower Agent's equity interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation. The designation of any Unrestricted Subsidiary as a Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

Section 5.11 **Use of Proceeds**.

(a) The proceeds of the Revolving Loans, the Swingline Loans and Letters of Credit are to be used solely to (i) refinance the Existing Credit Agreement and (ii) finance the working capital needs and other general corporate purposes of the Parent Borrower and its Subsidiaries (including for capital expenditures, acquisitions, working capital and/or purchase price adjustments, the payment of transaction fees and expenses, other investments, restricted payments and any other purpose not prohibited by Loan Documents).

(b) Notwithstanding anything to the contrary contained herein, no part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, (i) for any purpose that would entail a violation of Regulations T, U or X, (ii) for payments on or after the Closing Date of any obligations under or pursuant to the Second Lien Notes and (iii) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (iv) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country or (v) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 5.12 Additional Collateral; Further Assurances.

(a) Subject to applicable law, each Borrower and each other Loan Party shall cause each of its Domestic Subsidiaries (other than an Excluded Subsidiary) formed or acquired after the date of this Agreement to become a Loan Party on or prior to the later to occur of (i) 30 days following the date of such creation or acquisition and (ii) the earlier of the date of the required delivery of the next Compliance Certificate following such creation or acquisition and the date which is 45 days after the end of the most recently ended Fiscal Quarter (or such later date as may be acceptable to the Administrative Agent in its discretion), by executing a Subsidiary Borrower Joinder Agreement or a Subsidiary Guarantor Joinder Agreement in substantially the form set forth as Exhibit E hereto (the "**Subsidiary Guarantor Joinder Agreement**" and, together with each Subsidiary Borrower Joinder Agreement, each individually a "**Joinder Agreement**" and, collectively, the "**Joinder Agreements**"). Upon execution and delivery thereof, each such Person (i) shall automatically become a Subsidiary Guarantor or a Subsidiary Borrower, as applicable, hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will simultaneously therewith or as soon as practicable thereafter grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders and each other Secured Party, in each case to the extent required by the terms thereof, in any property (subject to the limitations with respect to Capital Stock set forth in paragraph (b) of this Section 5.12, the limitations with respect to real property set forth in paragraph (d) of this Section 5.12, and any other limitations set forth in the Pledge and Security Agreement) of such Loan Party which constitutes Collateral, on such terms as may be required pursuant to the terms of the Collateral Documents and in such priority as may be required pursuant to the terms of the Intercreditor Agreement.

(b) Each Parent Company, each Borrower and each Subsidiary that is a Loan Party will cause all Capital Stock directly owned by them to be subject at all times to a First Priority perfected Lien in favor of the Administrative Agent pursuant to the terms and conditions of the Collateral Documents; provided that in no event will any Loan Party be required to pledge or perfect more than 65.0% of the equity interests as determined for U.S. federal income tax purposes of any Foreign Subsidiary, FSHCO Subsidiary or Disregarded Domestic Subsidiary of such Loan Party.

(c) Without limiting the foregoing, each Loan Party will, and will cause each Subsidiary that is a Loan Party to, promptly execute and deliver, or cause to be promptly executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, short-form intellectual property security agreements, fixture filings, Mortgages and other documents and such other actions or deliveries of the type required by Article 4 and Article 5 as applicable), which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents (to the extent required herein or therein), all at the expense of the Loan Parties.

(d) Subject to the limitations set forth or referred to in this Section 5.12, if any Material Real Estate Assets are acquired by any Loan Party after the Closing Date (other than assets constituting

Collateral under the Pledge and Security Agreement that become subject to the Lien in favor of the Administrative Agent upon acquisition thereof), the Borrower Agent will notify the Administrative Agent and the Lenders thereof, and, if requested by the Administrative Agent or the Required Lenders, within 90 days of such request (or such longer period as may be acceptable to the Administrative Agent) Ultimate Parent, Holdings, the Borrower Agent will cause such assets to be subjected to a Lien securing the Secured Obligations and will take, and cause each Subsidiary that is a Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (c) of this Section and with respect to Material Real Estate Assets, clause (b) of Section 5.13, all at the expense of the Loan Parties. Notwithstanding the foregoing, no Mortgage shall be required in respect of any Material Real Estate Asset acquired by any Loan Party after the Closing Date until the date that occurs 30 days after the Administrative Agent has delivered to the Lenders (which may be delivered electronically) the following documents in respect of such Material Real Estate Asset: (i) a completed flood hazard determination from a third party vendor, (ii) if such Material Real Estate Asset is located in a "special flood hazard area," (A) a notification to the applicable Loan Party of that fact and (if applicable) notification to the applicable Loan Party that flood insurance is not available and (B) evidence of receipt by the applicable Loan Party of such notice, and (iii) if such notice is required to be provided to the applicable Loan Party and flood insurance is available in the community in which such Material Real Estate Asset is located, evidence of flood insurance as required by Section 5.05; provided that any such Mortgage may be granted prior to the notice period specified above if the Administrative Agent shall have received written confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.

(e) After any Domestic Subsidiary ceases to constitute an Excluded Subsidiary in accordance with the definition thereof, the Borrower Agent shall cause such Domestic Subsidiary to take all actions required by this Section 5.12 (within the time periods specified herein) as if such Domestic Subsidiary were then formed or acquired.

Notwithstanding anything to the contrary in this Section 5.12 or any other Collateral Document, (a) the Administrative Agent shall not require the taking of a Lien on, or require the perfection of any Lien granted in, those assets as to which the cost of obtaining or perfecting such Lien (including any mortgage, stamp, intangibles or other tax or expenses relating to such Lien) is excessive in relation to the benefit to the Lenders of the security afforded thereby as reasonably determined by the Borrower Agent and the Administrative Agent, (b) no Lien in Real Estate Assets shall be required except in respect of Material Real Estate Assets (provided that in any jurisdiction in which a tax is required to be paid in respect of the Mortgage on real property located in such jurisdiction based on the entire amount of the Secured Obligations, the amount secured by such Mortgage shall be limited to the estimated fair market value of the property to be subject to the Mortgage determined in a manner reasonably acceptable to Administrative Agent and the Borrower Agent), (c) no actions shall be required to be taken in order to create or grant any security interest in any assets located outside of the United States and no foreign law security or pledge agreements shall be required and (d) Liens required to be granted or perfected pursuant to this Section 5.12 shall be subject to the Intercreditor Agreement and to exceptions and limitations consistent with those set forth in the Collateral Documents.

Section 5.13 Post-Closing Items.

(a) As soon as available, and in any event no later than September 30, 2024 (or such later date as the Administrative Agent may agree in its sole discretion but in no event later than December 31, 2024) (but no later than the date the following items are delivered to lenders and/or lender-representatives in connection with other Indebtedness), the Administrative Agent shall have received (for delivery to each Lender) (i) the audited consolidated balance sheet of Ultimate Parent and its subsidiaries as at the end of 2022 and the related statements of income, stockholders' equity and cash flows of Ultimate Parent and its subsidiaries for such Fiscal Year, setting forth in each case in comparative form the

corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto, (ii) with respect to such financial statements a report thereon of BDO USA, P.A. or other independent certified public accountants of recognized national standing satisfactory to the Administrative Agent in its sole discretion (which report shall be unqualified as to "going concern" and scope of audit (except for qualifications pertaining to debt maturities occurring within 12 months of such audit), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Ultimate Parent and its subsidiaries as at the dates indicated and the results of their operations and their Cash flows for the periods indicated in conformity with GAAP and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with GAAP) and (iii) together with the delivery of financial statements required by Section 5.13(a)(i), the Compliance Certificate required to be delivered pursuant to Section 5.01(d).

(b) The Loan Parties shall take all necessary actions to satisfy the items described on Schedule 5.13(b) within the applicable periods of time specified in such Schedule (or such longer periods as the Administrative Agent may agree in its sole discretion).

Section 5.14 **MIRE Events**. Each of the parties hereto acknowledges and agrees that, if there are any Mortgaged Properties, no MIRE Event may be closed until the date that is (a) if there are no Mortgaged Properties in a "special flood hazard area", ten (10) Business Days or (b) if there are Mortgaged Properties in a "special flood hazard area", thirty (30) days (in each case, the "Notice Period"), after the Administrative Agent has delivered to the Lenders the following documents in respect of each Mortgaged Property: (i) a "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower or the applicable Loan Party in the event any such Mortgaged Property is located in a special flood hazard area) and (ii) evidence of flood insurance as required by Section 5.05; provided that any such MIRE Event may be closed prior to the Notice Period if the Administrative Agent shall have received confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.

Section 5.15 **Accuracy of Information**. Each Parent Company and the Borrower Agent shall, and shall cause the Subsidiaries to, ensure that any information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any amendment or modification hereof or waiver hereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading in any material respect, and the furnishing of such information shall be deemed to be a representation and warranty by each Parent Company and the Borrower Agent, as applicable, on the date thereof as to the matters specified in this Section. As of the Closing Date, any projections and pro forma financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrower Agent to be reasonable at the time made, in light of the circumstances under which they were made, it being recognized by the Administrative Agent and the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

Section 5.16 **USA PATRIOT Act**. Promptly upon reasonable request, Ultimate Parent, Holdings and the Borrower Agent shall, and shall cause the Subsidiaries to, deliver all documentation and other information required by regulatory authorities under applicable "know your customer" anti-money laundering laws, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

Section 5.17 **Lender Calls**.

(a) Prior to the date that the Audit Delivery Condition is satisfied, the Borrower Agent shall hold one update call each calendar month (which call shall take place on a Business Day selected by the Borrower) with a Financial Officer of the Borrower Agent and the Lenders to discuss the financial position, financial performance and cash flows of Ultimate Parent and its subsidiaries; provided that at the request of the Administrative Agent, such call may be cancelled with notice to the Borrower Agent.

(b) Beginning on and after the date that the Audit Delivery Condition is satisfied, the Borrower Agent shall hold one update call each fiscal quarter if reasonably requested by the Administrative Agent (which call shall take place on a Business Day selected by the Borrower) with a Financial Officer of the Borrower Agent and the Lenders to discuss the financial position, financial performance and cash flows of Ultimate Parent and its subsidiaries; provided that at the request of the Administrative Agent, such call may be cancelled with notice to the Borrower Agent.

Section 5.18 **Other Requested Information**. Promptly upon reasonable request, the Borrower Agent shall, and shall cause its Subsidiaries to, deliver such other information regarding the operations, business affairs, prospects and financial condition of Ultimate Parent and its subsidiaries (including with respect to beneficial ownership of Ultimate Parent) or compliance with the terms of this Agreement, any other Loan Document or other document as the Administrative Agent may reasonably request to the extent such information is reasonably available to, or can be reasonably obtained by, the Borrower Agent or any other Loan Party.

ARTICLE 6
NEGATIVE COVENANTS

Until the Termination Date has occurred, each of Ultimate Parent and Holdings (solely as to the extent applicable to either or both) and the other Loan Parties covenant and agree, jointly and severally, with the Lenders that:

Section 6.01 **Indebtedness**. Each of the Borrower Agent and its Subsidiaries shall not, nor shall they permit any of the Subsidiaries to, directly or indirectly, create, incur, assume or otherwise become or remain liable with respect to any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness of any Borrower to any Subsidiary, Holdings or Ultimate Parent and of any Subsidiary to any Borrower, Holdings, Ultimate Parent or any other Subsidiary; provided that in the case of any Indebtedness of a Subsidiary that is not a Loan Party owing to a Loan Party, such Indebtedness shall (x) be permitted as an Investment by Section 6.07 or (y) be of the type described in clause (ii) of the parenthetical under clause (c) of the definition of "Investment"; provided, further, that (A) all such Indebtedness shall be evidenced by an Intercompany Note and shall be subject to a First Priority Lien pursuant to the Pledge and Security Agreement and (B) all such Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party must be expressly subordinated to the Obligations of such Loan Party on terms reasonably acceptable to the Administrative Agent;

(c) the Second Lien Notes; provided that the aggregate outstanding principal amount of such Indebtedness at any time outstanding shall not exceed $232,394,231, subject to provisions under the Second Lien Notes Documents (as in effect on the date hereof) permitting accrued interest to be capitalized;

(d) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price or similar obligations (including contingent earnout obligations) incurred in connection with asset sales or other sales or Permitted Acquisitions or other purchases of assets, or Indebtedness arising

from guaranties, letters of credit, surety bonds or performance bonds securing the performance of any such Borrower or any such Subsidiary pursuant to such agreements;

(e) Indebtedness which may be deemed to exist pursuant to any performance and completion guaranties or customs, stay, performance, bid, surety, statutory, appeal or other similar obligations incurred in the ordinary course of business or in respect of any letters of credit related thereto;

(f) Indebtedness in respect of Banking Services Obligations and other netting services, overdraft protections, automated clearing-house arrangements, employee credit card programs and similar arrangements and otherwise in connection with Cash management and Deposit Accounts;

(g) (x) guaranties of the obligations of suppliers, customers, franchisees and licensees in the ordinary course of business and consistent with past practice as in effect on the Closing Date and (y) Indebtedness incurred in the ordinary course of business in respect of obligations of any Borrower or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services;

(h) Guarantees by any Borrower or any Subsidiary of Indebtedness or other obligations of any Borrower or any Subsidiary with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.01 or obligations not prohibited by this Agreement; provided that (A) in the case of any Guarantees by a Loan Party of the obligations of a non-Loan Party the related Investment is permitted under Section 6.07 (B) no Guarantee by any Subsidiary of any Indebtedness permitted under Sections 6.01(c) and (w) shall be permitted unless the guaranteeing party shall have also provided a Guarantee of the Guaranteed Obligations on the terms set forth herein, (C) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Obligations on terms at least as favorable (as reasonably determined by the Borrower Agent) to the Lenders as those contained in the subordination of such Indebtedness and (D) any Guarantee by a Subsidiary that is not a Loan Party of any Indebtedness permitted under Sections 6.01(r) shall only be permitted if such Guarantee meets the requirements of such Sections;

(i) Indebtedness existing on the Closing Date and described in Schedule 6.01(i); provided, that, in the case of Indebtedness of any Borrower to any Subsidiary and of any Subsidiary to any Borrower or any other Subsidiary, all such Indebtedness owed to a Loan Party shall be evidenced by an Intercompany Note and such Loan Party's interest therein shall be subject to a First Priority Lien pursuant to the Pledge and Security Agreement (and all such Indebtedness of any Loan Party owed to any Subsidiary that is not a Loan Party must be expressly subordinated to the Obligations of such Loan Party on the terms set forth therein);

(j) Indebtedness of Subsidiaries that are not Loan Parties; provided that the aggregate outstanding principal amount of such Indebtedness at any time outstanding shall not exceed $50,000,000 or, only following satisfaction of the Audit Delivery Condition, if greater, 3.00% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements most recently have been delivered pursuant to Section 5.01;

(k) Indebtedness at any time outstanding in an aggregate principal amount not to exceed $75,000,000; provided that (i) no Event of Default then exists or would result therefrom, (ii) any such Indebtedness shall not mature or require any scheduled amortization or scheduled payments of principal and is not subject to mandatory redemption, repurchase, repayment or sinking fund obligation (other than AHYDO payments, customary offers to repurchase on a change of control, asset sale or casualty event and customary acceleration rights after an event of default), in each case, prior to the date that is 91 days after the Maturity Date, (iii) the terms of such Indebtedness (excluding pricing, fees, rate floors, optional prepayment or redemption terms (and, if applicable, subordination terms)), are not, taken as a whole (as reasonably determined by the Borrower Agent), materially more favorable to the lenders

providing such Indebtedness than those applicable to the Credit Facility (other than any covenants or any other provisions applicable only to periods after the Maturity Date), (iv) the Borrower Agent shall have delivered a certificate of a Responsible Officer of the Borrower Agent to the Administrative Agent certifying as to compliance with the requirements of clauses (i) through (iii) of this clause (k) and (v) such Indebtedness shall be subject to the Intercreditor Agreement;

(l) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(m) Indebtedness with respect to Capital Leases and purchase money Indebtedness incurred prior to or within 270 days of the acquisition or lease or completion of construction, repair of, improvement to or installation of the assets acquired in connection with the incurrence of such Indebtedness in an aggregate principal amount at any time outstanding not to exceed $35,000,000 or, only following satisfaction of the Audit Delivery Condition, 2.00% of Consolidated Total Assets as of the last day of the last Test Period for which financial statements most recently have been delivered pursuant to Section 5.01;

(n) Indebtedness of a Person that becomes a Subsidiary or Indebtedness assumed in connection with an acquisition permitted hereunder after the Closing Date; provided that (i) such Indebtedness existed at the time such Person became a Subsidiary or the assets subject to such Indebtedness were acquired and was not created in anticipation thereof, (ii) no Event of Default then exists or would result therefrom, (iii) the Fixed Charge Coverage Ratio is at least 1.00 to 1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01, (iv) the Total Leverage Ratio would not exceed 6.00:1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01 (provided that, for purposes of calculating the Total Leverage Ratio under this clause (n), in no event shall the Unrestricted Cash Amount include the proceeds of such Indebtedness being incurred), (v) such Indebtedness was not incurred in contemplation of such acquisition, (vi) any such Indebtedness shall not mature or require any scheduled amortization or scheduled payments of principal and is not subject to mandatory redemption, repurchase, repayment or sinking fund obligation (other than AHYDO payments, customary offers to repurchase on a change of control, asset sale or casualty event and customary acceleration rights after an event of default), in each case, prior to the date that is 91 days after the Maturity Date, (vii) the terms of such Indebtedness (excluding pricing, fees, rate floors, optional prepayment or redemption terms (and, if applicable, subordination terms)), are not, taken as a whole (as reasonably determined by the Borrower Agent), materially more favorable to the lenders providing such Indebtedness than those applicable to the Credit Facility (other than any covenants or any other provisions applicable only to periods after the Maturity Date) and (viii) the Borrower Agent shall have delivered a certificate of a Responsible Officer of the Borrower Agent to the Administrative Agent certifying as to compliance with the requirements of clauses (i) through (vii) of this clause (n);

(o) Indebtedness consisting of unsecured subordinated promissory notes in form and in substance reasonably acceptable to the Administrative Agent, issued by any Borrower to any stockholders of any Parent Company or any current or former directors, officers, employees, members of management or consultants of any Parent Company, any Borrower or any Subsidiary (or their Immediate Family Members) and not guaranteed by any Subsidiary, to finance the purchase or redemption of Capital Stock of any Parent Company permitted by Section 6.05(a);

(p) the Borrowers and the Subsidiaries may become and remain liable for any Indebtedness replacing, refunding or refinancing any Indebtedness permitted under clauses (c), (i), (k), (n), (q), (r), (w) and (gg) of this Section 6.01 and any subsequent Refinancing Indebtedness in respect thereof (in any case, "**Refinancing Indebtedness**"); provided that (i) the principal amount of such Indebtedness does not exceed the principal amount of the Indebtedness being refinanced, refunded or replaced, except by an amount equal to unpaid accrued interest and premiums (including tender premiums) thereon plus

other reasonable and customary fees and expenses (including upfront fees and original issue discount) reasonably incurred in connection with such refinancing or replacement, (ii) such Indebtedness has a final maturity on or later than (and, in the case of any revolving Indebtedness, shall not require mandatory commitment reductions prior to) the final maturity of the Indebtedness being refinanced, refunded or replaced and, other than with respect to any revolving Indebtedness, a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being refinanced, refunded or replaced, (iii) the terms of such Indebtedness (excluding pricing, fees, premiums, rate floors, optional prepayment or redemption terms (and, if applicable, subordination terms) and, with respect to clauses (q) (if applicable), security), are not, taken as a whole (as reasonably determined by the Borrower Agent), more favorable to the lenders providing such indebtedness than those applicable to the Indebtedness being refinanced, refunded or replaced (other than any covenants or any other provisions applicable only to periods after the Maturity Date), (iv) such Indebtedness is secured only by the same collateral (or assets required to become collateral) and by Permitted Liens of the same or lower priority and by the same collateral (or assets required to become collateral)as the Liens securing the Indebtedness being refinanced, refunded or replaced at the time of such refinancing, refunding or replacement (it being understood, however, that such Indebtedness may go from being secured to being unsecured), (v) such Indebtedness is incurred by any Borrower or its Subsidiary that is the obligor on the Indebtedness being refinanced, refunded or replaced, except to the extent otherwise permitted pursuant to Section 6.01 and Section 6.07, (vi) if the Indebtedness being refinanced, refunded or replaced was originally contractually subordinated to the Obligations in right of payment (or the Liens on any Collateral securing such Indebtedness were originally contractually subordinated to the Liens on such Collateral securing the Secured Obligations), such Indebtedness is contractually subordinated to the Obligations in right of payment (or the Liens on such Collateral securing such Indebtedness shall be subordinated to the Liens on such Collateral securing the Secured Obligations) on terms not less favorable to the Lenders than those applicable to the Indebtedness (or Liens, as applicable) being refinanced, refunded or replaced, taken as a whole, (vii) Indebtedness of any Borrower or any Subsidiary shall not refinance Indebtedness of an Unrestricted Subsidiary, (viii) as of the date of incurring such Indebtedness and after giving effect thereto, no Event of Default shall exist or have occurred and be continuing and (ix) if such Indebtedness being refinanced, refunded or replaced is Guaranteed, the applicable Refinancing Indebtedness shall not be Guaranteed by any Person that is not a Loan Party other than persons who guaranteed the Indebtedness being refinanced, refunded or replaced;

(q) Indebtedness incurred to finance an acquisition permitted hereunder after the Closing Date; provided that (i) no Event of Default then exists or would result therefrom, (ii) such Indebtedness shall not mature or require any payment of principal, in each case, prior to the date which is 91 days after the Maturity Date, (iii) the Fixed Charge Coverage Ratio is at least 1.00 to 1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01, (iv) the Total Leverage Ratio would not exceed 6.00:1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01 (provided that, for purposes of calculating the Total Leverage Ratio under this clause (q), in no event shall the Unrestricted Cash Amount include the proceeds of such Indebtedness being incurred), (v) any such Indebtedness shall not mature or require any scheduled amortization or scheduled payments of principal and is not subject to mandatory redemption, repurchase, repayment or sinking fund obligation (other than AHYDO payments, customary offers to repurchase on a change of control, asset sale or casualty event and customary acceleration rights after an event of default), in each case, prior to the date that is 91 days after the Maturity Date, (vi) the terms of such Indebtedness (excluding pricing, fees, rate floors, optional prepayment or redemption terms (and, if applicable, subordination terms)), are not, taken as a whole (as reasonably determined by the Borrower Agent), materially more favorable to the lenders providing such Indebtedness than those applicable to the Credit Facility (other than any covenants or any other provisions applicable only to periods after the Maturity Date) and (vii) the Borrower Agent shall have delivered a certificate of a Responsible Officer of the

Borrower Agent to the Administrative Agent certifying as to compliance with the requirements of clauses (i) through (vi) of this clause (q);

(r) senior or subordinated unsecured Indebtedness of the Borrower Agent or any Subsidiary, so long as, after giving effect thereto, (A) no Default or Event of Default has occurred and is continuing at the time of the incurrence thereof, (B) the Total Leverage Ratio would not exceed 6.00:1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01 (provided that, for purposes of calculating the Total Leverage Ratio under this clause (r), in no event shall the Unrestricted Cash Amount include the proceeds of such Indebtedness being incurred), (C) the Fixed Charge Coverage Ratio is at least 1.00 to 1.00 calculated on a Pro Forma Basis as of the last day of the most recently ended Test Period for which financial statements have been delivered pursuant to Section 5.01 and (D) the Borrower Agent shall have delivered a certificate of a Responsible Officer of the Borrower Agent to the Administrative Agent certifying as to compliance with the requirements of clauses (A) and (C) of this clause (r); provided that (x) any such Indebtedness shall not mature or require any scheduled amortization or scheduled payments of principal and is not subject to mandatory redemption, repurchase, repayment or sinking fund obligation (other than AHYDO payments, customary offers to repurchase on a change of control, asset sale or casualty event and customary acceleration rights after an event of default), in each case, prior to the date that is 91 days after the Maturity Date, (y) the terms of such Indebtedness (excluding pricing, fees, rate floors, optional prepayment or redemption terms (and, if applicable, subordination terms)), are not, taken as a whole (as reasonably determined by the Borrower Agent), materially more favorable to the lenders providing such Indebtedness than those applicable to the Credit Facility (other than any covenants or any other provisions applicable only to periods after the Maturity Date) and (z) with respect to Indebtedness incurred under this clause (r) by a non-Loan Party, the aggregate outstanding principal amount of such Indebtedness of Subsidiaries that are not Loan Parties shall not exceed, $50,000,000 or, only following satisfaction of the Audit Delivery Condition, if greater, 3.00% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 5.01;

(s) Indebtedness under any Derivative Transaction entered into for the purpose of hedging risks associated with the Borrower Agent's and any Subsidiaries' operations and not for speculative purposes;

(t) contingent obligations in respect of corporate leases assigned, sold or otherwise transferred (i) as set forth on Schedule 6.01(t) or (ii) incurred or created after the Closing Date in connection with the sale of retail stores; provided that in the case of clause (ii) above all such contingent obligations shall be unsecured and shall not permit a cross-default to this Agreement;

(u) Indebtedness at any time outstanding in an aggregate principal amount not to exceed $50,000,000 or, only following satisfaction of the Audit Delivery Condition, if greater, 3.00% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 5.01 at such time;

(v) [Reserved];

(w) Indebtedness incurred in exchange for, and in order to discharge obligations under, Indebtedness existing on the Closing Date pursuant to notes issued by Anagram International, Inc. and Anagram Holdings, LLC and in an aggregate principal amount not to exceed $200,000,000; provided that (i) the terms of such Indebtedness shall not be materially more restrictive than the terms of the Second Lien Notes, (ii) no Event of Default then exists or would result therefrom, (iii) Anagram International, Inc., Anagram Holdings, LLC and the subsidiaries thereof (other than any of the immediately foregoing entities that would be classified as an Excluded Subsidiary (unless such entity is a "Loan Party" (or the functional equivalent thereof) for the purpose of any Indebtedness constituting Material Indebtedness) until such time

as such entity ceases to be an Excluded Subsidiary) shall be Loan Parties, (iv) such Indebtedness shall not mature prior to the date that is 91 days after the Maturity Date and (v) such Indebtedness shall be subject to the Intercreditor Agreement (subject to modifications that are acceptable to the Required Lenders (with consent thereto not to be unreasonably withheld, delayed or conditioned) for purposes of, inter alia, reflecting the Liens securing such Indebtedness);

(x) Indebtedness incurred in connection with Sale and Lease-Back Transactions permitted pursuant to Section 6.10;

(y) [Reserved];

(z) Indebtedness (including obligations in respect of letters of credit or bank guarantees or similar instruments with respect to such Indebtedness) incurred in respect of workers compensation claims, unemployment insurance (including premiums related thereto), other types of social security, pension obligations, vacation pay, health, disability or other employee benefits;

(aa) [Reserved];

(bb) Indebtedness representing (i) deferred compensation to directors, officers, employees, members of management and consultants of any Parent Company, the Borrowers or any Subsidiary in the ordinary course of business and (ii) deferred compensation or other similar arrangements in connection with the Transactions, any Permitted Acquisition or any Investment permitted hereby;

(cc) Indebtedness in respect of any letter of credit issued in favor of any Issuing Bank or Swingline Lender to support any Defaulting Lender's participation in Letters of Credit issued, or Swingline Loans made, hereunder;

(dd) [Reserved];

(ee) unfunded pension fund and other employee benefit plan obligations and liabilities incurred in the ordinary course of business to the extent that such unfunded amounts would not otherwise cause an Event of Default under Section 7.01(j);

(ff) without duplications of any other Indebtedness, all premiums (if any), interest (including post-petition interest and payment in kind interest), accretion or amortization of original issue discount, fees, expenses and charges with respect to Indebtedness hereunder; and

(gg) the Mudrick Promissory Note.

Notwithstanding anything to the contrary herein, no Indebtedness shall be incurred by any Parent Company, any Borrowers, the Subsidiary Guarantors or the Subsidiaries (x) in exchange for, (y) in order to discharge obligations under and/or (z) that otherwise refinances or replaces, in each case, Indebtedness pursuant to notes issued by Anagram International, Inc. and Anagram Holdings, LLC other than as permitted under Section 6.01(w).

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so

long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including original issue discount) incurred in connection with such refinancing.

Section 6.02 **Liens**. Each of the Borrower Agent and its Subsidiaries shall not shall not, nor shall they permit any of the Subsidiaries to, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) owned by it, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) Liens granted pursuant to the Loan Documents to secure the Secured Obligations;

(b) Liens for Taxes which are (i) not then due or if due obligations with respect to such Taxes that are not at such time required to be paid pursuant to Section 5.03 or (ii) which are being contested in accordance with Section 5.03;

(c) statutory Liens of landlords, banks (and rights of set-off), carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Code or by ERISA), in each case incurred in the ordinary course of business (i) for amounts not yet overdue by more than 30 days, (ii) for amounts that are overdue by more than 30 days and that are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts or (iii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(d) Liens incurred (i) in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security laws and regulations, (ii) in the ordinary course of business to secure the performance of tenders, statutory obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (iii) pursuant to pledges and deposits of Cash or Cash Equivalents in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Ultimate Parent, Holdings and the Subsidiaries;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not, in the aggregate, materially interfere with the ordinary conduct of the business of any Parent Company, the Borrower Agent and the Subsidiaries taken as a whole, or the use of the affected property for its intended purpose;

(f) any (i) interest or title of a lessor or sublessor under any lease of real estate permitted hereunder, (ii) landlord liens permitted by the terms of any lease, (iii) restrictions or encumbrances that the interest or title of such lessor or sublessor may be subject to or (iv) subordination of the interest of the lessee or sublessee under such lease to any restriction or encumbrance referred to in the preceding clause (iii);

(g) Liens solely on any Cash earnest money deposits made by the Borrower Agent or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to any Investment permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property or consignment or bailee arrangements entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) Liens in connection with any zoning, building or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any or dimensions of real property or the structure thereon;

(k) Liens securing Indebtedness permitted pursuant to Section 6.01(p) (solely with respect to the permitted refinancing of Indebtedness permitted pursuant to Sections 6.01(n) and (q)); provided that (i) any such Lien does not extend to any asset not covered by the Lien securing the Indebtedness that is refinanced and (ii) if the Indebtedness being refinanced was subject to intercreditor arrangements, then any such refinancing Indebtedness shall be subject to intercreditor arrangements no less favorable, taken as a whole, than the intercreditor arrangements governing the Indebtedness that is refinanced or shall be otherwise reasonably acceptable to the Administrative Agent;

(l) Liens existing on the Closing Date and described in Schedule 6.02 and any modifications, replacements, refinancings, renewals or extensions thereof; provided that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 6.01 and (B) proceeds and products thereof and accessions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates) and (ii) the replacement, refinancing, renewal or extension of the obligations secured or benefited by such Liens is permitted by Section 6.01;

(m) Liens arising out of Sale and Lease-Back Transactions permitted under Section 6.10;

(n) Liens securing Indebtedness permitted pursuant to Section 6.01(m); provided that any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness and proceeds and products thereof, accessions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates);

(o) (i) Liens securing Indebtedness permitted pursuant to Section 6.01(n) on assets acquired or on the Capital Stock of any Person (to the extent such Capital Stock would not otherwise constitute Collateral) and assets of the newly acquired Subsidiary; provided that such Lien (x) does not extend to or cover any other assets (other than the proceeds or products thereof and accessions or additions thereto and improvements thereon) and (y) was not created in contemplation of the applicable acquisition of assets or Capital Stock; provided, further, that in the case of any Liens on Collateral, such Indebtedness shall be secured on a junior basis with respect to the Secured Obligations pursuant to an intercreditor arrangement reasonably satisfactory to the Administrative Agent and the Required Lenders and (ii) Liens securing Indebtedness incurred pursuant to Section 6.01(q); provided that in the case of any Liens on Collateral, such Indebtedness shall be secured on a junior basis with respect to the Secured Obligations pursuant to an intercreditor arrangement reasonably satisfactory to the Administrative Agent and the Required Lenders;

(p) Liens that are contractual rights of setoff relating to (i) the establishment of depositary relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to

pooled deposit or sweep accounts of any Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of any Borrower or any Subsidiary, (iii) relating to purchase orders and other agreements entered into with customers of any Borrower or any Subsidiary in the ordinary course of business, (iv) attaching to commodity trading or other brokerage accounts incurred in the ordinary course of business and (v) encumbering reasonable customary initial deposits and margin deposits;

(q) Liens on assets of Foreign Subsidiaries and other Subsidiaries that are not Loan Parties (including Capital Stock owned by such Persons) securing Indebtedness of Subsidiaries that are not Loan Parties permitted pursuant to Section 6.01;

(r) [Reserved];

(s) Liens disclosed in the final title insurance policies insuring the Mortgages delivered pursuant to Sections 5.12 and 5.13 with respect to any Mortgaged Property reasonably acceptable to the Administrative Agent;

(t) Liens securing obligations in respect of any Indebtedness permitted under Sections 6.01(c), (k) and/or (w); provided that in the case of any Liens on Collateral, such Indebtedness shall be secured on a junior basis with respect to the Secured Obligations pursuant to the Intercreditor Agreement; provided, further, that Liens on Collateral, but no other Liens, may secure obligations in respect of any Indebtedness permitted under Sections 6.01(c);

(u) Liens on assets securing Indebtedness in an aggregate principal amount not to exceed $30,000,000; provided that, in the case of any Liens on Collateral, such Indebtedness shall be secured on a junior basis with respect to the Secured Obligations pursuant to an intercreditor arrangement reasonably satisfactory to the Administrative Agent;

(v) Liens on assets securing judgments for the payment of money not constituting an Event of Default under Section 7.01(h);

(w) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of Ultimate Parent and its Subsidiaries (other than an Immaterial Subsidiary), or adversely affect in any material respect the value of any Collateral or adversely affect in any material respect or could reasonably be expected to adversely affect any of the material rights or remedies of Administrative Agent with respect to any Collateral or (ii) secure any Indebtedness;

(x) [Reserved];

(y) Liens securing obligations in respect of letters of credit permitted under Sections 6.01(e), (z) and (cc);

(z) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of any assets or property in the ordinary course of business and permitted by this Agreement;

(aa) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto; and

(bb) If no Letters of Credit are available hereunder, and solely with the consent of the Administrative Agent (not to be unreasonably withheld), Liens on specific items of inventory or other goods and the proceeds thereof, on premises not owned, controlled or leased by any Loan Party, securing such Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created

for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods, in an aggregate outstanding amount not to exceed $10,000,000 at any time.

Section 6.03 [Reserved].

Section 6.04 No Further Negative Pledges. Neither the Loan Parties nor any of the Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, except with respect to:

(a) specific property to be sold pursuant to an asset sale permitted by Section 6.08;

(b) restrictions contained in any agreement with respect to Indebtedness permitted by Section 6.01(m) or Section 6.01(n) that is secured by a Permitted Lien, but only if such agreement applies solely to the specific asset or assets to which such Permitted Lien applies;

(c) restrictions contained in the Second Lien Notes Indenture and the documentation governing Indebtedness permitted by clauses (q), (r), (u) and (w) of Section 6.01;

(d) restrictions by reason of customary provisions restricting assignments, subletting or other transfers (including the granting of any Lien) contained in leases, subleases, licenses, sublicenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, subleases, licenses, sublicenses or similar agreements, as the case may be);

(e) Permitted Liens and restrictions in the agreements relating thereto that limit the right of the Borrower Agent or any of its Subsidiaries to dispose of or transfer the assets subject to such Liens;

(f) provisions limiting the disposition or distribution of assets or property in joint venture agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, which limitation is applicable only to the assets that are the subject of such agreements;

(g) any encumbrance or restriction assumed in connection with an acquisition of property or new Subsidiaries, so long as such encumbrance or restriction relates solely to the property so acquired and was not created in connection with or in anticipation of such acquisition;

(h) restrictions imposed by customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements that restrict the transfer of ownership interests in such partnership, limited liability company, joint venture or similar Person;

(i) restrictions on Cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;

(j) restrictions set forth in documents which exist on the Closing Date and are listed on Schedule 6.04 hereto; and

(k) restrictions or encumbrances imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clause (j) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower Agent, no more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 6.05 Restricted Payments; Certain Payments of Indebtedness.

(a) The Borrower Agent shall not pay or make, directly or indirectly, any Restricted Payment, except that:

(i) the Borrower Agent may make Restricted Payments to the extent necessary to permit any Parent Company;

(A) to pay (x) general administrative costs and expenses (including corporate overhead, legal or similar expenses) and franchise fees and taxes and similar fees, taxes and expenses required to maintain the organizational existence of such Parent Company, in each case, which are reasonable and customary and incurred in the ordinary course of business, plus any reasonable and customary indemnification claims made by directors, officers, members of management or employees of any Parent Company, in each case, to the extent attributable to the ownership or operations of any of Holdings, the Borrowers and the Subsidiaries and (y) without duplication of preceding clause (x), any Public Company Costs;

(B) for any taxable period in which the Borrower Agent and/or any of its subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of the Borrowers is the common parent (a "**Tax Group**"), to discharge the consolidated tax liabilities of such Tax Group when and as due, to the extent such liabilities are attributable to the ownership or operations of the Borrower Agent and the subsidiaries; provided, that the amount paid by the Borrower Agent pursuant to this paragraph (B) shall not exceed the tax liabilities that would be due if the Borrower Agent and each subsidiary were separate corporations filing income and similar tax returns on a consolidated or combined basis with the Borrower Agent as the common parent of such affiliated group (calculated at the highest combined applicable federal, state, local and foreign tax rate); provided further that the permitted payment pursuant to this paragraph (B) with respect to any taxes of any Unrestricted Subsidiary for any taxable period shall be limited to the amount actually paid with respect to such period by such Unrestricted Subsidiary to the Borrower Agent and the Subsidiaries for the purposes of paying such consolidated, combined or similar taxes;

(C) to pay audit and other accounting and reporting expenses at such Parent Company to the extent relating to the ownership or operations of the Borrowers and the Subsidiaries;

(D) for the payment of insurance premiums to the extent relating to the ownership or operations of the Borrowers and the Subsidiaries;

(E) pay fees and expenses related to debt or equity offerings, investments or acquisitions permitted by this Agreement (whether or not consummated);

(F) to pay the consideration to finance any Investment permitted under Section 6.07 (provided that (x) such Restricted Payments under this clause (a)(i)(F) shall be made substantially concurrently with the closing of such Investment and (y) such Parent Company shall, promptly following the closing thereof, cause all such property acquired to be contributed to the Borrowers or one of the Subsidiaries, or the merger or amalgamation of the Person formed or acquired into the Borrowers or one of the Subsidiaries, in order to consummate such Investment in a manner that causes such Investment to comply with the applicable requirements of Section 6.07 as if undertaken as a direct Investment by such Borrower or such Subsidiary); and

(G) without duplication of clause (A)(y) above, to pay customary salary, bonus and other benefits payable to directors, officers, members of management or employees of any Parent Company to the extent such salary, bonuses and other benefits are directly attributable and reasonably allocated to the operations of the Borrowers and the Subsidiaries, in each case, so long as such Parent Company applies the amount of any such Restricted Payment for such purpose;

(ii) the Borrower Agent may pay (or make Restricted Payments to allow any Parent Company to pay) for the repurchase, redemption, retirement or other acquisition or retirement for value of Capital Stock of any Parent Company held by any future, present or former employee, director, member of management, officer, manager or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company, the Borrowers or any Subsidiary;

(A) in exchange for notes issued pursuant to Section 6.01(o), so long as the aggregate amount of all cash payments made in respect of such notes, together with the aggregate amount of Restricted Payments made (x) pursuant to clause (D) of this clause (ii) below and (y) pursuant to Section 6.05(a)(iv), does not exceed $5,000,000 in any Fiscal Year;

(B) [Reserved];

(C) in exchange for net proceeds of any key-man life insurance policies received during such fiscal year; or

(D) in exchange for Cash and Cash Equivalents in an amount not to exceed, together with (x) the aggregate amount of all cash payments made in respect of notes issued pursuant to Section 6.01(o) and (y) the aggregate amount of Restricted Payments made pursuant to Section 6.05(a)(iv), $5,000,000 in any Fiscal Year;

(iii) the Borrower Agent may make Restricted Payments; provided that at the time they are paid by the Borrower Agent, before and after giving effect to such Restricted Payments under this clause (iii), the Payment Conditions are satisfied;

(iv) the Borrower Agent may make Restricted Payments to any Parent Company to enable such Parent Company to make Cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of such Parent Company in an amount not to exceed, together with (x) the aggregate amount of all cash payments made in respect of notes issued pursuant to Section 6.01(o) and (y) the aggregate amount of all Restricted Payments made pursuant to Section 6.05(a)(ii)(D), $5,000,000 in any Fiscal Year;

(v) [Reserved];

(vi) [Reserved];

(vii) the Borrower Agent may make Restricted Payments to Ultimate Parent to the extent necessary to permit Ultimate Parent to pay (and to the extent applied to pay) interest, fees, principal and expenses on (1) the Second Lien Notes and (2) any other permitted Indebtedness of Ultimate Parent, in each case, to the extent such payments of interest, fees, principal and expenses are not prohibited under Section 6.05(b); and

(viii) the Borrower Agent may make Restricted Payments to (i) redeem, repurchase, retire or otherwise acquire any (A) Capital Stock ("**Treasury Capital Stock**") of the Borrower Agent or any Subsidiary or (B) Capital Stock of any Parent Company, in the case of each

of subclauses (A) and (B), in exchange for, or out of the proceeds of the substantially concurrent sale (other than to the Borrower Agent or a Subsidiary) of, Capital Stock of the Borrower Agent or any Parent Company to the extent contributed as a common equity contribution to the capital of the Borrower Agent or any Subsidiary (in each case, other than Disqualified Capital Stock) ("**Refunding Capital Stock**") and (ii) declare and pay dividends on the Treasury Capital Stock out of the proceeds of the substantially concurrent sale (other than to the Borrower Agent or a Subsidiary) of the Refunding Capital Stock.

Notwithstanding anything to the contrary herein, in no event shall Ultimate Parent, Holdings or the Borrower Agent pay or make, directly or indirectly, any Restricted Payment in reliance on Sections 6.05(a)(i)(E) or (iii) or unless all FILO Loans have been paid in full.

(b) Notwithstanding anything to the contrary in Section 6.05(a), no Loan Party shall, nor shall they permit any Subsidiary to, make, directly or indirectly, any payment or other distribution (including with respect to principal, interest or fees) and whether in Cash, securities or other property) on or in respect of the Second Lien Notes, Indebtedness permitted under Section 6.01(k) or (w) (or Refinancing Indebtedness in respect of any of the foregoing if permitted hereunder), any Junior Indebtedness or (without duplication) Indebtedness permitted under Section 6.01(r), or any payment or other distribution (whether in Cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of the Second Lien Notes, Indebtedness permitted under Section 6.01(k) or (w) (or Refinancing Indebtedness in respect of either of the foregoing if permitted hereunder) or any Junior Indebtedness prior to scheduled maturity (collectively, "**Restricted Debt Payments**"), except:

(i) the defeasance, redemption, repurchase or other acquisition or retirement of the Second Lien Notes, Indebtedness permitted under Section 6.01(k) or (w) (or Refinancing Indebtedness in respect of either of the foregoing if permitted hereunder) or Junior Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent incurrence of, Refinancing Indebtedness permitted by Section 6.01;

(ii) [Reserved;]

(iii) payments of regularly scheduled principal with respect to any (A) Indebtedness incurred under Section 6.01(m), (B) Indebtedness of the type described in Section 6.01(m) to the extent incurred under Section 6.01(u) and (C) Indebtedness incurred under Section 6.01(gg);

(iv) (A) payments of regularly scheduled interest, as and when due in respect of any Indebtedness (other than the Second Lien Notes and Indebtedness permitted under Sections 6.01(k), (n), (q), (r) or (w)) and (B) payments of (1) customary fees paid on the Closing Date and, thereafter, (2) fees customarily paid to an administrative agent or indenture trustee on a regularly scheduled basis for administrative, agency and/or monitoring services to the extent the recipient thereof is not an Affiliate of either a Loan Party or any Persons holding Capital Stock in the Ultimate Parent, (3) original issuance discount and other customary fees netted from the proceeds of such Indebtedness concurrently with the funding thereof, (4) other fees in an amount not to exceed $50,000 in any calendar year and (5) expenses (including, if provided for under the applicable financing documentation, expenses of legal counsel and other advisors) and indemnification obligations, in each case, to the extent customary in nature, as and when due in respect of any Indebtedness (in each case under this Section 6.05(b)(iv), other than payments with respect to Subordinated Indebtedness prohibited by the subordination provisions thereof);

(v) payments with respect to intercompany Indebtedness permitted under Section 6.01, subject to the subordination provisions applicable thereto;

(vi) [Reserved];

(vii) (A) payments of any Indebtedness under the Second Lien Notes, Indebtedness permitted under Sections 6.01(k) and/or (w) and/or any Junior Indebtedness in exchange for, or with proceeds of any substantially contemporaneous issuance of Qualified Capital Stock of any Parent Company or the Borrower Agent, and any substantially contemporaneous capital contribution in respect of Qualified Capital Stock of the Borrower Agent, (B) payments of Indebtedness by the conversion of all or any portion thereof into Qualified Capital Stock of any Parent Company or the Borrower Agent and (C) payments of interest in respect of Indebtedness in the form of payment-in-kind interest with respect to such Indebtedness permitted under Section 6.01; and

(viii) Restricted Debt Payments; provided that as of the date of any such payment and after giving effect thereto, the Payment Conditions are satisfied (provided that in the case of an irrevocable notice required under the terms of the applicable agreements or instruments to be given in respect of a Restricted Debt Payment prior to the date of the making of such payment, the Payment Conditions with respect to such Restricted Debt Payment shall be satisfied at the time of the giving of such irrevocable notice and on the date of the making of such payment).

Notwithstanding anything to the contrary herein, in no event shall any Restricted Debt Payment be permitted under Sections 6.05(b)(viii) unless all FILO Loans have been paid in full.

Section 6.06 Restrictions on Subsidiary Distributions. Except as provided herein or in any other Loan Document, in the Second Lien Notes Indenture, in agreements governing Indebtedness permitted under Section 6.01(w), or in agreements with respect to refinancings, renewals or replacements of such Indebtedness permitted by Section 6.01, so long as such refinancing, renewal or replacement does not expand the scope of such contractual obligation, none of the Parent Companies, the Borrowers or the Subsidiary Guarantors shall, nor shall they permit any of the Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Ultimate Parent to:

(a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by any Loan Party or any other Subsidiary;

(b) repay or prepay any Indebtedness owed by such Subsidiary to Ultimate Parent, Holdings, any Borrower or any other Subsidiary;

(c) make loans or advances to Ultimate Parent, Holdings, any Borrower or any other Subsidiary of the Borrower Agent; or

(d) transfer any of its property or assets to Ultimate Parent, Holdings, any Borrower or any other Subsidiary other than restrictions:

(i) in any agreement evidencing (x) Indebtedness of a Subsidiary other than a Loan Party permitted by Section 6.01, (y) Indebtedness permitted by Section 6.01 that is secured by a Permitted Lien if such encumbrances or restrictions apply only to the Person obligated under such Indebtedness and its Subsidiaries or the property or assets intended to secure such Indebtedness and (z) Indebtedness permitted pursuant to clauses (p) (as it relates to Indebtedness in respect of clauses (q), (r) and (w) of Section 6.01), (q), (r) and (w) of Section 6.01;

(ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, subleases, licenses, sublicenses, joint venture agreements and similar agreements entered into in the ordinary course of business;

(iii) that are or were created by virtue of any Lien granted upon, transfer of, agreement to transfer or grant of any option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement;

(iv) assumed in connection with an acquisition of property or new Subsidiaries, so long as such encumbrance or restriction relates solely to the property so acquired and was not created in connection with or in anticipation of such acquisition;

(v) in any agreement for the sale or other disposition of a Subsidiary that restricts distributions by that Subsidiary pending the sale or other disposition;

(vi) in provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any class of Capital Stock of a Person other than on a pro rata basis;

(vii) imposed by customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements that restrict the transfer of ownership interests in such partnership, limited liability company, joint venture or similar Person;

(viii) on Cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;

(ix) set forth in documents which exist on the Closing Date and are listed on Schedule 6.06 hereto; and

(x) of the types referred to in clauses (a) through (d) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (ix) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower Agent, no more restrictive with respect to such restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 6.07 **Investments**. Each Loan Party shall not, nor shall they permit any of the Subsidiaries to make or own any Investment in any Person except:

(a) Cash or Cash Equivalents;

(b) (i) equity Investments owned as of the Closing Date in any Subsidiary, (ii) Investments made after the Closing Date in Subsidiaries that are Loan Parties and (iii) equity Investments by a Loan Party in a non-Loan Party consisting of the Capital Stock of any Person which is not a Loan Party;

(c) Investments (i) constituting deposits, prepayments and other credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts and (iii) in the form of advances made to distributors, suppliers, licensors and licensees, in each case, in the ordinary course of business;

(d) Investments (i) by any Subsidiary that is not a Loan Party in any other Subsidiary that is not a Loan Party and (ii) subject to Section 6.16(c), by any Parent Company, any Borrower or any Subsidiary Guarantor in any Subsidiary that is not a Loan Party so long as, in the case of this clause (ii), the aggregate amount of any such Investments outstanding at any time does not exceed $50,000,000 or,

only following satisfaction of the Audit Delivery Condition, if greater, 3.00% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 5.01;

(e) (i) Permitted Acquisitions and (ii) Investments in any Subsidiary that is not a Loan Party in an amount required to permit such Subsidiary to consummate a Permitted Acquisition (so long as the consideration for such Permitted Acquisition shall be included for the purposes of calculating any amount available for Permitted Acquisitions pursuant to clause (d) of the proviso to the definition of "Permitted Acquisition" (without regard to the proviso contained in such clause (d)));

(f) Investments existing on, or contractually committed to as of, the Closing Date and described in Schedule 6.07 and any modification, replacement, renewal or extension thereof so long as any such modification, renewal or extension thereof does not increase the amount of such Investment except by the terms thereof or as otherwise permitted by this Section 6.07;

(g) Investments received in lieu of Cash in connection with any asset sale permitted by Section 6.08;

(h) loans or advances to officers, directors, employees, consultants or independent contractors of any Parent Company, the Borrower Agent or the Subsidiaries to the extent permitted by Requirements of Law, in connection with such Person's purchase of Capital Stock of any Parent Company, in an aggregate principal amount not to exceed $10,000,000 at any one time outstanding;

(i) 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;

(j) Investments consisting of Indebtedness permitted under Section 6.01 (other than Indebtedness permitted under Sections 6.01(b) and (h)), Permitted Liens, Restricted Payments permitted under Section 6.05 (other than Section 6.05(a)(i)), Restricted Debt Payments permitted by Section 6.05 and mergers, consolidations or asset sales or dispositions permitted by Section 6.08 (other than Section 6.08(a) (if made in reliance on sub-clause (ii)(y)), Section 6.08(b) (if made in reliance on clause (ii)) and Section 6.08(c)(i) (if made in reliance on the proviso therein) and Section 6.08(g));

(k) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers;

(l) Investments (including debt obligations and Capital Stock) received (i) in connection with the bankruptcy or reorganization of any Person, (ii) in settlement of delinquent obligations of, or other disputes with, customers, suppliers and other financially troubled account debtors arising in the ordinary course of business and/or (iii) upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) loans and advances of payroll payments or other compensation to employees, officers, directors, consultants or independent contractors of any Parent Company (to the extent attributable to the ownership or operation of the Borrower Agent and the Subsidiaries), the Borrower Agent or any Subsidiary in the ordinary course of business, in an aggregate principal amount not to exceed $2,500,000 at any one time outstanding;

(n) Investments to the extent that payment for such Investments is made solely with Capital Stock (other than Disqualified Capital Stock) of Holdings or any Parent Company, in each case, to the extent not resulting in a Change of Control;

(o) Investments of any Person acquired by, or merged into or consolidated or amalgamated with, either Borrower or any Subsidiary pursuant to an Investment otherwise permitted by

this Section 6.07 after the Closing Date to the extent that such Investments of such Person were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation and any modification, replacement, renewal or extension thereof so long as any such modification, renewal or extension thereof does not increase the amount of such Investment except as otherwise permitted by this Section 6.07 (it being understood that the "grandfathering" of Investments pursuant to this clause (o) is not intended to limit the application of clause (d) of the definition of "Permitted Acquisition" to existing Investments in non-Loan Parties acquired pursuant to a Permitted Acquisition);

(p) the Transactions;

(q) Investments made after the Closing Date by, subject to Section 6.16(c), Ultimate Parent, Holdings, the Borrower Agent and the Subsidiaries in an aggregate principal amount at any time outstanding not to exceed $25,000,000 or, only following satisfaction of the Audit Delivery Condition, if greater, 1.50% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 5.01;

(r) Investments made after the Closing Date by, subject to Section 6.16(c), Ultimate Parent, Holdings, the Borrower Agent and the Subsidiaries (other than any acquisition); provided that as of the date of such Investment and after giving effect thereto, as to any such Investment, the Payment Conditions are satisfied;

(s) Guarantees of leases (other than Capital Leases) or of other obligations not constituting Indebtedness, in each case in the ordinary course of business;

(t) Investments in Ultimate Parent or Holdings in amounts and for purposes for which Restricted Payments to Ultimate Parent or Holdings are permitted under Section 6.05(a); provided that any such Investments made as provided above in lieu of such Restricted Payments shall reduce availability under any applicable Restricted Payment basket under Section 6.05(a);

(u) [Reserved];

(v) Investments under any Derivative Transactions permitted to be entered into under Section 6.01; and

(w) loans or advances in favor of franchisees of the Borrowers and the respective Subsidiaries made in the ordinary course of business in an aggregate principal amount not to exceed $15,000,000 at any one time outstanding.

(x) Notwithstanding anything in this Section 6.07 or in any other Loan Document to the contrary, from and after the Closing Date, neither any Parent Company,the Borrower nor any Subsidiary shall exclusively license any Material Intellectual Property to any Unrestricted Subsidiary or other Affiliate, or transfer (including, for the avoidance of doubt, by way of Investment or designation of a Subsidiary as an Unrestricted Subsidiary), assign, sell, or otherwise dispose of ownership of any Material Intellectual Property to any Unrestricted Subsidiary or other Affiliate; provided that nothing contained in this paragraph shall restrict or prohibit (i) any license or other arrangement existing on the Closing Date and, solely with respect to any Intellectual Property subject to such license or other arrangement as of the Closing Date, any amendments, modifications, restatements, renewals, or replacements of such license or other arrangement in the ordinary course of business that so not materially expand the scope of such Unrestricted Subsidiary's or other Person's, as applicable, rights in such Material Intellectual Property (ii) any jointly held Intellectual Property licenses from third parties existing on the Closing Date or any transfer, assignment, sale or other disposition of any rights with respect thereto, in any such case, for a bona fide business purpose.

Section 6.08 **Fundamental Changes; Disposition of Assets**. The Borrowers and the Subsidiary Guarantors shall not, nor shall they permit any of the Subsidiaries to, enter into any transaction of merger or consolidation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sublease (as lessor or sublessor), license or sublicense (as lessor or licensor), transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, except:

(a) any Subsidiary may be merged or consolidated or amalgamated with or into any Borrower or any other Subsidiary; provided that (i) in the case of such a merger, amalgamation or consolidation with or into any Borrower, such Borrower shall be the continuing or surviving Person (or, in the case of any such transaction involving both Borrowers, the Borrower Agent shall be the continuing or surviving Person) and (ii) in the case of such a merger, amalgamation or consolidation with or into any Subsidiary Guarantor, either (x) such Subsidiary Guarantor shall be the continuing or surviving Person or (y) such transaction shall be treated as an Investment and shall comply Section 6.07;

(b) sales or other dispositions among Loan Parties or sales or other dispositions among Subsidiaries that are not Loan Parties (upon voluntary liquidation or otherwise) (for the avoidance of doubt, any such sales or dispositions by a Loan Party to a Person that is not a Loan Party shall be treated as an Investment and shall be otherwise made in compliance with Section 6.07);

(c) (i) the liquidation or dissolution of any Subsidiary (so long as, in the case of the liquidation or dissolution of the Subsidiary Borrower, the Borrower Agent receives any assets of such entity) or change in form of entity of any Subsidiary if the Borrower Agent determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrowers, is not materially disadvantageous to the Lenders and the Borrowers or any Subsidiary receives any assets of such dissolved or liquidated Subsidiary and (ii) any merger, amalgamation, dissolution, liquidation or consolidation, the purpose of which is to effect a sale or disposition otherwise permitted under this Section 6.08 (other than clause (a), clause (b) or this clause (c)); provided, further, in the case of a change in the form of entity of any Subsidiary that is a Loan Party, the security interests in the Collateral shall remain in full force and effect and perfected to the same extent as prior to such change;

(d) (x) sales or leases of inventory or equipment in the ordinary course of business and (y) the leasing or subleasing of real property in the ordinary course of business;

(e) (x) disposals of surplus, obsolete, used or worn out property or other property that, in the reasonable judgment of the Borrower Agent, is no longer useful in its business and (y) any assets acquired in connection with the acquisition of another Person or a division or line of business of such Person which the Borrower Agent reasonably determines are surplus assets;

(f) sales of Cash Equivalents for the fair market value thereof;

(g) dispositions, mergers, amalgamations, consolidations or conveyances that constitute Investments permitted pursuant to Section 6.07 (other than Section 6.07(j)), Permitted Liens, Restricted Payments permitted by Section 6.05(a)) and Sale and Lease-Back Transactions permitted by Section 6.10;

(h) sales or other dispositions of any assets of the Borrowers or any Subsidiary for fair market value; provided that with respect to sales or dispositions (other than any Store Exchange) in an aggregate amount in excess of $15,000,000 or, only following satisfaction of the Audit Delivery Condition, if greater, 0.75% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 5.01, at least 75.0% of the consideration for such sale or disposition shall consist of Cash or Cash Equivalents (provided that for purposes of the 75.0%

Cash consideration requirement (w) the amount of any Indebtedness or other liabilities (other than Indebtedness or other liabilities that are subordinated to the Obligations or that are owed to the Borrower Agent or a Subsidiary) of any Borrower or any Subsidiary (as shown on such person's most recent balance sheet or in the notes thereto) that are assumed by the transferee of any such assets and for which the Borrower Agent and the Subsidiaries shall have been validly released by all creditors in writing, (x) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such sale or disposition and (y) any Securities received by such Subsidiary from such transferee that are converted by such Subsidiary into Cash or Cash Equivalents (to the extent of the Cash or Cash Equivalents received) within 180 days following the closing of the applicable sale or disposition, in each case, shall be deemed to be Cash for purposes of this Section 6.08(h); provided, further, that (i) immediately prior to and after giving effect to such sale or disposition, no Event of Default shall have occurred that is continuing on the date on which the agreement governing such sale or disposition is executed and (ii) the Net Proceeds of such sale or disposition (including any "cash boot" arising in connection with a Store Exchange) shall be applied and/or reinvested as (and to the extent) required by Section 2.11(b);

(i) to the extent that (i) such property is exchanged for credit against the purchase price of substantially similar replacement property or (ii) the proceeds of such disposition are promptly applied to the purchase price of such replacement property;

(j) dispositions of Investments in joint ventures to the extent required by, or made pursuant to, buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(k) sales, discounting or forgiveness of Accounts in the ordinary course of business or in connection with the collection or compromise thereof;

(l) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and which (i) do not materially interfere with the business of Ultimate Parent, Holdings, the Borrowers and the Subsidiaries or (ii) relate to closed stores;

(m) (i) termination of leases in the ordinary course of business, (ii) the expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or other litigation claims in the ordinary course of business;

(n) transfers of property subject to casualty, eminent domain or condemnation proceedings (including in lieu thereof);

(o) licenses for the conduct of licensed departments within the Loan Parties' stores in the ordinary course of business;

(p) as long as (i) no Event of Default then exists or would arise therefrom and (ii) Excess Availability on the date of the proposed transaction (calculated on a Pro Forma Basis) is equal to or greater than 10.0% of the ABL Line Cap, bulk sales or other dispositions of the Loan Parties' Inventory outside of the ordinary course of business in connection with store closings that are conducted on an arm's-length basis; provided that such store closures and related Inventory dispositions shall not exceed, in any Fiscal Year 10.0% of the number of the Loan Parties' stores as of the beginning of such Fiscal Year (net of store relocations (x) occurring substantially contemporaneously with, but in no event later than ten Business Days after, the related store closure date and (y) wherein a binding lease has been entered into for a new store opening prior to the related store closure date); provided, further, that all sales of Inventory in connection with store closings in a transaction or series of related transactions shall be in accordance with liquidation agreements and with professional liquidators reasonably acceptable to the Administrative Agent

and proceeds of such sales or other dispositions shall be paid to the Blocked Accounts as provided in Section 2.21; provided, further, that if the Net Proceeds of any sale or disposition of Inventory permitted pursuant to this clause (p) exceeds the lesser of (xx) $20,000,000 and (yy) 5.0% of the Borrowing Base in effect at such time, the Borrower Agent shall be required to deliver an updated Borrowing Base Certificate to the Administrative Agent within five Business Days of such sale or disposition;

(q) sales of non-core assets acquired in connection with a Permitted Acquisition and sales of Real Estate Assets acquired in a Permitted Acquisition which, within 30 days of the date of the acquisition, are designated in writing to the Administrative Agent as being held for sale and not for the continued operation of a store; provided that (i) all Net Proceeds received in connection therewith shall be paid to the Blocked Accounts as provided in Section 2.21 and (ii) no Event of Default shall have occurred and be continuing;

(r) exchanges or swaps, including, without limitation, transactions covered by Section 1031 of the Code, of Real Estate Assets so long as the exchange or swap is made for fair value and on an arm's length basis for other Real Estate Assets; provided that upon the consummation of such exchange or swap, in the case of any Loan Party, the Administrative Agent has a perfected Lien having the same priority as any Lien held on the Real Estate Assets so exchanged or swapped;

(s) sales and dispositions for fair market value in an aggregate amount since the Closing Date of up to $17,500,000 or, only following satisfaction of the Audit Delivery Condition, if greater, 1.00% of the Consolidated Total Assets as of the last day of the last Test Period for which financial statements have been delivered pursuant to Section 5.01;

(t) (i) non-exclusive licensing and cross-licensing arrangements involving any technology or other intellectual property of any Borrower or any Subsidiary in the ordinary course of business and (ii) dispositions of property in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of the Borrower Agent, are not material to the conduct of the business of Ultimate Parent, Holdings, the Borrowers and the Subsidiaries; and

(u) terminations of Derivative Transactions.

To the extent any Collateral is disposed of as expressly permitted by this Section 6.08 to any Person other than a Loan Party, such Collateral shall automatically be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Notwithstanding anything in this Section 6.08 or in any other Loan Document to the contrary, from and after the Closing Date, neither any Parent Company, the Borrower nor any Subsidiary shall exclusively license any Material Intellectual Property to any Unrestricted Subsidiary or other Person, or transfer (including, for the avoidance of doubt, by way of Investment or designation of a Subsidiary as an Unrestricted Subsidiary), assign, sell, or otherwise dispose of ownership of any Material Intellectual Property to any Unrestricted Subsidiary or other Person; provided that nothing contained in this paragraph shall restrict or prohibit (i) any license or other arrangement existing on the Closing Date and, solely with respect to any Intellectual Property subject to such license or other arrangement as of the Closing Date, any amendments, modifications, restatements, renewals, or replacements of such license or other arrangement in the ordinary course of business that do not materially extend the scope of such Unrestricted Subsidiary's or other Person's, as applicable, rights in such Material Intellectual Property or (ii) any jointly held intellectual property licenses from third parties existing on the Closing Date.

Section 6.09 [Reserved].

Section 6.10 **Sales and Lease-Backs**. Ultimate Parent, Holdings, the Borrowers and the Subsidiary Guarantors shall not, nor shall they permit any of the Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Person (a) has sold or transferred or is to sell or to transfer to any other Person (other than Ultimate Parent or any of its Subsidiaries) and (b) intends to use for substantially the same purpose as the property which has been or is to be sold or transferred by Ultimate Parent, Holdings, such Borrower or such Subsidiary Guarantors (as applicable) to any Person (other than Ultimate Parent or any of its Subsidiaries) in connection with such lease (such a transaction described herein, a "**Sale and Lease-Back Transaction**"); provided that Sale and Lease-Back Transactions shall be permitted in respect of the real properties owned by the Borrowers and/or the Subsidiary Guarantors and located at (i) 47 Elizabeth Drive, Chester, New York, (ii) 7700 Anagram Drive, Eden Prairie, Hennepin County, MN 55344 and (iii) 2800 Purple Sage Road NW, Village of Los Lunas, New Mexico, in each case, so long as (x) [reserved], (y) [reserved] and (z) the Borrower shall use commercially reasonable efforts to deliver to the Administrative Agent a Collateral Access Agreement from the purchaser or transferee of each of the foregoing real properties on terms and conditions reasonably satisfactory to the Administrative Agent.

Section 6.11 **Transactions with Affiliates**. Ultimate Parent, Holdings, the Borrowers and the Subsidiary Guarantors shall not, nor shall they permit any of the Subsidiaries to enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any of their Affiliates on terms that are less favorable to Ultimate Parent, Holdings, such Borrower or such Subsidiary, as the case may be, than those that might be obtained at the time in a comparable arm's-length transaction from a Person who is not an Affiliate; provided that the foregoing restriction shall not apply to:

(a) to the extent permitted or not restricted by this Agreement, (i) any transaction between or among any Loan Parties or (ii) any transactions between or among Subsidiaries (none of which is a Loan Party);

(b) reasonable and customary fees, indemnities and reasonable out-of-pocket expenses paid to members of the board of directors (or similar governing body) of any Parent Company, the Borrowers and the Subsidiaries in the ordinary course of business and, in the case of payments to any Parent Company, to the extent attributable to the operations of the Borrower Agent and the Subsidiaries;

(c) (i) any employment, severance agreements or compensatory (including profit sharing) arrangements entered into by any Borrower or any of the Subsidiaries with their respective current or former officers, directors, members of management, employees, consultants or independent contractors in the ordinary course of business, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Capital Stock pursuant to put/call rights or similar rights with current or former officers, directors, members of management, employees, consultants or independent contractors and (iii) transactions pursuant to any employee compensation, benefit plan, stock option plan or arrangement, any health, disability or similar insurance plan which covers employees or any employment contract or arrangement;

(d) (x) transactions permitted by Sections 6.01(d), (o) and (bb), 6.05 (excluding transactions permitted under Section 6.05(a)(ii)(D)) and 6.07(h) and (m) and (y) issuances of Capital Stock and debt securities not restricted by this Agreement;

(e) the transactions in existence on the Closing Date and described on Schedule 6.11 and any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect;

(f) [reserved];

(g) [reserved];

(h) [reserved];

(i) Guarantees permitted by Section 6.01 in accordance with the terms of Section 6.01 and Section 6.07;

(j) loans and other transactions among the Borrowers, Holdings and any other Loan Party to the extent permitted under this Article 6;

(k) the payment of customary fees, reasonable out-of-pocket costs to and indemnities provided on behalf of, directors, officers, employees, members of management, consultants and independent contractors of the Borrower Agent and the Subsidiaries in the ordinary course of business and, in the case of payments to any Parent Company, to the extent attributable to the operations of the Borrower Agent and the Subsidiaries;

(l) transactions with customers, clients, suppliers or joint ventures for the purchase or sale of goods and services entered into in the ordinary course of business, which are fair to the Borrower Agent and the Subsidiaries, in the reasonable determination of the board of directors of the Borrower Agent or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(m) [reserved]; and

(n) the payment of reasonable out-of-pocket costs and expenses related to registration rights and customary indemnities provided to shareholders under any shareholder agreement.

Section 6.12 **Conduct of Business**. From and after the Closing Date, the Borrowers and the Subsidiary Guarantors shall not, nor shall they permit any of the Subsidiaries to, engage in any material line of business other than (a) the businesses engaged in by any Borrower or Subsidiary on the Closing Date and similar, complementary, ancillary or related businesses and (b) such other lines of business as may be consented to by Required Lenders.

Section 6.13 **Amendments or Waivers of Organizational Documents**. Ultimate Parent, Holdings, the Borrowers and the Subsidiary Guarantors shall not, nor shall they permit any of the Subsidiaries to amend or modify, in each case in a manner that is materially adverse to the Lenders, such Person's Organizational Documents without obtaining the prior written consent of Required Lenders.

Section 6.14 **Amendments of or Waivers with Respect to Certain Indebtedness**. Ultimate Parent, Holdings, the Borrowers and the Subsidiary Guarantors shall not, nor shall they permit any of the Subsidiaries to, amend or otherwise change (a) the terms of the Second Lien Notes, Indebtedness permitted under Section 6.01(k) or (w) (or Refinancing Indebtedness in respect of either of the foregoing if permitted hereunder) or Junior Indebtedness (or the documentation governing the foregoing (including, for the avoidance of doubt, Indebtedness permitted under Sections 6.01(r) and (gg)) or (b) the subordination provisions of any Subordinated Indebtedness (and the component definitions as used therein), in each case, if the effect of such amendment or change, together with all other amendments or changes made, is materially adverse to the interests of the Lenders.

Section 6.15 **Fiscal Year**. Ultimate Parent, Holdings, the Borrowers and the Subsidiary Guarantors shall not, nor shall they permit any of the Subsidiaries to, change its Fiscal Year-end to a date other than December 31 or the Saturday closest to December 31.

Section 6.16 **Permitted Activities of Parent Companies**. None of Ultimate Parent, Holdings or any other Parent Company shall (notwithstanding anything to the contrary contained herein) (a) incur,

directly or indirectly, any Indebtedness other than (i) the Indebtedness under the Loan Documents, Indebtedness described in Section 6.01(c), Sections 6.01(k), Section 6.01(w), Section 6.01(gg) or otherwise in connection with the Transactions (it being understood that Indebtedness of any Parent Company to any Subsidiary shall not be permitted under this clause (a)) and (ii) Guarantees of Indebtedness of the Borrowers and the Subsidiaries permitted hereunder; (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than (i) the Liens created under the Collateral Documents, (ii) subject to the applicable intercreditor arrangements explicitly contemplated hereunder (including, with respect to the Second Lien Notes, the Intercreditor Agreement), Liens securing the Second Lien Notes, Indebtedness described in Sections 6.01(k) and (w) and, in each case, permitted Guarantees thereof, in each case, to the extent such Liens would be permitted under Section 6.02 if incurred by the Borrower Agent or (iii) any other Lien created in connection with the Transactions (it being understood that no Lien shall be permitted under this clause (iii) other than a Lien on the property or assets of Ultimate Parent or Holdings that would be a Permitted Lien but for the subject property or assets not being property or assets of the Borrower Agent); (c) engage in any business activity or own any material assets other than (i) holding 100.0% of the Capital Stock (and any amount of Subordinated Indebtedness issued by) of, in the case of Ultimate Parent, Holdings, in the case of Holdings, the Borrower Agent and, indirectly, any other subsidiary; provided that any such Subordinated Indebtedness shall be evidenced by an Intercompany Note and shall be subject to a First Priority Lien pursuant to the Pledge and Security Agreement, (ii) performing its obligations under the Loan Documents and other Indebtedness, Liens (including the granting of Liens) and Guarantees permitted hereunder, (iii) issuing its own Capital Stock, (iv) filing tax reports and paying taxes in the ordinary course (and contesting any taxes); (v) preparing reports to Governmental Authorities and to its shareholders; (vi) holding director and shareholder meetings, preparing corporate records and other corporate activities required to maintain its separate corporate structure or to comply with applicable Requirements of Law; (vii) [reserved]; (viii) holding Cash and other assets received in connection with Restricted Payments or Investments made by the Borrowers and the Subsidiaries or contributions to, or proceeds from the issuance of, issuances of Capital Stock of Holdings, in each case, pending the application thereof in a manner not prohibited by this Agreement; (ix) providing indemnification for its officers, directors or members of management; (x) participating in tax, accounting and other administrative matters; (xi) the performance of its obligations under the other documents, agreements and Investments contemplated by the Transactions and (xii) activities incidental to the foregoing; (d) liquidate, wind up or dissolve itself or consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person; provided that so long as no Default or Event of Default exists or would result therefrom, Holdings may merge with any other Person (other than the Borrower Agent and any of the Subsidiaries) so long as (i) Holdings shall be the continuing or surviving Person or (ii) if the Person formed by or surviving any such merger or consolidation is not Holdings, (A) the successor Holdings shall expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in a form reasonably satisfactory to the Administrative Agent; (B) such successor shall be an entity organized under the laws of the United States, any state thereof or the District of Columbia and (C) the Borrower Agent shall deliver a certificate of a Responsible Officer with respect to the satisfaction of the conditions under clauses (A) and (B) hereof; provided, further, that if the conditions set forth in the preceding proviso are satisfied, the successor Holdings will succeed to, and be substituted for, Holdings under this Agreement; or (e) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

Section 6.17 **[Reserved]**.

Section 6.18 **Minimum Availability**. The Borrowers shall maintain, at all times, Excess Unadjusted Availability equal to or greater than the greater of (i) 10.0% of the Total Line Cap and (ii) $46,000,000.

ARTICLE 7
EVENTS OF DEFAULT

Section 7.01 **Events of Default**. If any of the following events (each, an "**Event of Default**") shall occur:

(a) Failure To Make Payments When Due. Failure by the Borrowers to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (ii) any interest on any Loan or any fee or any other amount due hereunder within five Business Days after the date due; or

(b) Default in Other Agreements. (i) any breach or default by any Loan Party with respect to any other term of one or more items of Material Indebtedness or (ii) the occurrence of any other event or condition, in the case of the preceding subclauses (i) and (ii) if the effect of such breach, default, event or condition is to cause, with the giving of notice if required, or to permit the holder or holders of Material Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, that Material Indebtedness to become or be declared due and payable (or redeemable), prior to its scheduled maturity or the scheduled maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants.

(i) Failure of the Borrowers or any Loan Party, as required by the relevant provision, to perform or comply with any term or condition contained in Section 2.21, Section 5.01(e)(i), Section 5.02 (as it applies to the Borrowers), Section 5.13 or Article 6; or

(ii) Failure of the Borrower Agent or any Loan Party, as required by the relevant provision, to deliver a Borrowing Base Certificate required to be delivered pursuant to Section 5.01(l) within five days of the date such Borrowing Base Certificate is required to be delivered;

(d) Breach of Representations, Etc. Any representation, warranty, certification or other statement made or deemed made by any Loan Party in any Loan Document or in any certificate or document required to be delivered in connection herewith or therewith shall be untrue in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Loan Documents. Any Loan Party shall default in the performance of or compliance with any term contained herein or any of the other Loan Documents, other than any such term referred to in any other Section of this Article 7, and such default shall not have been remedied or waived within 30 days after receipt by any Borrower (or the Borrower Agent on behalf of such Borrower) of written notice from the Administrative Agent of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Ultimate Parent, Holdings, the Borrowers or any of the Subsidiaries (other than an Immaterial Subsidiary) in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Ultimate Parent, Holdings, the Borrowers or any of the Subsidiaries (other than an Immaterial Subsidiary) under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Ultimate Parent, Holdings, the Borrowers or any of

the Subsidiaries other than any Immaterial Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Ultimate Parent, Holdings, the Borrowers or any of the Subsidiaries other than any Immaterial Subsidiaries for all or a substantial part of its property; and any such event described in this clause (ii) shall continue for 60 consecutive days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) Ultimate Parent, Holdings, the Borrowers or any of the Subsidiaries (other than an Immaterial Subsidiary) shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or (ii) Ultimate Parent, Holdings, the Borrowers or any of the Subsidiaries shall make a general assignment for the benefit of creditors; or (iii) Ultimate Parent, Holdings, the Borrowers or any of the Subsidiaries (other than an Immaterial Subsidiary) shall admit in writing its inability, to pay its debts as such debts become due; or

(h) Judgments and Attachments. Any one or more final money judgments, writs or warrants of attachment or similar process involving in the aggregate at any time an amount in excess of the Threshold Amount (in either case to the extent not adequately covered by self-insurance (if applicable) or by insurance as to which a third party insurance company has been notified and not denied coverage) shall be entered or filed against any Parent Company, any Borrower or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed pending appeal for a period of 60 days; or

(i) [Reserved]; or

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events or (ii) there shall occur the imposition of a Lien or security interest under Section 430(k) of the Code or under ERISA, in either case of clauses (i) or (ii), which individually or in the aggregate results in liability of any Parent Company, the Borrowers or any of the Subsidiaries in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; or

(k) Change of Control. A Change of Control shall occur; or

(l) Guaranties, Collateral Documents and Other Loan Documents. At any time after the execution and delivery thereof, (i) any guaranty set forth in Article 10 for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate in writing its obligations thereunder (other than as a result of the discharge of such Guarantor in accordance with the terms thereof), (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof or any other termination of such Collateral Document in accordance with the terms thereof) or shall be declared null and void, or the Administrative Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by and subject to such limitations and restrictions as are set forth by the relevant Collateral Document, except to the extent (x) such loss of perfection or priority is directly attributable to the loss of physical collateral in the possession of the Administrative Agent (unless such loss results from the breach or non-compliance by any Loan Party with the terms of the Loan Documents) or (y) such loss is covered by a lender's title insurance policy as to which the insurer has been notified of such loss and does not deny coverage and the Administrative Agent shall be reasonably satisfied with the credit of such insurer or (iii) any Loan Party shall contest the validity or enforceability of any

material provision of any Loan Document in writing or deny in writing that it has any further liability, including with respect to future advances by the Lenders, under any Loan Document to which it is a party; or

(m) Subordination. The Obligations shall cease to constitute senior indebtedness under the subordination provisions of any document or instrument evidencing any permitted Subordinated Indebtedness constituting Material Indebtedness or such subordination provision shall be invalidated or otherwise cease, for any reason, to be valid, binding and enforceable obligations of the parties thereto;

then, and in every such event (other than an event with respect to the Borrowers described in clause (f) or (g) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower Agent, take any of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers and (iii) require that the Borrowers deposit in the LC Collateral Account an additional amount in Cash as reasonably requested by the Issuing Banks, (not to exceed 105.0% of the relevant fact amount) of the then outstanding LC Exposure; provided that upon the occurrence of an event with respect to the Borrowers described in clause (f) or (g) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers, and the obligation of the Borrowers to Cash collateralize the outstanding Letters of Credit as aforesaid shall automatically become effective, in each case without further action of the Administrative Agent or any Lender. Upon the occurrence and the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE 8
THE ADMINISTRATIVE AGENT

Each of the Lenders, on behalf of itself and any of its Affiliates that are Secured Parties and the Issuing Banks hereby irrevocably appoints JPMCB (or any successor appointed pursuant hereto) as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

Any Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated, unless the context otherwise requires or unless such Person is in fact not a Lender, include each Person serving as Administrative Agent hereunder in its individual capacity, and such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any subsidiary of a Loan Party or other Affiliate thereof as if it were not the Administrative Agent hereunder. The Lenders acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality

obligations in favor of such Loan Party or such Affiliate) and acknowledge that the Administrative Agent shall not be under any obligation to provide such information to them.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term "agent" herein and in the other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02); 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 laws, and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Subsidiaries that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it 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 Section 9.02) or in the absence of its own gross negligence or willful misconduct as determined by the final non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the Administrative Agent by any Borrower or any Lender, and 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 any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence, value or sufficiency of the Collateral, (vi) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or (vii) the properties, books or records of any Loan Party or any Affiliate thereof.

Each Lender agrees that, except with the written consent of the Administrative Agent, it will not take any enforcement action hereunder or under any other Loan Document, accelerate the Obligations under any Loan Documents, or exercise any right that it might otherwise have under applicable law or otherwise to credit bid at foreclosure sales, UCC sales, any sale under Section 363 of the Bankruptcy Code or other similar dispositions of Collateral. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against a Loan Party where a deadline or limitation period is applicable that would, absent such action, bar enforcement of the Obligations held by such Lender, including the filing of proofs of claim in a case under the Bankruptcy Code.

No holder of Secured Hedging Obligations shall have any rights in connection with the management or release of any Collateral or of the obligations of any Loan Guarantor under this Agreement.

Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, the Borrowers, the Administrative Agent and each Secured Party agrees that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Loan Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and all powers, rights and remedies under the other Loan Documents may be exercised solely by the Administrative Agent, and (ii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or in the event of any other disposition (including pursuant to Section 363 of the Bankruptcy Code), (A) the Administrative Agent, as agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale or other disposition and (B) Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition.

Each of the Lenders hereby irrevocably authorizes (and by entering into a Hedge Agreement with respect to Secured Hedging Obligations or by entering into documentation in connection with Banking Services Obligations, each of the other Secured Parties hereby authorizes and shall be deemed to authorize) the Administrative Agent, on behalf of all Secured Parties to take any of the following actions upon the instruction of the Required Lenders:

(A) consent to the sale or other disposition of all or any portion of the Collateral free and clear of the Liens securing the Secured Obligations in connection with any such sale or other transfer pursuant to the applicable provisions of the Bankruptcy Code, including Section 363 thereof;

(B) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral, (in each case, either directly or through one or more acquisition vehicles) in connection with any sale or other disposition of all or any portion of the Collateral pursuant to the applicable provisions of the Bankruptcy Code, including under Section 363 thereof;

(C) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral, (in each case, either directly or through one or more acquisition vehicles) in connection with any sale or other disposition of all or any portion of the Collateral pursuant to the applicable provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC;

(D) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral, (in each case, either directly or through one or more acquisition vehicles) in connection with any sale, foreclosure or other disposition conducted in accordance with applicable law following the occurrence of an Event of Default, including by power of sale, judicial action or otherwise; and/or

(E) estimate the amount of any contingent or unliquidated Secured Obligations of such Lender or other Secured Party;

it being understood that no Lender shall be required to fund any amounts in connection with any purchase of all or any portion of the Collateral by the Administrative Agent pursuant to the foregoing clauses (b), (c) or (d) without its prior written consent.

Each Lender and other Secured Party agrees that the Administrative Agent is under no obligation to credit bid any part of the Secured Obligations or to purchase or retain or acquire any portion of the Collateral; provided that, in connection with any credit bid or purchase under clause (b), (c) or (d) of the preceding paragraph, the Secured Obligations owed to all of the Secured Parties (other than with respect to

contingent or unliquidated liabilities as set forth in the next succeeding paragraph) shall be entitled to be, and shall be, credit bid by the Administrative Agent on a ratable basis.

With respect to each contingent or unliquidated claim that is a Secured Obligation, the Administrative Agent is hereby authorized, but is not required, to estimate the amount of any such claim for purposes of the credit bid or purchase so long as the fixing or liquidation of such claim would not unduly delay the ability of the Administrative Agent to credit bid the Secured Obligations or purchase the Collateral at such sale or other disposition. In the event that the Administrative Agent, in its sole and absolute discretion, elects not to estimate any such contingent or unliquidated claim or any such claim cannot be estimated without unduly delaying the ability of the Administrative Agent to credit bid or purchase in accordance with the second preceding paragraph, then those of the contingent or unliquidated claims not so estimated shall be disregarded, shall not be credit bid, and shall not be entitled to any interest in the portion or the entirety of the Collateral purchased by means of such credit bid.

Each Secured Party whose Secured Obligations are credit bid under clauses (b), (c) or (d) of the third preceding paragraph shall be entitled to receive interests in the Collateral or other asset or assets acquired in connection with such credit bid (or in the Capital Stock of the acquisition vehicle or vehicles that are used to consummate such acquisition) on a ratable basis in accordance with the percentage obtained by dividing (x) the amount of the Secured Obligations of such Secured Party that were credit bid in such credit bid, sale or other disposition, by (y) the aggregate amount of all Secured Obligations that were credit bid in such credit bid, sale or other disposition.

In addition, in case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, each Secured Party agrees that the Administrative Agent (irrespective of whether the principal of any Loan or LC Exposure 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 Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Exposure and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts to the extent due to the Lenders, the Issuing Banks and the Administrative Agent under Sections 2.12 and 9.03) allowed in such judicial proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(d) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amount to the extent due to the Administrative Agent under Sections 2.12 and 9.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuing Bank in any such proceeding.

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, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the applicable Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers 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 its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the 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 the Administrative Agent.

The Administrative Agent may resign at any time by giving ten days written notice to the Lenders, the Issuing Banks and the Borrowers. If the Administrative Agent is a Defaulting Lender or an Affiliate of a Defaulting Lender, either the Required Lenders or the Borrowers may, upon ten days' notice remove the Administrative Agent. Upon receipt of any such notice of resignation or delivery of such removal notice, the Required Lenders shall have the right, with the consent of the Borrowers (not to be unreasonably withheld or delayed), to appoint a successor Administrative Agent which shall be a commercial bank with an office in New York, New York, or an Affiliate of any such bank having combined capital and surplus in excess of $1,000,000,000 and a "U.S. person" and a "financial institution" within the meaning of Treasury Regulations Section 1.1441-1T(c); provided that during the existence and continuation of an Event of Default under Section 7.01(a) or, with respect to the Borrowers, Section 7.01(f) or (g), no consent of the Borrowers shall be required. If no successor shall have been so appointed as provided above and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then (a) in the case of a retirement, the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent meeting the qualifications set forth above or (b) in the case of a removal, the Borrowers may, after consulting with the Required Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that (x) in the case of a retirement, if such Administrative Agent shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment or (y) in the case of a removal, the Borrowers notify the Required Lenders that no qualifying Person has accepted such appointment, then, in each case, such resignation or removal shall nonetheless become effective in accordance with such notice and (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that (a) solely for purposes of maintaining any security interest granted to a retiring Administrative Agent in its capacity as collateral agent under any Loan Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this paragraph (it being understood and agreed that the retiring

Administrative Agent shall have no duly or obligation to take any further action under any Loan Document, including any action required to maintain the perfection of any such security interest), and (b) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and (ii) 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 and each Issuing Bank directly (and each Lender and Issuing Bank will cooperate with the Borrowers to enable the Borrowers to take such actions), until such time as the Required Lenders or the Borrowers, as applicable, appoint a successor Administrative Agent, as provided for above in this Article 8 and meeting the qualifications set forth above. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent (other than any rights to indemnity payments owed to the retiring Administrative Agent), and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor, unless otherwise agreed between the Borrowers and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring 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 while it was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

Each Lender and Issuing Bank acknowledges and agrees that the extensions of credit made hereunder are commercial loans and letters of credit and not investments in a business enterprise or securities. Each Lender and each Issuing Bank further represents that it is engaged in making, acquiring or holding commercial loans and/or issuing letters of credit in the ordinary course of its business and has, independently and without reliance upon either 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 and each Issuing Bank also acknowledges that it will, independently and without reliance upon either Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrowers and their Affiliates) 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 related agreement or any document furnished hereunder or thereunder and in deciding whether or to the extent to which it will continue as a Lender and/or Issuing Bank or assign or otherwise transfer its rights, interests and obligations hereunder. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of the Administrative Agent or any of its Related Parties.

The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor the list or identities of, or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

Each Lender hereby agrees that (a) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (b) Administrative Agent (i) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or

any inaccuracy or omission contained in or relating to a Report and (ii) shall not be liable for any information contained in any Report; (c) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (d) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (e) without limiting the generality of any other indemnification provision contained in this Agreement, (i) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (ii) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by either Administrative Agent or such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Anything herein to the contrary notwithstanding, the Arrangers, the joint bookrunners, Syndication Agent and Co-Documentation Agents shall not have any right, power, obligation, liability, responsibility or duty under this Agreement, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Bank hereunder. Without limiting the foregoing, none of such Persons shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with respect to the relevant Lenders in their respective capacities as Arranger, the joint bookrunner, Syndication Agent and Co-Documentation Agent, as applicable, as it makes with respect to the Administrative Agent in the preceding paragraph.

The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Administrative Agent) authorized to act for, any other Lender.

The following paragraphs (a) through (d) shall be referred to herein as the "**Erroneous Payment Provision**":

(e) Each Lender and Issuing Bank hereby agrees that (x) if the Administrative Agent notifies such Lender or Issuing Bank that the Administrative Agent has determined in its sole discretion that any funds received by such Lender or Issuing Bank from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender or Issuing Bank (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender or Issuing Bank shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or Issuing Bank to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender or Issuing Bank shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under the Erroneous Payment Provisions shall be conclusive, absent manifest error.

(f) Each Lender and Issuing Bank hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender and Issuing Bank agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender or Issuing Bank shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or Issuing Bank to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(g) Each Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender or Issuing Bank that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender or Issuing Bank with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by any Borrower or any other Loan Party.

(h) Each party's obligations under the Erroneous Payment Provisions shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, an Issuing Bank, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

Each of the Lenders and each Issuing Bank irrevocably authorize and instruct the Administrative Agent to, and the Administrative Agent shall,

(i) release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the occurrence of the Termination Date, (ii) that is sold or to be sold or transferred as part of or in connection with any sale or other transfer permitted under the Loan Documents to a Person that is not a Subsidiary, (iii) that does not constitute (or ceases to constitute) Collateral, (iv) if the property subject to such Lien is owned by a Subsidiary Guarantor, upon the release of such Subsidiary Guarantor from its Loan Guaranty in accordance with the Loan Documents or (v) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9.02;

(j) release any Subsidiary Guarantor from its obligations under the Loan Guaranty if such Person ceases to be a Subsidiary (or becomes an Excluded Subsidiary, provided, however, that the release of any Subsidiary Guarantor from its obligations under this Agreement if such Subsidiary Guarantor becomes an Excluded Subsidiary of the type described in clause (a) of the definition thereof shall only be permitted if at the time such Subsidiary Guarantor becomes an Excluded Subsidiary of such type, (1) no Default or Event of Default shall have occurred and be outstanding, (2) after giving pro forma effect to such release and the consummation of the transaction or event that causes such Person to be an Excluded Subsidiary of such type, the Borrower is deemed to have made a new Investment in such Person (as if such Person were then newly acquired) and such Investment is permitted at such time and (3) a Responsible Officer of the Borrower Agent certifies to the Administrative Agent compliance with preceding clauses (1) and (2)) as a result of a transaction permitted hereunder; provided, further, that no such release shall occur if such Subsidiary Guarantor continues to be a guarantor in respect of the Second Lien Notes, Indebtedness

permitted under Section 6.01(k) or (w)or any Refinancing Indebtedness in respect of any of the foregoing if permitted hereunder; and

(k) subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(m), Section 6.02(n) and Section 6.02(o).

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 Loan Guarantor from its obligations under its Loan Guaranty pursuant to this Article 8 and Section 10.13 hereunder. In each case as specified in this Article 8, the Administrative Agent will (and each Lender hereby authorizes the Administrative Agent to), at the Borrowers' 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 Loan Guarantor from its obligations under the Loan Guaranty, in each case in accordance with the terms of the Loan Documents and this Article 8.

The Administrative Agent is authorized to enter into the Intercreditor Agreement and any other intercreditor agreement contemplated hereby and approved by the Required Lenders with respect to Indebtedness that is (i) required or permitted to be subordinated hereunder and/or (ii) secured by Liens and which Indebtedness contemplates an intercreditor, subordination or collateral trust agreement (any such other intercreditor agreement, an "**Additional Agreement**"), and the parties hereto acknowledge that the Intercreditor Agreement and any Additional Agreement are binding upon them. Each Lender (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement or any Additional Agreement and (b) hereby authorizes and instructs the Administrative Agent to enter into the Intercreditor Agreement or any Additional Agreement and to subject the Liens on the Collateral securing the Secured Obligations to the provisions thereof. The foregoing provisions are intended as an inducement to the Secured Parties to extend credit to the Borrowers and such Secured Parties are intended third-party beneficiaries of such provisions and the provisions of the Intercreditor Agreement or any Additional Agreement.

Each Lender and Issuing Bank appoints and designates JPMCB as collateral agent hereunder and each Lender and Issuing Bank hereby authorizes JPMCB to act as collateral agent in accordance with the terms hereof and the other Loan Documents and authorizes JPMCB, as the Administrative Agent, to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and/or collateral agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. In its capacity, the Administrative Agent and/or collateral agent is a "representative" of the Secured Parties within the meaning of the term "secured party" as defined in the New York Uniform Commercial Code. Each Lender authorizes the Administrative Agent to enter into each of the Collateral Documents to which it is a party and to take all action contemplated by such documents. The Administrative Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement. Each Lender agrees that no Secured Party (other than the Administrative Agent) shall have the right individually to seek to realize upon the security granted by any Collateral Document, it being understood and agreed that such rights and remedies may be exercised solely by the Administrative Agent for the benefit of the Secured Parties upon the terms of the Collateral Documents. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

To the extent the Administrative Agent (or any affiliate thereof) is not reimbursed and indemnified by the Borrowers, the Lenders will reimburse and indemnify the Administrative Agent (and any affiliate thereof) in proportion to their respective Applicable Percentage (determined as if there were no Defaulting Lenders) for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent (or any affiliate thereof) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's (or such affiliate's) gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

JPMCB has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "**Flood Laws**"). JPMCB, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. Each Lender and Participant acknowledges and agrees that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE 9
MISCELLANEOUS

Section 9.01 **Notices**.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject, in each case, to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to any Loan Party, to the Borrower Agent at:

Party City Holdings Inc.
100 Tice Boulevard
Woodcliff Lake, NJ 07677
Attn: Jeremy Aguilar
Interim Chief Financial Officer
Email:

with a copy to:

Party City Holdings Inc.
100 Tice Boulevard
Woodcliff Lake, NJ 07677
Attn: Ian Heller,
Senior Vice President and General Counsel
Email:

(ii) if to the Administrative Agent or the Swingline Lender, at:

JPMorgan Chase Bank, N.A.
131 S Dearborn St, Floor 04

Chicago, IL, 60603-5506
Attention: Loan and Agency Servicing
Email:

Agency Withholding Tax Inquiries:
Email:

Agency Compliance/Financials/Intralinks:
Email:

With a Copy to:

JPMorgan Chase Bank, N.A.
383 Madison Ave, Floor 23
New York, NY, 10179-0001
Attention: Bonnie David, Executive Director
Tel.: (212) 449-2509
Facsimile No: (646) 534-2288
Email:

(iii) if to JPMorgan Chase Bank, N.A. as Issuing Bank, at:

JPMorgan Chase Bank, N.A.
131 S Dearborn St, Floor 04
Chicago, IL, 60603-5506
Attention: LC Agency Team
Tel: 800-364-1969
Fax: 856-294-5267
Email:

With a Copy to:

JPMorgan Chase Bank, N.A.
131 S Dearborn St, Floor 04
Chicago, IL, 60603-5506
Attention: Loan and Agency Servicing
Email: and

JPMorgan Chase Bank, N.A.
383 Madison Ave, Floor 23
New York, NY, 10179-0001
Attention: Bonnie David, Executive Director
Tel.: (212) 449-2509
Facsimile No: (646) 534-2288
Email:

(iv) if to any other Lender, including in such Lender's capacity as an Issuing Bank, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (ii) 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), or (iii) delivered through Electronic Systems to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by Electronic Systems pursuant to procedures set forth herein or otherwise approved by the Administrative Agent. Each of the Administrative Agent and the Borrower Agent (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems pursuant to procedures set forth herein or otherwise approved by it; provided that approval of such procedures may be limited to particular notices or communications. All such notices and other communications (i) 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) 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 (b)(i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.

(c) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) Electronic Systems.

(i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Banks and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System. "**Communications**" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or the Issuing Banks by means of electronic communications pursuant to this Section, including through an Electronic System.

(ii) Any Electronic System used by the Administrative Agent is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. 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 Communications or any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to the Borrowers or the other Loan Parties, any Lender, any Issuing Bank or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Borrower's, any Loan Party's or the Administrative Agent's transmission of communications through an Electronic System, except to the extent such liability is determined by a court of competent jurisdiction in a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Parties.

Section 9.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver

thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, to the extent permitted by law, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, any Lender or Issuing Bank may have had notice or knowledge of such Default or Event of Default at the time.

(b) Subject to clauses (A) and (B) below and Sections 2.14 and 2.23, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders (or the Administrative Agent with the consent of the Required Lenders), or (ii) in the case of any other Loan Document (other than any such amendment to effectuate any modification thereto expressly contemplated by the terms of such other Loan Documents), pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that:

(A) notwithstanding the foregoing, no such agreement shall, without the consent of each Lender directly and adversely affected thereby (but without the necessity of obtaining the consent of the Required Lenders),

(1) increase the Commitment of such Lender (other than with respect to any Commitment Increase pursuant to Section 2.23 in respect of which such Lender has agreed to be an Additional Lender); it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall constitute an increase of any Commitment of such Lender;

(2) reduce or forgive the principal amount of any Loan or postpone the date of any scheduled payment of interest or fees payable hereunder;

(3) extend the scheduled final maturity of any Loan, extend the stated expiration date of any Letter of Credit beyond the Maturity Date;

(4) reduce the rate of interest (other than to waive any obligations of the Borrowers to pay interest at the default rate of interest under Section 2.13(c)) or the amount of any fees owed to such Lender; it being understood that any change in the definition of "Applicable Rate Audit Delivery Step-Up" used in the calculations of such interest or fees (or the component definitions) shall not constitute a reduction in any rate of interest or fees;

(5) extend the expiry date of such Lender's Commitment; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall constitute an extension of any Commitment of such Lender; and

(6) amend or modify the provisions of Sections 2.11(a), 2.11(c), 2.18(a) (with respect to pro rata allocation among Lenders), 2.18(b) and 2.18(c) of this Agreement in a manner that would by its terms alter the order of payments or the pro rata sharing of payments required thereby (except as otherwise provided in this Section 9.02); and

(B) notwithstanding the foregoing, no such agreement shall:

(1) change any of the provisions of this Section or the definitions of "Required Lenders", "Super Majority Lenders", "Super Majority ABL Revolving Lenders" or "Super Majority FILO Lenders", in each case, to reduce any of the voting percentages required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the prior written consent of each Lender;

(2) release all or substantially all of the Collateral, without the prior written consent of each Lender;

(3) release all or substantially all of the value of the Loan Guaranties, without the prior written consent of each Lender;

(4) enter into an amendment or waiver the effect of which would be to increase the percentages set forth in the definition of Trade Receivables Component, Inventory Component, and/or Credit Card Receivables Component, without the consent of the Super Majority Lenders;

(5) change the definition of the term "ABL Borrowing Base", or any component definition thereof, the effect of which would be to increase amounts available to be borrowed, without the consent of the Super Majority ABL Revolving Lenders;

(6) change the definition of "FILO Borrowing Base", "FILO Line Cap" and the component definitions thereof which would increase availability under the FILO Facility without the consent of the Super Majority FILO Lenders; or

(7) contractually subordinate (in right of payment) the Loans (or any portion thereof) or all or substantially all of the value of the Loan Guaranties to any other Indebtedness for borrowed money or contractually subordinate the Liens granted in favor of the Administrative Agent on all or substantially all of the Collateral securing the Obligations to Liens on such Collateral securing any other Indebtedness for borrowed money without the written consent of each Lender directly and adversely affected thereby;

provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, any Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, such Issuing Bank or the Swingline Lender, as the case may be. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.05. Notwithstanding anything to the contrary herein, other than in connection with any modification contemplated in Clause (A) above (to the extent a Defaulting Lender would be directly and adversely affected thereby), no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (it being understood that any Commitment or Loan held or

deemed held by any Defaulting Lender shall be excluded from a vote of the Lenders hereunder requiring any consent of the Lenders, except as provided in Section 2.22(b)).

Notwithstanding anything to the contrary contained in this Section 9.02, (i) guarantees, collateral security agreements, pledge agreements and related documents (if any) executed by the Loan Parties in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be amended, supplemented and/or waived with the consent of the Administrative Agent at the request of the Borrowers (or the Borrower Agent on behalf of Borrowers) without the input or need to obtain the consent of any other Lenders if such amendment or waiver is delivered in order (x) to comply with local law or advice of local counsel, (y) to cure ambiguities, omissions or defects or (z) to cause such guarantees, collateral security agreements, pledge agreement or other document to be consistent with this Agreement and the other Loan Documents, (ii) the Borrowers and the Administrative Agent may, without the input or consent of any other Lender (other than each applicable Additional Lender, in the case of Section 2.23), effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrowers and the Administrative Agent to effect the provisions of Sections 2.22 or 2.23 and (iii) if the Administrative Agent and the Borrowers have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrowers shall be permitted to amend such provision.

Section 9.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrowers shall pay (i) all reasonable and documented out-of-pocket expenses incurred by each Arranger, the Administrative Agent and their respective Affiliates (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such persons taken as a whole and, if necessary, of one counsel in any relevant material jurisdiction to such Persons, taken as a whole) in connection with the syndication and distribution (including, without limitation, via the internet or through an Electronic System) of the credit facilities provided for herein, the preparation, execution, delivery and administration of the Loan Documents and related documentation, including in connection with any amendments, modifications or waivers of the provisions of any Loan Documents (whether or not the transactions contemplated thereby shall be consummated, but only to the extent such amendments, modifications or waivers were requested by the Borrowers to be prepared) and the Chapter 11 Cases and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Arrangers, Issuing Banks or the Lenders and their respective Affiliates (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to be selected by the Administrative Agent to all such persons taken as a whole and, if necessary, of one counsel in any relevant material jurisdiction to such persons, taken as a whole) in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder. Expenses reimbursable by the Borrowers under this Section include, subject to any other applicable provision of any Loan Document, reasonable and documented out-of-pocket costs and expenses incurred in connection with: (A) appraisals and field examinations and the preparation of Reports based thereon, (B) the fees charged by a third party retained by the Administrative Agent or (notwithstanding any reference to "out-of-pocket" above in this Section 9.03) the internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination, (C) lien and title searches and title insurance, (D) taxes, fees and other charges for recording the Mortgages, filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens and (E) forwarding loan proceeds and costs and expenses of preserving and protecting the Collateral. Other than to the extent required to be paid on the Closing Date, all amounts due under this paragraph (a) shall be payable by the Borrowers within 30 days of receipt of an invoice relating thereto, setting forth such expenses in reasonable detail and together with backup documentation supporting such reimbursement requests.

(b) The Borrowers shall indemnify each Arranger, the Administrative Agent, each Issuing Bank and 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 expenses (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all 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, one local counsel in any relevant material jurisdiction to all Indemnitees, taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional local counsel to all affected Indemnitees, taken as a whole) incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby, (ii) the funding or use of the proceeds of the Loans or any Letter of Credit (including any refusal by an Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) the failure of a Loan Party to deliver to the Administrative Agent the required receipts or other required documentary evidence with respect to a payment made by a Loan Party for Taxes pursuant to Section 2.17, (iv) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by the Parent Companies, the Borrowers or any of the Subsidiaries or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is initiated by a third party or by the Borrowers, any other Loan Party or any of their respective Affiliates, equity holders or any other party); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are (i) determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or of any affiliate of such Indemnitee or, to the extent such judgment finds such Indemnitee in material breach of the Loan Documents or (ii) arise out of any claim, litigation, investigation or proceeding brought by such Indemnitee (or its Related Parties) against another Indemnitee (or its Related Parties) (other than any claim, litigation, investigation or proceeding brought by or against the Administrative Agent, acting in its capacity as the Administrative Agent or any Arranger, acting in its capacity as an Arranger) that does not involve any act or omission of Holdings, any Borrower or any of the Subsidiaries. Each Indemnitee shall be obligated to refund or return any and all amounts paid by any Borrower pursuant to this Section 9.03(b) to such Indemnitee for any fees, expenses, or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof. All amounts due under this paragraph (b) shall be payable by the Borrowers within 30 days (x) after written demand thereof, in the case of any indemnification obligations and (y) in the case of reimbursement of costs and expenses, after receipt of an invoice relating thereto, setting forth such expenses in reasonable detail and together with backup documentation supporting such reimbursement requests. This Section 9.03 shall not apply to Taxes other than Taxes that represent losses, claims, damages, liabilities or related expenses arising from any non-Tax claim. Payments under this Section 9.03(b) shall be made by the Borrowers to the Administrative Agent for the benefit of the relevant Indemnitee.

Section 9.04 **Waiver of Claim**. To the extent permitted by applicable law, no party to this Agreement shall assert, and each hereby waives, any claim against any other party hereto or any Related Party thereof, 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 or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof, except, in the case of the Borrowers, to the extent such damages would otherwise be subject to indemnification pursuant to the terms of Section 9.03.

Section 9.05 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Banks that issues any Letter of Credit), except that (i) except as provided under Section 6.08, the Borrowers may not assign or otherwise transfer any of their rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. 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 (including any Affiliate of the Issuing Banks that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b)

(i) Subject to the limitations set forth in paragraph (a) above and the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed except in connection with a proposed assignment to any Disqualified Institution or any Person described in clause (iv) of the proviso contained in the definition of "Eligible Assignee") of:

(A) the Borrower Agent; provided that, the Borrower Agent shall have been deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Administrative Agent within 3 Business Days after receiving written notice thereof; provided, further, that no consent of the Borrower Agent shall be required for an assignment to another Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default under Section 7.01(a) or Section 7.01(f) or (g) (with respect to the Borrowers only) has occurred and is continuing, any other Eligible Assignee;

(B) the Administrative Agent; and

(C) each Issuing Bank (solely in the case of assignments of ABL Revolving Commitments and ABL Revolving Loans).

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to another Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or the principal amount of 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 and determined on an aggregate basis in the event of concurrent assignments to Related Funds or by Related Funds (as defined below)) shall not be less than $5,000,000 unless each of the Borrower Agent and the Administrative Agent otherwise consent;

(B) 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;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent); and

(D) the Eligible Assignee, if it shall not be a Lender, shall deliver on or prior to the effective date of such assignment, to the Administrative Agent (1) an Administrative Questionnaire and (2) if applicable, any Internal Revenue Service forms required under Section 2.17.

The term "**Related Funds**" shall mean with respect to any Lender that is an Approved Fund, any other Approved Fund that is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the Eligible Assignee thereunder shall be a party hereto 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 2.15, 2.16, 2.17 and 9.03 with respect to facts and circumstances occurring on or prior to the effective date of such assignment and subject to its obligations thereunder and under Section 9.13). If any such assignment by a Lender holding a Note hereunder occurs after the issuance of any Note hereunder to such Lender, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender such Note to the Administrative Agent for cancellation, and thereupon the applicable Borrower shall issue and deliver a new Note, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

If any assignment or participation under this Section 9.05 is made to (1) any Affiliate of any Disqualified Institution (other than any bona fide debt fund that is not itself a Disqualified Institution) or (2) any Disqualified Institution without the Borrower Agent's prior written consent (any such Person, a "**Disqualified Person**"), then the Borrower Agent may, at its sole expense and effort, upon notice to the applicable Disqualified Person and the Administrative Agent, (A) terminate any Commitment of such Disqualified Person and repay the outstanding amount of Loans, together with accrued and unpaid interest thereon, accrued and unpaid fees and all other amounts owing to such Disqualified Person, (B) in the case of any outstanding Loans, purchase such Loans by paying the lesser of (x) par and (y) the amount that such Disqualified Person paid to acquire such Loans, plus in the case of each of clauses (x) and (y), accrued and unpaid interest thereon, accrued and unpaid fees and all other amounts due and payable to it hereunder and/or (C) require such Disqualified Person to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.05), all of its interests, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) par and (y) the amount that such Disqualified Person paid to acquire such Loans, plus in the case of each of clauses (x) and (y), accrued and unpaid interest thereon, accrued and unpaid fees and all other amounts due and payable to it hereunder; provided that (I) in the case of clauses (A) and (B), the Borrower Agent shall be liable to the relevant Disqualified Person under Section 2.16 if any Term SOFR Loan owing to such Disqualified Person is repaid or purchased other than on the last day of the Interest Period relating thereto and (II) in the case of clause

(C), the relevant assignment shall otherwise comply with this Section 9.05 (except that no registration and processing fee required under this Section 9.05 shall be required with any assignment pursuant to this paragraph). Nothing in this Section 9.05 shall be deemed to prejudice any right or remedy that Holdings or any Borrower may otherwise have at law or equity. Each Lender acknowledges and agrees that Holdings and its Subsidiaries will suffer irreparable harm if such Lender breaches any obligation under this Section 9.05 insofar as such obligation relates to any assignment or participation to any Disqualified Institution. Additionally, each Lender agrees that Holdings and/or either Borrower may seek to obtain specific performance or other equitable or injunctive relief to enforce this paragraph against any Disqualified Person and the immediately following paragraph of this Section 9.05 against any Disqualified Institution, in each case with respect to such breach without posting a bond or presenting evidence of irreparable harm.

Notwithstanding anything to the contrary contained in this Agreement, each Disqualified Institution (A) will not receive information provided solely to Lenders by any Borrower, the Administrative Agent or any Lender and will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article 2 and (B) (x) for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, shall not have any right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action, and all Loans held by any Disqualified Institution shall be deemed to be not outstanding for all purposes of calculating whether the Required Lenders or all Lenders have taken any actions, except that no amendment, modification or waiver of any Loan Document shall, without the consent of the applicable Disqualified Institution, deprive any Disqualified Institution of its pro rata share of any payment to which all Lenders of the applicable Class of Loans are entitled and (y) hereby agrees that if a proceeding under any Debtor Relief Law shall be commenced by or against a Borrower or any other Loan Party, such Disqualified Institution will be deemed to vote in the same proportion as Lenders that are not Disqualified Institutions.

The Administrative Agent shall have the right, and the Borrowers hereby expressly authorize the Administrative Agent, to provide the Disqualified Institutions List to each Lender requesting the same (provided that such Lender agrees to maintain the confidentiality of the Disqualified Institutions List (which agreement may be by way of a "click through" or other affirmative action on the part of the recipient to access the Disqualified Institutions List and acknowledge its confidentiality obligations in respect thereof)).

The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor the list or identities of, or enforce, compliance with the provisions hereof relating to Disqualified Institutions or Disqualified Person. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or Disqualified Person or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution or Disqualified Person.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders and their respective successors and assigns, and the Commitment of, and principal amount of and interest on the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation, shall not affect the Borrowers' obligations in respect of such Loans and LC Disbursements. The entries

in the Register shall be conclusive, absent manifest error, and the Borrowers, the Administrative Agent, the Issuing Banks and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender and the owner of the amounts owing to it under the Loan Documents as reflected in the Register for all purposes of the Loan Documents, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, the Issuing Banks and any Lender (but only as to its own holdings), at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an Eligible Assignee, the Eligible Assignee's completed Administrative Questionnaire and tax certifications required by Section 9.05(b)(ii)(D)(2) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section, if applicable, and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall promptly accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) By executing and delivering an Assignment and Assumption, the assigning Lender thereunder and the Eligible Assignee thereunder shall be deemed to confirm and agree with each other and the other parties hereto as follows: (A) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Commitment of the relevant Class being assigned, and the outstanding balances of its Revolving Loans of the relevant Class being assigned, in each case without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Assumption, (B) except as set forth in (A) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Parent Companies, the Borrowers or any Subsidiary or the performance or observance by the Parent Companies, the Borrowers or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (C) such assignee represents and warrants that it is an Eligible Assignee, legally authorized to enter into such Assignment and Assumption; (D) such assignee confirms that it has received a copy of this Agreement and the Intercreditor Agreement, together with copies of the most recent financial statements referred to in Section 3.04(a) or delivered pursuant to Section 5.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Assumption; (E) such assignee will independently and without reliance upon the Administrative Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (F) such assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent, by the terms hereof, together with such powers as are reasonably incidental thereto; and (G) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(c)

(i) Any Lender may, without the consent of any Borrower, the Administrative Agent, the Issuing Banks, the Swingline Lender or any other Lender, sell participations to one or

more banks or other entities (other than any Disqualified Institution) (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and 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, modification or waiver described in (x) clause (A) to the first proviso to Section 9.02(b) that directly and adversely affects the Loans or Commitments in which such Participant has an interest and (y) clause (B) to the first proviso to Section 9.02(b). Subject to paragraph (c)(ii) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.09 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower Agent's prior written consent expressly acknowledging such Participant may receive a greater benefit. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.17 unless the Borrower Agent is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 2.17(e) as though it were a Lender.

Each Lender that sells a participation shall, acting for this purpose as a non-fiduciary agent of the Borrowers, maintain at one of its offices a copy of a register for the recordation of the names and addresses of each Participant and their respective successors and assigns, and principal amount of and interest on the Loans (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender may treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such participation for all purposes of this Agreement, notwithstanding notice to the contrary.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to any Disqualified Institution or natural person) to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and this Section 9.05 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an "**SPC**"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower Agent, the option to provide to the Borrowers all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrowers pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan; (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such

Loan pursuant to the terms hereof; and (iii) if an SPC elects to exercise such option and provides all or any part of such Loan, such SPC shall be recorded in the Register as the Lender with respect to the portion of a Loan made by such SPC. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrowers under this Agreement (including its obligations under Section 2.15, 2.16 or 2.17) and no SPC shall be entitled to any greater amount under Section 2.13, 2.14 or 2.15 or any other provision of this Agreement or any other Loan Document that the Granting Lender would have been entitled to receive, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender) and (iii) the Granting Lender shall for all purposes including approval of any amendment, waiver or other modification of any provision of the Loan Documents, remain the Lender of record hereunder. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof; provided that (i) in the case of the Borrowers, such SPC's Granting Lender is in compliance in all material respects with its obligations to the Borrowers hereunder and (ii) each Lender designating any SPC hereby agrees to indemnify, save and hold harmless each other party hereto for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such SPC during such period of forbearance. In addition, notwithstanding anything to the contrary contained in this Section 9.05, any SPC may (i) with notice to, but without the prior written consent of, the Borrower Agent or the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender, which assignment shall be recorded in the register, and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC.

Section 9.06 **Survival**. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, an Issuing Bank or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until the Termination Date. The provisions of Sections 2.15, 2.16, 2.17, 9.03 and 9.13 and Article 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments, the occurrence of the Termination Date or the termination of this Agreement or any provision hereof but in each case, subject to the limitations set forth in this Agreement.

Section 9.07 **Counterparts; Integration; Effectiveness**. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and the Fee Letter and any separate letter agreements with respect to fees payable to the Administrative Agent 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 Ultimate Parent, Holdings, the Borrowers, the Subsidiaries of the Borrowers party hereto and the Administrative Agent and when the Administrative Agent shall have received counterparts

hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by email as a ".pdf" or ".tif" attachment shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 9.08 **Severability**. To the extent permitted by law, any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 9.09 **Right of Setoff**. If an Event of Default shall have occurred and be continuing, upon the written consent of the Administrative Agent, each Issuing Bank and each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by the Administrative Agent, such Issuing Bank or such Lender or Affiliate (including, without limitation, by branches and agencies of the Administrative Agent, such Issuing Bank or such Lender, wherever located) to or for the credit or the account of any Borrower or any Loan Guarantor against any of and all the Secured Obligations held by the Administrative Agent, such Issuing Bank or such Lender or Affiliate, irrespective of whether or not the Administrative Agent, such Issuing Bank or such Lender or Affiliate shall have made any demand under the Loan Documents and although such obligations may be unmatured. The applicable Lender shall promptly notify the Borrower Agent and the Administrative Agent of such set-off or application; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. NOTWITHSTANDING THE FOREGOING, AT ANY TIME THAT ANY OF THE SECURED OBLIGATIONS SHALL BE SECURED BY REAL PROPERTY LOCATED IN CALIFORNIA, NO LENDER SHALL EXERCISE A RIGHT OF SETOFF LENDER'S LIEN OR COUNTERCLAIM OR TAKE ANY COURT OR ADMINISTRATIVE ACTION OR INSTITUTE ANY PROCEEDING TO ENFORCE ANY PROVISION OF THIS AGREEMENT OR ANY LOAN DOCUMENT UNLESS IT IS TAKEN WITH THE CONSENT OF THE LENDERS REQUIRED BY SECTION 9.02 OF THIS AGREEMENT OR APPROVED IN WRITING BY THE ADMINISTRATIVE AGENT, IF SUCH SETOFF OR ACTION OR PROCEEDING WOULD OR MIGHT (PURSUANT TO SECTIONS 580a, 580b, 580d AND 726 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE OR SECTION 2924 OF THE CALIFORNIA CIVIL CODE, IF APPLICABLE, OR OTHERWISE) AFFECT OR IMPAIR THE VALIDITY, PRIORITY, OR ENFORCEABILITY OF THE LIENS GRANTED TO THE ADMINISTRATIVE AGENT PURSUANT TO THE COLLATERAL DOCUMENTS OR THE ENFORCEABILITY OF THE PROMISSORY NOTES AND OTHER OBLIGATIONS HEREUNDER, AND ANY ATTEMPTED EXERCISE BY ANY LENDER OR ANY SUCH RIGHT WITHOUT OBTAINING SUCH CONSENT OF THE PARTIES AS REQUIRED ABOVE, SHALL BE NULL AND VOID. THIS PARAGRAPH SHALL BE SOLELY FOR THE BENEFIT OF EACH OF THE LENDERS AND THE ADMINISTRATIVE AGENT HEREUNDER.

Section 9.10 GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS), WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK (OR ANY APPELLATE COURT THEREFROM) OVER ANY SUIT, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL (EXCEPT AS PERMITTED BELOW) BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, FEDERAL COURT. THE PARTIES HERETO AGREE THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY REGISTERED MAIL ADDRESSED TO SUCH PERSON SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PERSON FOR ANY SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE ADMINISTRATIVE AGENT AND LENDERS RETAIN THE RIGHT TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION SOLELY IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION, SUIT OR PROCEEDING IN ANY SUCH COURT.

(d) TO THE EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 9.01. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY LOAN DOCUMENT THAT

SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 9.11 **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 SUIT, ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.12 **Headings**. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.13 **Confidentiality**. The Administrative Agent, each Issuing Bank and each Lender agrees (and each Lender agrees to cause its SPC, if any) to maintain the confidentiality of the Confidential Information (as defined below), except that Confidential Information may be disclosed (a) to its and its Affiliates' directors (or equivalent managers), officers, employees, independent auditors, or other experts and advisors, including accountants, legal counsel and other advisors (collectively, the "**Representatives**") on a "need to know" basis solely in connection with the transactions completed hereby and who are informed of the confidential nature of such Confidential Information and are or have been advised of their obligation to keep such Confidential Information of this type confidential; provided that such Person shall be responsible for its Affiliates' and their Representatives' compliance with this paragraph, (b) upon the demand or request of any regulatory (including any self-regulatory body, such as the National Association of Insurance Commissioners), governmental or administrative authority purporting to have jurisdiction over such Person or its Affiliates (in which case such Person shall (i) except with respect to any audit or examination conducted by bank accountants or any Governmental Authority exercising examination or regulatory authority, to the extent practicable and not prohibited by law, inform the Borrower Agent promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (c) to the extent compelled by legal process in, or reasonably necessary to, the defense of such legal, judicial or administrative proceeding, in any legal, judicial or administrative proceeding or otherwise as required by applicable Requirements of Law, rule or regulation (in which case such party shall (i) to the extent practicable and not prohibited by law, inform the Borrower Agent promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (d) to any other party to this Agreement, (e) subject to an acknowledgment and agreement by such recipient that such information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower Agent), to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement, including, without limitation, any SPC (in each case other than a Disqualified Institution), (ii) any pledgee referred to in Section 9.05 or (iii) any actual or prospective, direct or indirect contractual counterparty (or its advisors) to any swap or derivative transaction (including any credit default swap) or similar product relating to the Loan Parties and their obligations subject to acknowledgment and agreement by such recipient that such information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower Agent), (f) with

the prior written consent of the Borrower Agent, (g) to any rating agency in connection with obtaining ratings for the Borrowers or the Second Lien Notes, (h) to the extent applicable and reasonably necessary or advisable, for purposes of establishing a "due diligence" defense and (i) to the extent such Confidential Information (i) becomes publicly available other than as a result of a breach of this Section by such Person, its Affiliates or their respective Representatives or (ii) becomes available to the Administrative Agent, an Issuing Bank or any Lender on a non-confidential basis other than as a result of a breach of this Section from a source other than any Loan Party. For the purposes of this Section, "**Confidential Information**" means all information received from any Loan Party relating to the Loan Parties or their businesses or the Transactions other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis prior to disclosure by any Loan Party and other information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrower after the Closing Date, such information is clearly identified at the time of delivery as confidential. For the avoidance of doubt, in no event shall any disclosure of such Confidential Information be made to any Disqualified Institution (at the time such disclosure was made).

EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.13 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE COMPANY, AND ITS AFFILIATES, THE OTHER LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

Section 9.14 **No Fiduciary Duty**. Each of the Administrative Agent, Arrangers, Co-Documentation Agents and Syndication Agent, each Lender and their respective Affiliates (collectively, solely for purposes of this paragraph, the "Lenders"), may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their respective affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and any Loan Party, its respective stockholders or its respective affiliates, on the other. The Loan Parties acknowledge and agree that: (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and each Loan Party, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its respective stockholders or its respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its respective stockholders or its respective Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of such Loan Party, its respective management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that such Loan Party has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto.

Section 9.15 **Several Obligations**. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder.

Section 9.16 **USA PATRIOT Act**. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Borrower and Loan Guarantor, which information includes the name, address and tax identification number of each Loan Party and other information that will allow such Lender to identify the Loan Parties in accordance with the USA PATRIOT Act. This notice is given in accordance with the requirements of the USA PATRIOT Act and is effective as to the Lenders and the Administrative Agent.

Section 9.17 **Disclosure**. Each Loan Party and each Lender hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

Section 9.18 **Appointment for Perfection**. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession. Should any Lender (other than the Administrative Agent) obtain possession of any such Collateral, such Lender shall notify the Administrative Agent thereof; and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

Section 9.19 **Interest Rate Limitation**. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 9.20 **Intercreditor Agreement**. REFERENCE IS MADE TO THE INTERCREDITOR AGREEMENT. EACH LENDER HEREUNDER (a) AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT AND (b) AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO THE INTERCREDITOR AGREEMENT AS REVOLVING FACILITY AGENT AND ON BEHALF OF SUCH LENDER. THE PROVISIONS OF THIS SECTION 9.20 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF THE INTERCREDITOR AGREEMENT, THE FORM OF WHICH IS ATTACHED AS AN EXHIBIT TO THIS AGREEMENT. REFERENCE MUST BE MADE TO THE INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE INTERCREDITOR AGREEMENT.

Section 9.21 **Conflicts**. Notwithstanding anything to the contrary contained herein, in any other Loan Document (including, without limitation, any Letter of Credit application but excluding the Intercreditor Agreement), in the event of any conflict or inconsistency between this Agreement and any other Loan Document (including, without limitation, any Letter of Credit application but excluding the

Intercreditor Agreement), the terms of this Agreement shall govern and control; provided that in the case of any conflict or inconsistency between the Intercreditor Agreement and any other Loan Document, the terms of the Intercreditor Agreement shall govern and control.

Section 9.22 [Reserved].

Section 9.23 Borrower Agent. (a) Parent Borrower is hereby appointed by each of the Borrowers as its contractual representative hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Agent to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Agent agrees to act as such contractual representative upon the express conditions contained in this Section 9.23. Additionally, the Borrowers hereby appoint the Borrower Agent as their agent to receive, to the extent so requested by such Borrower, the proceeds of the Loans in its account(s), at which time the Borrower Agent shall promptly disburse such Loans to the appropriate Borrower(s). The Administrative Agent and the Lenders, and their respective officers, directors, agents or employees, shall not be liable to the Borrower Agent or any Borrower for any action taken or omitted to be taken by the Borrower Agent or the Borrowers pursuant to this Section 9.23.

(b) The Borrower Agent shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Agent by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Agent shall have no implied duties to the Borrowers hereunder, or any obligation to the Lenders to take any action hereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Agent.

Section 9.24 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 its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of and the Borrowers 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 the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

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

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

entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

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

(b) The Administrative Agent hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

Section 9.25 **Acknowledgement Regarding Any Supported QFCs**. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Obligations or any other agreement or instrument that is a QFC (such support "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States).

In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

ARTICLE 10
LOAN GUARANTY

Section 10.01 **Guaranty**. Each Loan Guarantor hereby agrees that it is jointly and severally liable for, and, as primary obligor and not merely as surety, and absolutely and unconditionally and irrevocably guarantees to the Administrative Agent for the ratable benefit of the Issuing Banks and the other Secured Parties the full and prompt payment upon the failure of the Borrowers to do so, when and as the same shall become due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations (collectively the "**Guaranteed Obligations**"; provided, however, that the definition of "Guaranteed Obligations" shall not create any guarantee by any Loan Guarantor of (or grant of security interest by any Loan Guarantor to support, as applicable) any Excluded Swap Obligations of such Loan Guarantor for purposes of determining any obligations of any Loan Guarantor). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. If any or all of the Guaranteed Obligations becomes due and payable hereunder, each Loan Guarantor, unconditionally and irrevocably, promises to pay such indebtedness to the Administrative Agent and/or the other Secured Parties, on demand, together with any and all expenses which may be incurred by the Administrative Agent and the other Secured Parties in collecting any of the Guaranteed Obligations to the extent reimbursable in accordance with Section 9.03. Each Loan Guarantor unconditionally and irrevocably guarantees the payment of any and all of the Guaranteed Obligations to the Secured Parties whether or not due or payable by the Borrowers upon the occurrence of any of the events specified in Sections 7.01(f) or (g), and in such event, irrevocably and unconditionally promises to pay such indebtedness to the Secured Parties, on demand, in lawful money of the United States.

Section 10.02 **Guaranty of Payment**. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent, any Issuing Bank or any Lender to sue any Borrower, any other Loan Guarantor, any other guarantor, or any other Person obligated for all or any part of the Guaranteed Obligations (each, an "**Obligated Party**"), or otherwise to enforce its rights in respect of any Collateral securing all or any part of the Guaranteed Obligations. The Administrative Agent may enforce this Loan Guaranty upon the occurrence and during the continuance of an Event of Default.

Section 10.03 **No Discharge or Diminishment of Loan Guaranty**.

(a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional, irrevocable and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than as set forth in Section 10.13), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other guarantor of or other Person liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party, or their assets or any resulting release or discharge of any obligation of any Obligated Party; (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, any Issuing Bank, any Lender, or any other Person, whether in connection herewith or in any unrelated transactions; (v) any direction as to application of payments by any Borrower or by any other party; (vi) any other continuing or other guaranty, undertaking or maximum liability of a guarantor or of any other party as to the Guaranteed Obligations; (vii) any payment on or in reduction of any such other guaranty or undertaking; (viii) any dissolution, termination or increase, decrease or change in personnel by the Borrowers or (ix) any payment made to any Secured Party on the Guaranteed Obligations which any such Secured Party repays to any Borrower

pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each Loan Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

(b) Except for termination of a Loan Guarantor's obligations hereunder or as expressly permitted by Section 10.13, the obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, any Issuing Bank or any Secured Party to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of the Borrowers for all or any part of the Guaranteed Obligations or any obligations of any other guarantor of or other Person liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, any Issuing Bank or any Secured Party with respect to any Collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than as set forth in Section 10.13).

Section 10.04 **Defenses Waived**. To the fullest extent permitted by applicable law, and except for termination of a Loan Guarantor's obligations hereunder or as expressly permitted by Section 10.13, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any other Loan Guarantor or arising out of the disability of the Borrowers or any other Loan Guarantor or any other party or the unenforceability of all or any part of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower or any other Loan Guarantor. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, including notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Loan Guaranty, and notices of the existence, creation or incurring of new or additional Guaranteed Obligations, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person including any right (except as shall be required by applicable statute and cannot be waived) to require any Secured Party to (i) proceed against any Borrower, any other guarantor or any other party, (ii) proceed against or exhaust any security held from any Borrower, any other guarantor or any other party or (iii) pursue any other remedy in any Secured Party's power whatsoever. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or non-judicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent permitted by applicable law), accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any Collateral securing all or a part of the Guaranteed Obligations, and the Administrative Agent may, at its election, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, or any security, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except as otherwise provided in Section 10.13. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

Section 10.05 **Authorization**. The Loan Guarantors authorize the Secured Parties without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder (except as set forth in Section 10.13), from time to time to:

(a) change the manner, place or terms of payment of, and/or change or extend the time of payment of, renew, increase, accelerate or alter, any of the Guaranteed Obligations (including any increase or decrease in the principal amount thereof or the rate of interest or fees thereon), any security therefor, or any liability incurred directly or indirectly in respect thereof, and this Loan Guaranty shall apply to the Guaranteed Obligations as so changed, extended, renewed or altered;

(b) take and hold security for the payment of the Guaranteed Obligations and sell, exchange, release, impair, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Guaranteed Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset there against;

(c) exercise or refrain from exercising any rights against the Borrowers, any other Loan Party or others or otherwise act or refrain from acting;

(d) release or substitute any one or more endorsers, guarantors, the Borrowers, other Loan Parties or other obligors;

(e) settle or compromise any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Borrowers to their creditors other than the Secured Parties;

(f) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of the Borrowers to the Secured Parties regardless of what liability or liabilities of the Borrowers remain unpaid;

(g) consent to or waive any breach of, or any act, omission or default under, this Agreement, any other Loan Document, any Hedge Agreement or any of the instruments or agreements referred to herein or therein, or otherwise amend, modify or supplement this Agreement, any other Loan Document, any Hedge Agreement or any of such other instruments or agreements; and/or

(h) take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of the Loan Guarantors from their respective liabilities under this Loan Guaranty.

Section 10.06 **Rights of Subrogation**. Any indebtedness of the Borrowers now or hereafter owing to any Loan Guarantor is hereby subordinated to the Obligations owing to the Secured Parties; and if the Administrative Agent so requests at a time when an Event of Default exists, all such indebtedness of the Borrowers to such Loan Guarantor shall be collected, enforced and received by such Loan Guarantor for the benefit of the Secured Parties and be paid over to the Administrative Agent on behalf of the Secured Parties on account of the Guaranteed Obligations to the Secured Parties, but without affecting or impairing in any manner the liability of such Loan Guarantor under the other provisions of this Loan Guaranty. Prior to the transfer by any Loan Guarantor of any note or negotiable instrument evidencing any such indebtedness of the Borrowers to such Loan Guarantor, such Loan Guarantor shall mark such note or negotiable instrument with a legend that the same is subject to this subordination. No Loan Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification that it has against any Loan Party or any collateral in respect of this Loan Guaranty until the occurrence of the Termination Date.

Section 10.07 **Reinstatement; Stay of Acceleration**. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Borrower or otherwise, each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the other Loan Guarantors forthwith on demand by the Administrative Agent.

Section 10.08 **Information**. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Administrative Agent, any Issuing Bank or any Lender shall have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

Section 10.09 **[Reserved]**.

Section 10.10 **Maximum Liability**. It is the desire and intent of the Loan Guarantors and the Secured Parties that this Loan Guaranty shall be enforced against the Loan Guarantors to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state, Federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Loan Guarantor under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Loan Guarantor's liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by the Loan Guarantors or the Secured Parties, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Loan Guarantor's "**Maximum Liability**"). Each Loan Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the Maximum Liability of each Loan Guarantor without impairing this Loan Guaranty or affecting the rights and remedies of the Secured Parties hereunder; provided that nothing in this sentence shall be construed to increase any Loan Guarantor's obligations hereunder beyond its Maximum Liability.

Section 10.11 **Contribution**. In the event any Loan Guarantor (a "**Paying Guarantor**") shall make any payment or payments under this Loan Guaranty or shall suffer any loss as a result of any realization upon any Collateral granted by it to secure its obligations under this Loan Guaranty, each other Loan Guarantor (each a "**Non-Paying Guarantor**") shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor's "Guarantor Percentage" of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Article 10, each Non-Paying Guarantor's "**Guarantor Percentage**" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (a) such Non- Paying Guarantor's Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from the Borrowers after the Closing Date (whether by loan, capital infusion or by other means) to (b) the aggregate Maximum Liability of all Loan Guarantors hereunder (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Loan Guarantor, the aggregate amount of all monies received by such Loan Guarantors from the Borrowers after the Closing Date (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Loan Guarantor's

several liability for the entire amount of the Guaranteed Obligations (up to such Loan Guarantor's Maximum Liability). Each of the Loan Guarantors covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Non-Paying Guarantor shall be subordinate and junior in right of payment to the Secured Obligations until the Termination Date. This provision is for the benefit of the Administrative Agent, the Issuing Banks, the Lenders and the other Secured Parties and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

Section 10.12 Liability Cumulative. The liability of each Loan Guarantor under this Article 10 is in addition to and shall be cumulative with all liabilities of such Loan Guarantor to the Administrative Agent, the Issuing Banks and the Lenders under this Agreement and the other Loan Documents to which such Loan Guarantor is a party or in respect of any obligations or liabilities of the other Loan Guarantors, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

Section 10.13 Release of Loan Guarantors. Notwithstanding anything in Section 9.02(b) to the contrary, a Subsidiary Guarantor shall automatically be released from its obligations hereunder and its Loan Guaranty shall be automatically released (i) upon the consummation of any transaction permitted hereunder if as a result thereof such Subsidiary Guarantor shall cease to be a Subsidiary (or becomes an Excluded Subsidiary, provided, however, that the release of any Subsidiary Guarantor from its obligations under this Agreement if such Subsidiary Guarantor becomes an Excluded Subsidiary of the type described in clause (a) of the definition thereof shall only be permitted if at the time such Subsidiary Guarantor becomes an Excluded Subsidiary of such type, (1) no Default or Event of Default shall have occurred and be outstanding, (2) after giving pro forma effect to such release and the consummation of the transaction or event that causes such Person to be an Excluded Subsidiary of such type, the Borrower is deemed to have made a new Investment in such Person (as if such Person were then newly acquired) and such Investment is permitted at such time, (3) the "primary purpose" in becoming an Excluded Subsidiary of such type shall not be to release the Loan Guaranty and (4) a Responsible Officer of the Borrower Agent certifies to the Administrative Agent compliance with preceding clauses (1), (2) and (3)); provided, further, that no such release shall occur if such Subsidiary Guarantor continues to be a guarantor in respect of the Second Lien Notes, Indebtedness permitted under Section 6.01(k) or (w)or any Refinancing Indebtedness in respect of any of the foregoing if permitted hereunder or (ii) upon the occurrence of the Termination Date. In connection with any such release, the Administrative Agent shall promptly execute and deliver to any Loan Guarantor, at such Loan Guarantor's expense, all documents that such Loan Guarantor shall reasonably request to evidence termination or release. Any execution and delivery of documents pursuant to the preceding sentence of this Section 10.13 shall be without recourse to or warranty by the Administrative Agent (other than to the Administrative Agent's authority to deliver such documents).

Section 10.14 Authorization to Enter into Intercreditor Agreement. Each Lender hereunder hereby authorizes and instructs the Administrative Agent to enter into the Intercreditor Agreement.

Section 10.15 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Loan Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.15 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.15 or otherwise under this Loan Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Except as otherwise provided herein, the obligations of each Qualified ECP Guarantor under this Section 10.15 shall remain in full force and effect until the termination of all Swap Obligations. Each Qualified ECP Guarantor intends that this Section 10.15 constitute, and this Section 10.15 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Section 10.16 **Acknowledgement and Consent to Bail-In of Affected Financial Institutions**. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by.

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

[*Signature Pages Follow*]

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

PARTY CITY CORPORATION

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Vice President, Treasurer

PARTY CITY HOLDINGS INC.

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title Interim Chief Financial Officer

PC INTERMEDIATE HOLDINGS, INC.

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Chief Financial Officer and Assistant Secretary

PARTY CITY HOLDCO INC.

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Interim Chief Financial Officer

AMSCAN INC.

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Vice President, Treasurer

AM-SOURCE, LLC

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Vice President, Treasurer

TRISAR, INC.

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Vice President, Treasurer

JPMORGAN CHASE BANK, N.A., as
Administrative Agent, an Issuing Bank and a Lender

By: /s/ Rohan Bhatia
Name: Rohan Bhatia
Title: Vice President

Bank of America, N.A., as an Issuing Bank and a Lender

By: /s/ Joseph Burt
Name: Joseph Burt
Title: Senior Vice President

Wells Fargo Bank, N.A., as an Issuing Bank and as a Lender

By: /s/ Paul Steffens
Name: Paul Steffens
Title: Assistant Vice President

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as a Lender

By: /s/ Johannes Werner
Name: Johannes Werner
Title: Authorized Signatory

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as a Lender

By: /s/ Jeremy D. Horn
Name: Jeremy D. Horn
Title: Authorized Signatory

MUFG Bank, Ltd., as a Lender

By: /s/ Peter Otoki
Name: Peter Otoki
Title: Vice President

TD BANK, N.A., as a Lender

By: /s/ Jennifer Visconti
Name: Jennifer Visconti
Title: Vice President

BANK OF MONTREAL, as a Lender

By: /s/ Lauren Wittert
Name: Lauren Wittert
Title: Vice President

SIEMENS FINANCIAL SERVICES, INC., as a Lender

By: /s/ Jeffrey B. Iervese
Name: Jeffrey B. Iervese
Title: Vice President

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

GOLDMAN SACHS LENDING PARTNERS, LLC, as a Lender

By: /s/ Dan Starr
Name: Dan Starr
Title: Authorized Signatory

INTERCREDITOR AGREEMENT

Intercreditor Agreement (this "Agreement"), dated as of October 12, 2023, among JPMORGAN CHASE BANK, N.A., as Administrative Agent (in such capacity, with its successors and assigns, and as more specifically defined below, the "First Priority Representative") for the First Priority Secured Parties (as defined below), WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee and Collateral Agent (in such capacity, with its successors and assigns, and as more specifically defined below, the "Second Priority Representative") for the Second Priority Secured Parties (as defined below), PARTY CITY HOLDINGS INC., a Delaware corporation (the "Ultimate Parent"), PARTY CITY HOLDCO INC., a Delaware corporation ("Parent Borrower"), PARTY CITY CORPORATION, a Delaware corporation ("Party City", and collectively with the Parent Borrower, the "Borrowers"), and each of the other Loan Parties (as defined below) party hereto.

WHEREAS, the Ultimate Parent, the Borrowers, the First Priority Representative and certain financial institutions and other entities are parties to the ABL Credit Agreement, dated as of the date hereof (the "Existing First Priority Agreement"), pursuant to which such financial institutions and other entities have agreed to make loans and extend other financial accommodations to the Borrowers; and

WHEREAS, the Ultimate Parent, the Borrowers and the other Loan Parties have granted to the First Priority Representative security interests in the Common Collateral (as defined below) as security for payment and performance of the First Priority Obligations (as defined below); and

WHEREAS, the Ultimate Parent, the Second Priority Representative and certain other entities are parties to the Indenture, dated as of the date hereof (the "Existing Second Priority Agreement"), pursuant to which Party City Holdco Inc. has agreed to issue the 12.00% Senior Secured Second Lien PIK Toggle Notes due 2029; and

WHEREAS, the Ultimate Parent, the Borrowers and the other Loan Parties have granted to the Second Priority Representative junior security interests in the Common Collateral as security for payment and performance of the Second Priority Obligations (as defined below); and

WHEREAS, each of the First Priority Representative (on behalf of itself and the First Priority Creditors) and the Second Priority Representative (on behalf of itself and the Second Priority Creditors) desire to enter into this agreement in order to, amongst other things, (a) establish the relative priorities of the First Priority Creditors and the Second Priority Creditors with respect to the payment of (i) the First Priority Obligations owed by the Loan Parties to the First Priority Creditors and (ii) the Second Priority Obligations owed by the Loan Parties to the Second Priority Creditors and (b) document their respective rights and remedies with respect to the Common Collateral.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants herein contained and other good and valuable consideration, the existence and sufficiency of which is expressly recognized by all of the parties hereto, the parties agree as follows:

SECTION 1. **Definitions.**

1.1. Defined Terms. The following terms, as used herein, have the following meanings:

"Additional First Priority Agreement" means any agreement selected for designation as such by the Borrowers.

"Additional Second Priority Agreement" means any agreement selected for designation as such by the Borrowers.

"Affiliate" means, as applied to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, that Person.

"Ancillary Document" has the meaning set forth in Section 9.12.

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

"Borrowers" has the meaning set forth in the introductory paragraph hereof.

"Cash Management Obligations" means any and all obligations of the Loan Parties, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), in connection with Cash Management Services, in each case, that has been designated to the First Priority Representative in writing by Parent Borrower as being a "Banking Services Obligation" for the purposes of the First Priority Documents.

"Cash Management Services" means each and any of the following bank services provided to any Loan Party (a) under any arrangement that is in effect on the date hereof between any Loan Party and a counterparty that is the First Priority Representative or a First Priority Creditor that is a "Lender" under the Existing First Priority Agreement or an Affiliate of any of the foregoing as of the date hereof or (b) under any arrangement that is entered into after the date hereof by any Loan Party with any counterparty that is the First Priority Representative or a First Priority Creditor that is a "Lender" under the Existing First Priority Agreement or an Affiliate of any of the foregoing at the time such arrangement is entered into: (i) commercial credit cards, (ii) stored value cards, (iii) purchasing cards and (iv) treasury management services (including, without limitation, controlled disbursement, ACH transactions, return items and interstate depository network services).

"Commercial Letter of Credit" means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by the Parent Borrower or any of its subsidiaries in the ordinary course of business of such Person.

"Common Collateral" means all assets that are both First Priority Collateral and Second Priority Collateral.

"Comparable Second Priority Security Document" means, in relation to any Common Collateral subject to any First Priority Security Document, that Second Priority Security Document that creates a security interest in the same Common Collateral, granted by the same Loan Party, as applicable.

"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.

"Derivative Transaction" means (a) any interest-rate transaction, including any interest-rate swap, basis swap, forward rate agreement, interest rate option (including a cap collar and floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted), (b) any exchange-rate transaction, including any cross-currency interest-

rate swap, any forward foreign-exchange contract, any currency option, and any other instrument linked to exchange rates that gives rise to similar credit risks, (c) any equity derivative transaction, including any equity-linked swap, any equity-linked option, any forward equity-linked contract, and any other instrument linked to equities that gives rise to similar credit risk and (d) any commodity (including precious metal) derivative transaction, including any commodity-linked swap, any commodity-linked option, any forward commodity- linked contract, and any other instrument linked to commodities that gives rise to similar credit risks; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Holdings or its subsidiaries shall be a Derivative Transaction.

"DIP Financing" has the meaning set forth in Section 5.2.

"Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Enforcement Action" means, with respect to the First Priority Obligations or the Second Priority Obligations, any acceleration of payment obligations, the exercise of any rights and remedies with respect to any Common Collateral securing such obligations or the commencement or prosecution of enforcement of any of the rights and remedies with respect to the Common Collateral under, as applicable, the First Priority Documents or the Second Priority Documents, or applicable law, including without limitation the exercise of any rights of set-off or recoupment, and the exercise of any rights or remedies of a secured creditor under the Uniform Commercial Code of any applicable jurisdiction or under the Bankruptcy Code.

"Existing First Priority Agreement" has the meaning set forth in the first WHEREAS clause of this Agreement.

"Existing Second Priority Agreement" has the meaning set forth in the second WHEREAS clause of this Agreement.

"First Priority Agreement" means the collective reference to (a) the Existing First Priority Agreement, (b) any Additional First Priority Agreement and (c) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, replace, refinance or refund in whole or in part the indebtedness and other obligations outstanding under the Existing First Priority Agreement, any Additional First Priority Agreement or any other agreement or instrument referred to in this clause (c) unless such agreement or instrument expressly provides that it is not intended to be and is not a First Priority Agreement hereunder (a "Replacement First Priority Agreement"). Any reference to the First Priority Agreement hereunder shall be deemed a reference to any First Priority Agreement then extant.

"First Priority Collateral" means all assets, whether now owned or hereafter acquired by the Borrowers or any other Loan Party, in which a Lien is granted or purported to be granted to any First Priority Secured Party as security for any First Priority Obligation.

"First Priority Creditors" means, collectively, the "Lenders" and the "Secured Parties", each as defined in the First Priority Agreement, or any Persons that are designated under the First Priority Agreement as the "First Priority Creditors" for purposes of this Agreement.

"First Priority Documents" means the First Priority Agreement, each First Priority Security Document and each First Priority Guarantee.

"First Priority Guarantee" means any guarantee by any Loan Party of any or all of the First Priority Obligations.

"First Priority LC Exposure" means, at any time of determination, the sum of (a) the aggregate undrawn amount of all outstanding First Priority Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements (as defined in the First Priority Agreement) that have not yet been reimbursed by or on behalf of any Borrower or any other Loan Party at such time, less (c) the amount then on deposit in the LC Collateral Account (or similar term) (as defined in the First Priority Agreement).

"First Priority Letter of Credit" means any Standby Letter of Credit or Commercial Letter of Credit issued (or, in the case of an Existing Letter of Credit, deemed to be issued) pursuant to the First Priority Agreement.

"First Priority Lien" means any Lien created by the First Priority Security Documents.

"First Priority Obligations" means (a) all unpaid principal of and accrued and unpaid interest (including interest accruing during the pendency of any Insolvency Proceeding) on the loans made pursuant to the First Priority Agreement, all First Priority LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and all other advances to, debts, liabilities and obligations of the Loan Parties to any First Priority Creditor that is a "Lender", the First Priority Representative, any "Issuing Bank" under the First Priority Agreement or any indemnified party arising under the First Priority Documents in respect of any loans made pursuant to the First Priority Agreement or First Priority Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute, contingent, due or to become due, now existing or hereafter arising, (b) all Secured Hedging Obligations and (c) all Cash Management Obligations, in each case regardless of whether allowed or allowable in an Insolvency Proceeding. To the extent any payment with respect to any First Priority Obligation (whether by or on behalf of any Loan Party, as proceeds of security, enforcement of any right of setoff or otherwise) is declared to be a fraudulent conveyance or a preference in any respect, set aside or required to be paid to a debtor in possession, any Second Priority Secured Party, receiver or similar Person, then the obligation or part thereof originally intended to be satisfied shall, for the purposes of this Agreement and the rights and obligations of the First Priority Secured Parties and the Second Priority Secured Parties, be deemed to be reinstated and outstanding as if such payment had not occurred.

"First Priority Obligations Payment Date" means the first date on which (a) the First Priority Obligations (other than those that constitute Unasserted Contingent Obligations) have been indefeasibly paid in cash in full (or cash collateralized or defeased in accordance with the terms of the First Priority Documents), (b) all commitments to extend credit under the First Priority Documents have been terminated and (c) there are no outstanding letters of credit or similar instruments issued under the First Priority Documents (other than such as have been cash collateralized, backstopped or defeased in accordance with the terms of the First Priority Security Documents.

"First Priority Representative" has the meaning set forth in the introductory paragraph hereof. In the case of any Replacement First Priority Agreement, the First Priority Representative shall be the Person identified as such in such Agreement.

"First Priority Secured Parties" means the First Priority Representative, the First Priority Creditors and any other holders of the First Priority Obligations.

"First Priority Security Documents" means the "Security Documents" as defined in the First Priority Agreement, and any other documents that are designated under the First Priority Agreement as "First Priority Security Documents" for purposes of this Agreement.

"Hedge Agreement" means any agreement with respect to any Derivative Transaction between any Borrower or any Subsidiary (as defined in the Existing First Priority Agreement on the date hereof) and any other Person.

"Hedging Obligations" means, with respect to any Person, the obligations of such Person under any Hedge Agreement.

"Holdings" means PC Intermediate Holdings, Inc., a Delaware corporation.

"Insolvency Proceeding" means any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution or assignment for the benefit of creditors, in each of the foregoing events whether under the Bankruptcy Code or any similar federal, state or foreign bankruptcy, insolvency, reorganization, receivership or similar law.

"Lien" means any mortgage, pledge, hypothecation, license, 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 (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capital Lease having substantially the same economic effect as any of the foregoing), in each case, in the nature of security; provided that in no event shall an operating lease in and of itself be deemed a Lien.

"Loan Party" means the Borrowers and each direct or indirect affiliate or shareholder (or equivalent) of the Borrowers or any of its affiliates that is now or hereafter becomes a party to any First Priority Document or Second Priority Document as an obligor or guarantor thereunder. All references in this Agreement to any Loan Party shall include such Loan Party as a debtor-in-possession and any receiver or trustee for such Loan Party in any Insolvency Proceeding.

"Person" means any person, individual, sole proprietorship, partnership, joint venture, corporation, limited liability company, unincorporated organization, association, institution, entity, party, including any government and any political subdivision, agency or instrumentality thereof.

"Post-Petition Interest" means any interest or entitlement to fees or expenses or other charges that accrues after the commencement of any Insolvency Proceeding, whether or not allowed or allowable in any such Insolvency Proceeding.

"Related Parties" means, with respect to any specified Person, such Person's affiliates and the respective directors, officers, partners, members, trustees, employees, agents, administrators, managers, representatives and advisors of such Person and such Person's affiliates.

"Replacement First Priority Agreement" has the meaning set forth in the definition of "First Priority Agreement".

"Second Priority Agreement" means the collective reference to (a) the Existing Second Priority Agreement, (b) any Additional Second Priority Agreement and (c) any other credit agreement, loan agreement, note agreement, promissory note, indenture, or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend,

replace, refinance or refund in whole or in part the indebtedness and other obligations outstanding under the Existing Second Priority Agreement, any Additional Second Priority Agreement or any other agreement or instrument referred to in this clause (c). Any reference to the Second Priority Agreement hereunder shall be deemed a reference to any Second Priority Agreement then extant.

"Second Priority Collateral" means all assets, whether now owned or hereafter acquired by the Borrowers or any other Loan Party, in which a Lien is granted or purported to be granted to any Second Priority Secured Party as security for any Second Priority Obligation.

"Second Priority Creditors" means, collectively, the "Holders" as defined in the Second Priority Agreement, or any Persons that are designated under the Second Priority Agreement as the "Second Priority Creditors" for purposes of this Agreement.

"Second Priority Documents" means each Second Priority Agreement, each Second Priority Security Document and each Second Priority Guarantee.

"Second Priority Guarantee" means any guarantee by any Loan Party of any or all of the Second Priority Obligations.

"Second Priority Lien" means any Lien created by the Second Priority Security Documents.

"Second Priority Obligations" means all unpaid principal of and accrued and unpaid interest (including interest accruing during the pendency of any Insolvency Proceeding) on the securities issued pursuant to the Second Priority Agreement, all accrued and unpaid fees and all expenses, reimbursements, indemnities and all other advances to, debts, liabilities and obligations of the Loan Parties to any Second Priority Creditor that is a "Holder", the Second Priority Representative or any indemnified party arising under the Second Priority Documents in respect of any security issued pursuant to the Second Priority Agreement, whether direct or indirect (including those acquired by assumption), absolute, contingent, due or to become due, now existing or hereafter arising, regardless of whether allowed or allowable in an Insolvency Proceeding. To the extent any payment with respect to any Second Priority Obligation (whether by or on behalf of any Loan Party, as proceeds of security, enforcement of any right of setoff or otherwise) is declared to be a fraudulent conveyance or a preference in any respect, set aside or required to be paid to a debtor in possession, any First Priority Secured Party, receiver or similar Person, then the obligation or part thereof originally intended to be satisfied shall, for the purposes of this Agreement and the rights and obligations of the First Priority Secured Parties and the Second Priority Secured Parties, be deemed to be reinstated and outstanding as if such payment had not occurred.

"Second Priority Representative" has the meaning set forth in the introductory paragraph hereof, but shall also include any Person identified as a "Second Priority Representative" in any Second Priority Agreement other than the Existing Second Priority Agreement.

"Second Priority Secured Parties" means the Second Priority Representative, the Second Priority Creditors and any other holders of the Second Priority Obligations.

"Second Priority Security Documents" means the "Security Documents" as defined in the Second Priority Agreement and any documents that are designated under the Second Priority Agreement as "Second Priority Security Documents" for purposes of this Agreement.

"Secured Hedging Obligations" means all Hedging Obligations under each Hedge Agreement that (a) is in effect on the date hereof between any Borrower or any other Loan Party and a counterparty that is

the First Priority Representative or a First Priority Creditor that is a "Lender" under the Existing First Priority Agreement or an Affiliate of any of the foregoing as of the date hereof or (b) is entered into after the Closing Date between any Borrower or any other Loan Party and any counterparty that is the First Priority Representative or a First Priority Creditor that is a "Lender" under the Existing First Priority Agreement or an Affiliate of any of the foregoing at the time such Hedge Agreement is entered into, for which such Borrower or Loan Party (as applicable) agrees to provide security, in each case that has been designated to the First Priority Representative in writing by Parent Borrower as being a Secured Hedging Obligation for the purposes of the First Priority Documents.

"Secured Parties" means the First Priority Secured Parties and the Second Priority Secured Parties.

"Standby Letter of Credit" means any Letter of Credit other than a Commercial Letter of Credit.

"Unasserted Contingent Obligations" shall mean, at any time, First Priority Obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities (excluding (a) the principal of, and interest and premium (if any) on, and fees and expenses relating to, any First Priority Obligation and (b) contingent reimbursement obligations in respect of amounts that may be drawn under outstanding letters of credit) in respect of which no assertion of liability (whether oral or written) and no claim or demand for payment (whether oral or written) has been made (and, in the case of First Priority Obligations for indemnification, no notice for indemnification has been issued by the indemnitee) at such time.

"Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect from time to time in the applicable jurisdiction.

1.2 Amended Agreements. All references in this Agreement to agreements or other contractual obligations shall, unless otherwise specified, be deemed to refer to such agreements or contractual obligations as amended, supplemented, restated or otherwise modified from time to time.

1.3 Rules of Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the term "including" is not limiting and shall be deemed to be followed by the phrase "without limitation," and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, schedule and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement to any agreement, instrument, or document shall include all alterations, amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any reference herein to the repayment in full of an obligation shall mean the payment in full in cash of such obligation, or in such other manner as may be approved in writing by the requisite holders or representatives in respect of such obligation.

SECTION 2. **Lien Priorities.**

2.1 Subordination of Liens.

(a) Any and all Liens now existing or hereafter created or arising in favor of any Second Priority Secured Party securing the Second Priority Obligations, regardless of how

acquired, whether by grant, statute, operation of law, subrogation or otherwise are expressly junior in priority, operation and effect to any and all Liens now existing or hereafter created or arising in favor of the First Priority Secured Parties securing the First Priority Obligations, notwithstanding (i) anything to the contrary contained in any agreement or filing to which any Second Priority Secured Party may now or hereafter be a party, and regardless of the time, order or method of grant, attachment, recording or perfection of any financing statements or other security interests, assignments, pledges, deeds, mortgages and other liens, charges or encumbrances or any defect or deficiency or alleged defect or deficiency in any of the foregoing, (ii) any provision of the Uniform Commercial Code or any applicable law or any First Priority Document or Second Priority Document or any other circumstance whatsoever and (iii) the fact that any such Liens in favor of any First Priority Secured Party securing any of the First Priority Obligations are (x) subordinated to any Lien securing any obligation of any Loan Party other than the Second Priority Obligations or (y) otherwise subordinated, voided, avoided, invalidated or lapsed.

(b) No First Priority Secured Party or Second Priority Secured Party shall object to or contest, or support any other Person in contesting or objecting to, in any proceeding (including without limitation, any Insolvency Proceeding), the validity, extent, perfection, priority or enforceability of any security interest in the Common Collateral granted to the other. Notwithstanding any failure by any First Priority Secured Party or Second Priority Secured Party to perfect its security interests in the Common Collateral or any avoidance, invalidation or subordination by any third party or court of competent jurisdiction of the security interests in the Common Collateral granted to the First Priority Secured Parties or the Second Priority Secured Parties, the priority and rights as between the First Priority Secured Parties and the Second Priority Secured Parties with respect to the Common Collateral shall be as set forth herein.

2.2 Nature of First Priority Obligations. The Second Priority Representative on behalf of itself and the other Second Priority Secured Parties acknowledges that a portion of the First Priority Obligations represents debt that is revolving in nature and that the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, and that the terms of the First Priority Obligations may be modified, extended or amended from time to time, and that the aggregate amount of the First Priority Obligations may be increased, replaced or refinanced, in each event, without notice to or consent by the Second Priority Secured Parties and without affecting the provisions hereof. The lien priorities provided in Section 2.1 shall not be altered or otherwise affected by any such amendment, modification, supplement, extension, repayment, reborrowing, increase, replacement, renewal, restatement or refinancing of either the First Priority Obligations or the Second Priority Obligations, or any portion thereof.

2.3 Agreements Regarding Actions to Perfect Liens.

(a) The Second Priority Representative on behalf of itself and the other Second Priority Secured Parties agrees that UCC-1 financing statements, patent, trademark or copyright filings or other filings or recordings filed or recorded by or on behalf of the Second Priority Representative shall be in form reasonably satisfactory to the First Priority Representative; provided that any such filings or recordings that are substantially identical to any corresponding filings or recordings filed or recorded by or on behalf of the First Priority Representative shall be deemed to be reasonably satisfactory to the First Priority Representative.

(b) The Second Priority Representative agrees on behalf of itself and the other Second Priority Secured Parties that all mortgages, deeds of trust, deeds and similar instruments (collectively, "mortgages") now or hereafter filed against real property in favor of or for the benefit

of the Second Priority Representative (i) shall be in form reasonably satisfactory to the First Priority Representative; provided that any such mortgages that are substantially identical to any corresponding mortgages filed or recorded by or on behalf of the First Priority Representative shall be deemed to be reasonably satisfactory to the First Priority Representative, and (ii) shall contain the following notation (or language to similar effect that is reasonably satisfactory to the First Priority Representative):

> "The lien created by this mortgage on the property described herein is junior and subordinate to the lien on such property created by any mortgage, deed of trust or similar instrument now or hereafter granted to JPMorgan Chase Bank, N.A., as Administrative Agent, and its successors and assigns, in such property, in accordance with the provisions of the Intercreditor Agreement dated as of October 12, 2023 among JPMorgan Chase Bank, N.A., as Administrative Agent, Wilmington Savings Fund Society, FSB, as Trustee and Collateral Agent, and the Loan Parties referred to therein, as amended from time to time."

(c) The First Priority Representative hereby acknowledges that, to the extent that it holds, or a third party holds on its behalf, physical possession of or "control" (as defined in the Uniform Commercial Code) over Common Collateral pursuant to the First Priority Security Documents, such possession or control is also for the benefit of the Second Priority Representative and the other Second Priority Secured Parties solely to the extent required to perfect their security interest in such Common Collateral. Nothing in the preceding sentence shall be construed to impose any duty on the First Priority Representative (or any third party acting on its behalf) with respect to such Common Collateral or provide the Second Priority Representative or any other Second Priority Secured Party with any rights with respect to such Common Collateral beyond those specified in this Agreement and the Second Priority Security Documents, provided that subsequent to the occurrence of the First Priority Obligations Payment Date, the First Priority Representative shall (i) deliver to the Second Priority Representative, at the Borrowers' sole cost and expense, the Common Collateral in its possession or control together with any necessary endorsements to the extent required by the Second Priority Documents or (ii) direct and deliver such Common Collateral as a court of competent jurisdiction otherwise directs, and provided, further, that the provisions of this Agreement are intended solely to govern the respective Lien priorities as between the First Priority Secured Parties and the Second Priority Secured Parties and shall not impose on the First Priority Secured Parties any obligations in respect of the disposition of any Common Collateral (or any proceeds thereof) that would conflict with prior perfected Liens or any claims thereon in favor of any other Person that is not a Secured Party.

2.4 No New Liens. So long as the First Priority Obligations Payment Date has not occurred, the First Priority Representative (on behalf of itself and the First Priority Secured Parties) and the Second Priority Representative (on behalf of itself and the Second Priority Secured Parties) agree that (subject to any Liens on non-working capital assets granted to secure indebtedness incurred in reliance on Section 6.01(w) of the Existing First Priority Agreement (or any analogous provision in any Additional First Priority Agreement or Second Priority Agreement in accordance with the Second Priority Security Documents), subject to intercreditor arrangements with respect to such indebtedness that are reasonably satisfactory to the First Priority Representative and the Second Priority Representative) (a) there shall be no Lien, and no Loan Party shall have any right to create any Lien, on any assets of any Loan Party securing any Second Priority Obligation if these same assets are not subject to, and do not become subject to, a Lien securing the First Priority Obligations, (b) there shall be no Lien, and no Loan Party shall have any right to create any Lien, on any assets of any Loan Party securing any First Priority Obligation if these same assets are not subject to, and do not become subject to, a Lien securing the Second Priority Obligations, (c) if any Second

Priority Secured Party shall acquire or hold any Lien on any assets of any Loan Party securing any Second Priority Obligation which assets are not also subject to the first-priority Lien of the First Priority Representative under the First Priority Documents, then the Second Priority Representative shall be deemed to hold and have held such Lien for the benefit of the First Priority Representative and the other First Priority Secured Parties and (d) if any First Priority Secured Party shall acquire or hold any Lien on any assets of any Loan Party securing any First Priority Obligation which assets are not also subject to the second-priority Lien of the Second Priority Representative under the Second Priority Documents, then the First Priority Representative shall be deemed to hold and have held such Lien for the benefit of the Second Priority Representative and the other Second Priority Secured Parties. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the First Priority Secured Parties, the Second Priority Representative and the other Second Priority Secured Parties, and the First Priority Representative and the other First Priority Secured Parties, each agree that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.4 shall be subject to Section 4.1.

2.5 No Payments of Second Priority Obligations Prior to the First Priority Obligations Payment Date. Notwithstanding anything to the contrary contained herein or in any Second Priority Document, other than as expressly permitted under the Existing First Priority Agreement (or any Replacement First Priority Agreement that has been incurred to extend, replace, refinance or refund in whole or in part the indebtedness and other obligations outstanding under the Existing First Priority Agreement, as applicable), each of the parties hereto hereby agrees that (a) the Borrowers shall not make cash interest payments in respect of the Second Priority Obligations prior to the First Priority Obligations Payment Date and must instead elect to PIK such interest and (b) no voluntary prepayments, mandatory prepayments, amortization or other payments of principal (other than any payment of principal upon scheduled maturity) shall be paid in respect of the Second Priority Obligations until after the occurrence of the First Priority Obligations Payment Date. Any payments made in contravention of this Section 2.5 shall be subject to the turnover provisions of the last sentence of Section 4.1.

SECTION 3. **Enforcement Rights.**

3.1 Exclusive Enforcement. Until the First Priority Obligations Payment Date has occurred, whether or not an Insolvency Proceeding has been commenced by or against any Loan Party, the First Priority Secured Parties shall have the exclusive right to take and continue any Enforcement Action with respect to the Common Collateral, without any consultation with or consent of any Second Priority Secured Party. Upon the occurrence and during the continuance of a default or an event of default under the First Priority Documents, the First Priority Representative and the other First Priority Secured Parties may take and continue any Enforcement Action with respect to the First Priority Obligations and the Common Collateral in such order and manner as they may determine in their sole discretion in accordance with applicable law. In each case of the foregoing, any proceeds received by any First Priority Representative in excess of those necessary to achieve the occurrence of the First Priority Obligations Payment Date shall be distributed in accordance with Section 4.1. Nothing herein shall limit the right or ability of the Second Priority Secured Parties to purchase (by credit bid or otherwise) all or any portion of the Common Collateral in connection with any enforcement of remedies by the First Priority Representative or any sale of the Common Collateral during an Insolvency Proceeding to the extent that, and so long as, the First Priority Secured Parties receive payment in full in cash of all First Priority Obligations after giving effect thereto.

3.2 Standstill and Waivers.

(a) The Second Priority Representative, on behalf of itself and the other Second Priority Secured Parties, agrees that, until the First Priority Obligations Payment Date has occurred:

(1) they will not take or cause to be taken any Enforcement Action;

(2) they will not take or cause to be taken any action, the purpose or effect of which is to make any Lien in respect of any Second Priority Obligation pari passu with or senior to, or to give any Second Priority Secured Party any preference or priority relative to, the Liens with respect to the First Priority Obligations or the First Priority Secured Parties with respect to any of the Common Collateral;

(3) they will not contest, oppose, object to, interfere with, hinder or delay, in any manner, whether by judicial proceedings (including without limitation the filing of an Insolvency Proceeding) or otherwise, any foreclosure, sale, lease, exchange, transfer or other disposition of the Common Collateral by any First Priority Secured Party or any other Enforcement Action taken (or any forbearance from taking any Enforcement Action) by or on behalf of any First Priority Secured Party;

(4) they have no right to (i) direct either the First Priority Representative or any other First Priority Secured Party to exercise any right, remedy or power with respect to the Common Collateral or pursuant to the First Priority Security Documents or (ii) consent or object to the exercise by the First Priority Representative or any other First Priority Secured Party of any right, remedy or power with respect to the Common Collateral or pursuant to the First Priority Security Documents or to the timing or manner in which any such right is exercised or not exercised (or, to the extent they may have any such right described in this clause (d), whether as a junior lien creditor or otherwise, they hereby irrevocably waive such right);

(5) they will not institute any suit or other proceeding or assert in any suit, Insolvency Proceeding or other proceeding any claim against any First Priority Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to, and no First Priority Secured Party shall be liable for, any action taken or omitted to be taken by any First Priority Secured Party with respect to the Common Collateral; provided, however, that the foregoing actions shall not include any actions permitted by or consistent with this Agreement;

(6) they will not make any judicial or nonjudicial claim or demand or commence any judicial or non-judicial proceedings against any Loan Party or any of its subsidiaries or affiliates under or with respect to any Second Priority Security Document seeking payment or damages from or other relief by way of specific performance, instructions or otherwise under or with respect to any Second Priority Security Document (other than filing a proof of claim or statement of interest) or exercise any right, remedy or power under or with respect to, or otherwise take any action to enforce, other than filing a proof of claim or statement of interest, any Second Priority Security Document;

(7) they will not commence judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of any Common Collateral, exercise any right, remedy or power with respect to, or otherwise take any action to enforce their interest in or realize upon, the Common Collateral or pursuant to the Second Priority Security Documents; and

(8) they will not seek, and hereby waive any right, to have the Common Collateral or any part thereof marshaled upon any foreclosure or other disposition of the Common Collateral;

provided that, notwithstanding the foregoing, the Second Priority Representative on behalf of the Second Priority Secured Parties may exercise its rights and remedies in respect of the Common Collateral under the Second Priority Security Documents or applicable law after the passage of a period of 180 days (the "Standstill Period") from the date of delivery of a notice in writing to the First Priority Representative of its intention to exercise such rights and remedies, which notice may only be delivered following the date on which a Second Priority Representative declared the existence of an "Event of Default" under and as defined in the Second Priority Agreement; provided, however, that, notwithstanding the foregoing, in no event shall any Second Priority Secured Party exercise or continue to exercise any such rights or remedies if, notwithstanding the expiration of the Standstill Period, (i) any First Priority Secured Party shall have commenced and be diligently pursuing the exercise of any of its rights and remedies with respect to all or any portion of the Common Collateral (prompt notice of such exercise to be given to the Second Priority Representative) or (ii) an Insolvency Proceeding in respect of any Loan Party shall have been commenced; and provided, further, that in any Insolvency Proceeding commenced by or against any Loan Party, the Second Priority Representative and the Second Priority Secured Parties may take any action expressly permitted by Section 5.

(b) Notwithstanding the foregoing, the Second Priority Representative or other Second Priority Secured Party (as applicable) may:

(1) take any action (not adverse to the priority status of the Liens on the Common Collateral securing the First Priority Obligations, or the rights of the First Priority Representative or any other First Priority Secured Party to exercise remedies in respect thereof) in order to create, perfect, preserve or protect its rights in, and perfection and priority of its Lien on, the Common Collateral;

(2) exercise its rights and remedies as unsecured creditors, to the extent provided in Section 3.3;

(3) file any necessary or appropriate responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of the Second Priority Secured Parties, including any claims secured by the Common Collateral, if any, in each case in accordance with the terms of this Agreement;

(4) join (but not exercise any control with respect to) any judicial foreclosure proceeding or other judicial lien enforcement proceeding with respect to the Common Collateral initiated by the First Priority Representative or any other First Priority Secured Party to the extent that any such action could not reasonably be expected, in any material respect, to restrain, hinder, limit, delay for any material period or otherwise interfere with the exercise of remedies by the First Priority Representative nor such other First Priority Secured Party (it being understood that neither the Second Priority Representative nor any other Second Priority Secured Party shall be entitled to receive any proceeds thereof unless otherwise expressly permitted herein);

(5) vote on any plan of reorganization, arrangement, compromise or liquidation, file any proof of claim, make other filings and make any arguments and motions that are, in each case, in accordance with the terms of this Agreement, with respect to the Second Priority Obligations and the Common Collateral; provided that no filing of any claim or vote, or pleading related to such claim or vote, to accept or reject a disclosure statement, plan of reorganization, arrangement, compromise or liquidation, or any other document, agreement or proposal similar to the foregoing by the Second Priority Representative or any other Second Priority Secured Party may be inconsistent with the provisions of this Agreement;

(6) exercise any of its rights or remedies with respect to the Common Collateral after the termination of the Standstill Period to the extent permitted by Section 3.2(a); and/or

(7) object to any proposed acceptance of the Common Collateral by the First Priority Representative or any other First Priority Secured Party pursuant to Section 9-620 of the Uniform Commercial Code.

3.3 Rights as Unsecured Creditor; Judgment Creditors. Both before and during an Insolvency Proceeding, any of the Second Priority Secured Parties may take any actions and exercise any and all rights that would be available to a holder of unsecured claims; provided that no such action is otherwise prohibited by the terms of this Agreement; provided, further, that in the event that any Second Priority Secured Party becomes a judgment lien creditor in respect of Common Collateral as a result of its enforcement of its rights as contemplated by this Section 3.3 or otherwise as an unsecured creditor, such judgment lien shall be subject to the terms of this Agreement for all purposes (including in relation to the First Priority Liens and the First Priority Obligations) to the same extent as all other Liens securing the Second Priority Obligations are subject to the terms of this Agreement.

3.4 Cooperation. Subject to Section 3.2(b), the Second Priority Representative, on behalf of itself and the other Second Priority Secured Parties, agrees that, unless and until the First Priority Obligations Payment Date, each of them shall take such actions as the First Priority Representative shall reasonably request in connection with the exercise by the First Priority Secured Parties of their rights in commencing any enforcement, collection, execution, levy or foreclosure action or proceeding with respect to any Lien held by it in the Common Collateral under the Second Priority Documents or otherwise in respect of the Second Priority Obligations.

3.5 No Additional Rights For the Loan Parties Hereunder. Except as provided in Section 3.6, if any First Priority Secured Party or Second Priority Secured Party shall enforce its rights or remedies in violation of the terms of this Agreement, no Loan Party shall be entitled to use such violation as a defense to any action by any First Priority Secured Party or Second Priority Secured Party, nor to assert such violation as a counterclaim or basis for set off or recoupment against any First Priority Secured Party or Second Priority Secured Party.

3.6 Actions Upon Breach.

(a) If any Second Priority Secured Party, contrary to this Agreement, commences or participates in any action or proceeding against any Loan Party or the Common Collateral, such Loan Party, with the prior written consent of the First Priority Secured Representative and solely in the name of the First Priority Secured Parties and not on its own behalf, may interpose as a defense or dilatory plea the making of this Agreement, and any First Priority Secured Party may intervene and interpose such defense or plea in its or their name.

(b) Should any Second Priority Secured Party, contrary to this Agreement, in any way take, attempt to or threaten to take any action with respect to the Common Collateral (including, without limitation, any attempt to realize upon or enforce any remedy with respect to this Agreement), or fail to take any action required by this Agreement, any First Priority Secured Party or the relevant Loan Party (solely in the name of the First Priority Secured Parties and not on its own behalf) may obtain relief against such Second Priority Secured Party by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by the Second Priority Representative on behalf of each Second Priority Secured Party that (i) the First Priority Secured Parties' damages from its actions may at that time be difficult to ascertain and may be irreparable, and (ii) each Second Priority Secured Party waives any defense that the First Priority Secured Parties cannot demonstrate damage and/or be made whole by the awarding of damages.

3.7 Option to Purchase.

(a) The First Priority Representative agrees that it will give the Second Priority Representative written notice (the "Enforcement Notice") within five business days after commencing any Enforcement Action with respect to Common Collateral (which notice shall be effective for all Enforcement Actions taken after the date of such notice so long as the First Priority Representative is diligently pursuing in good faith the exercise of its default or enforcement rights or remedies against, or diligently attempting in good faith to vacate any stay of enforcement rights of its senior Liens on a material portion of the Common Collateral, including, without limitation, all Enforcement Actions identified in such notice). Any Second Priority Secured Party shall have the option, by irrevocable written notice (the "Purchase Notice") delivered by the Second Priority Representative to the First Priority Representative no later than fifteen days after receipt by the Second Priority Representative of the Enforcement Notice, commencement of an Insolvency Proceeding, occurrence of a default in any payment of principal and/or interest under the First Priority Documents that has continued for five or more days or acceleration of the First Priority Obligations, to purchase all of the First Priority Obligations from the First Priority Secured Parties. If the Second Priority Representative so delivers the Purchase Notice, the First Priority Representative shall terminate any existing Enforcement Actions and shall not take any further Enforcement Actions, provided that the Purchase (as defined below) shall have been consummated on the date specified in the Purchase Notice in accordance with this Section 3.7.

(b) On the date specified by the Second Priority Representative in the Purchase Notice (which shall be a business day not less than five business days, nor more than ten business days, after receipt by the First Priority Representative of the Purchase Notice, the First Priority Secured Parties shall, subject to any required approval of any court or other governmental authority then in effect, sell to the Second Priority Secured Parties electing to purchase pursuant to Section 3.7(a) (the "Purchasing Parties"), and the Purchasing Parties shall purchase (the "Purchase") from the First Priority Secured Parties, the First Priority Obligations; provided that the First Priority Obligations purchased shall not include any rights of First Priority Secured Parties with respect to indemnification and other obligations of the Loan Parties under the First Priority Documents that are expressly stated to survive the termination of the First Priority Documents (the "Surviving Obligations").

(c) Without limiting the obligations of the Loan Parties under the First Priority Documents to the First Priority Secured Parties with respect to the Surviving Obligations (which shall not be transferred in connection with the Purchase), on the date of the Purchase, the Purchasing Parties shall (i) pay to the First Priority Secured Parties as the purchase price (the "Purchase Price") therefor the full amount of all First Priority Obligations then outstanding and unpaid (including (A) principal, interest, breakage costs, accrued and unpaid fees, attorneys' fees and expenses, (B) in the case of any Hedging Obligations, the amount that would be payable by the relevant Loan Party thereunder if it were to terminate such Hedging Obligations on the date of the Purchase or, if not terminated, an amount determined by the relevant First Priority Secured Party to be necessary to collateralize its credit risk arising out of such Hedging Obligations and (C) in the case of Cash Management Obligations, the amount that would be payable by the relevant Loan Party thereunder if it were to terminate such Cash Management Obligations on the date of the Purchase and/or an amount determined by the relevant First Priority Secured Party to be necessary to collateralize its credit risk arising out of such Cash Management Obligations), (ii) furnish cash collateral (the "Cash Collateral") to the First Priority Secured Parties in such amounts as the relevant First Priority Secured Parties determine is reasonably necessary to secure such First Priority Secured Parties in connection with any outstanding letters of credit (not to exceed 105% of the aggregate undrawn

face amount of such letters of credit), (iii) agree to reimburse the First Priority Secured Parties for any loss, cost, damage or expense (including attorneys' fees and expenses) in connection with any fees, costs or expenses related to any checks or other payments provisionally credited to the First Priority Obligations and/or as to which the First Priority Secured Parties have not yet received final payment in each case that are due and owing and have not otherwise been paid by the Loan Parties after demand thereof and (iv) agree, after written request from the First Priority Representative, to reimburse the First Priority Secured Parties in respect of indemnification obligations of the Loan Parties under the First Priority Documents as to matters or circumstances known to the Purchasing Parties at the time of the Purchase which could reasonably be expected to result in any loss, cost, damage or expense to any of the First Priority Secured Parties (other than with respect to any contingent indemnification obligations for which no claim has been asserted) in each case that are due and owing (but not yet payable) and have not otherwise been paid by the Loan Parties; provided that in no event shall any Purchasing Party have any liability for amounts reimbursable under this clause (iv) to the extent in excess of proceeds of Common Collateral received by the Purchasing Parties.

(d) The Purchase Price and Cash Collateral shall be remitted by wire transfer in immediately available funds to such account of the First Priority Representative as it shall designate to the Purchasing Parties. The First Priority Representative shall, promptly following its receipt thereof, distribute the amounts received by it in respect of the Purchase Price to the First Priority Secured Parties in accordance with the First Priority Agreement. Interest shall be calculated to but excluding the day on which the Purchase occurs if the amounts so paid by the Purchasing Parties to the account designated by the First Priority Representative are received in such account prior to 12:00 Noon, New York City time, and interest shall be calculated to and including such day if the amounts so paid by the Purchasing Parties to the account designated by the First Priority Representative are received in such account later than 12:00 Noon, New York City time.

(e) The Purchase shall be made without representation or warranty of any kind by the First Priority Secured Parties as to the First Priority Obligations, the Common Collateral or otherwise and without recourse to the First Priority Secured Parties, except that the First Priority Secured Parties shall severally and not jointly represent and warrant: (i) the amount of the First Priority Obligations being purchased, (ii) that the First Priority Secured Parties own the First Priority Obligations free and clear of any Liens or encumbrances (other than participation interests not prohibited by the First Priority Documents, in which case at the election of the Second Priority Secured Parties the Purchase Price may be appropriately adjusted so that the Second Priority Secured Parties do not pay amounts represented by participation interests to the extent that the Second Priority Secured Parties expressly assume the obligations under such participation interests) and (iii) that the First Priority Secured Parties have the right to assign the First Priority Obligations and the assignment is duly authorized.

SECTION 4. **Application Of Proceeds Of Common Collateral; Dispositions And Releases Of Common Collateral; Inspection and Insurance.**

4.1 Application of Proceeds; Turnover Provisions. So long as the First Priority Obligations Payment Date has not occurred, regardless of whether an Insolvency Proceeding has been commenced, the Common Collateral, amounts received on account of the Common Collateral and the proceeds of the Common Collateral, including, but not limited to, the proceeds, payments, distributions or collections, resulting from the sale, collection or other disposition of Common Collateral, in each case, in connection with the exercise of remedies or in an Insolvency Proceeding, shall be distributed as follows: first to the First Priority Representative for application to the First Priority Obligations in accordance with the terms

of the First Priority Documents, until the First Priority Obligations Payment Date has occurred and thereafter, to the Second Priority Representative for application in accordance with the Second Priority Documents. Until the occurrence of the First Priority Obligations Payment Date, the Common Collateral, amounts received on account of the Common Collateral and proceeds of the Common Collateral, that may be received by any Second Priority Secured Party in violation of this Agreement shall be segregated and held in trust and promptly paid over to the First Priority Representative, for the benefit of the First Priority Secured Parties, in the same form as received, with any necessary endorsements, and each Second Priority Secured Party hereby authorizes the First Priority Representative to make any such endorsements as agent for the Second Priority Representative (which authorization, being coupled with an interest, is irrevocable).

4.2 Releases of Second Priority Lien.

(a) Upon any release, sale or disposition of Common Collateral (x) permitted pursuant to the terms of the First Priority Documents and the Second Priority Documents that results in the release of the First Priority Lien on any Common Collateral or (y) pursuant to any Enforcement Action, the Second Priority Lien on such Common Collateral (excluding any portion of the proceeds of such Common Collateral remaining after the First Priority Obligations Payment Date occurs and other than in connection with a First Priority Obligations Payment Date) shall be automatically and unconditionally released with no further consent or action of any Person.

(b) The Second Priority Representative shall promptly execute and deliver such release documents and instruments and shall take such further actions as the First Priority Representative shall reasonably request to evidence any release of the Second Priority Lien described in paragraph (a). The Second Priority Representative hereby appoints the First Priority Representative and any officer or duly authorized person of the First Priority Representative, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney in the place and stead of the Second Priority Representative and in the name of the Second Priority Representative or in the First Priority Representative's own name, from time to time, in the First Priority Representative's sole discretion, for the purposes of carrying out the terms of Section 4.2(a), to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of Section 4.2(a), including, without limitation, any financing statements, endorsements, assignments, releases or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable).

4.3 Inspection Rights and Insurance.

(a) Any First Priority Secured Party and its representatives and invitees may at any time inspect, repossess, remove and otherwise deal with the Common Collateral, and the First Priority Representative may advertise and conduct public auctions or private sales of the Common Collateral, in each case, in connection with an Enforcement Action and without notice to, the involvement of or interference by any Second Priority Secured Party or liability to any Second Priority Secured Party.

(b) Until the First Priority Obligations Payment Date has occurred, the First Priority Representative will have the sole and exclusive right to (i) be named as additional insured and loss payee under any insurance policies maintained from time to time by any Loan Party (except that the Second Priority Representative shall have the right to be named as additional insured and loss payee so long as its second lien status is identified in a manner satisfactory to the First Priority Representative), (ii) adjust or settle any insurance policy or claim covering the Common Collateral

in the event of any loss thereunder and (iii) approve any award granted in any condemnation or similar proceeding affecting the Common Collateral.

SECTION 5. **Insolvency Proceedings.**

5.1 [Reserved.]

5.2 Financing Matters. If any Loan Party becomes subject to any Insolvency Proceeding, and if the First Priority Representative desires to consent (or not object) to the use of cash collateral under the Bankruptcy Code or to provide financing to any Loan Party under the Bankruptcy Code or to consent (or not object) to the provision of such financing to any Loan Party by any of the First Priority Secured Parties or a third party (any such financing, "DIP Financing"), then the Second Priority Representative agrees, on behalf of itself and the other Second Priority Secured Parties, that each Second Priority Secured Party (a) will be deemed to have consented to, will raise no objection to, nor support any other Person objecting to, the use of such cash collateral or to such DIP Financing, (b) will not request or accept adequate protection or any other relief in connection with the use of such cash collateral or such DIP Financing except as set forth in paragraph 5.4 below and (c) will subordinate (and will be deemed hereunder to have subordinated) the Second Priority Liens to (i) such DIP Financing on the same terms as the First Priority Liens are subordinated thereto (and such subordination will not alter in any manner the terms of this Agreement), (ii) any adequate protection provided to the First Priority Secured Parties and (iii) any "carve-out" agreed to by the First Priority Representative or the other First Priority Secured Parties.

5.3 Relief From the Automatic Stay. Until the First Priority Obligations Payment Date has occurred, the Second Priority Representative agrees, on behalf of itself and the other Second Priority Secured Parties, that none of them will seek relief from the automatic stay or from any other stay in any Insolvency Proceeding or take any action in derogation thereof, in each case in respect of any Common Collateral, without the prior written consent of the First Priority Representative.

5.4 Adequate Protection. The Second Priority Representative, on behalf of itself and the other Second Priority Secured Parties, agrees that none of them shall object, contest, or support any other Person objecting to or contesting, (a) any request by the First Priority Representative or the other First Priority Secured Parties for adequate protection or any adequate protection provided to the First Priority Representative or the other First Priority Secured Parties, (b) any objection by the First Priority Representative or any other First Priority Secured Parties to any motion, relief, action or proceeding based on a claim of a lack of adequate protection or (c) the payment of interest, fees, expenses or other amounts to the First Priority Representative or any other First Priority Secured Party under Section 506(b) or 506(c) of the Bankruptcy Code or otherwise; provided that, if the First Priority Secured Parties (or any subset thereof) receive payment of any of the amounts described in this clause (c), the Second Priority Representative, on behalf of itself and any of the Second Priority Secured Parties, may request adequate protection in the form of interest, fees, expenses or such other amounts, but all parties' rights to object thereto are preserved. Notwithstanding anything contained in this Section and in Section 5.2(b) (but subject to all other provisions of this Agreement, including, without limitation, Sections 5.2(a) and 5.3), in any Insolvency Proceeding, (i) if the First Priority Secured Parties (or any subset thereof) are granted adequate protection consisting of additional collateral (with replacement liens on Common Collateral or such additional collateral) and superpriority claims in connection with any DIP Financing or use of cash collateral, then, in connection with any such DIP Financing or use of cash collateral, the Second Priority Representative, on behalf of itself and any of the Second Priority Secured Parties, may seek or accept adequate protection consisting solely of (x) a replacement Lien on the same Common Collateral or additional collateral, subordinated to the Liens securing the First Priority Obligations (including adequate protection obligations) and such DIP Financing on the same basis as the other Liens securing the Second

Priority Obligations are so subordinated to the First Priority Obligations under this Agreement and (y) superpriority claims junior in all respects to the superpriority claims granted to the First Priority Secured Parties and (ii) in the event the Second Priority Representative, on behalf of itself and the Second Priority Secured Parties, seeks or accepts adequate protection in accordance with clause (i) above and such adequate protection is granted in the form of additional collateral, then the Second Priority Representative, on behalf of itself or any of the Second Priority Secured Parties, agrees that the First Priority Representative shall also be granted a senior Lien on such additional collateral as adequate protection on account of the First Priority Obligations and any such DIP Financing and that any Lien on such additional collateral securing the Second Priority Obligations shall be subordinated to the Liens on such collateral securing the First Priority Obligations (including adequate protection obligations) and any such DIP Financing (and all obligations relating thereto) and any other Liens granted to the First Priority Secured Parties as adequate protection, with such subordination to be on the same terms that the other Liens securing the Second Priority Obligations are subordinated to such First Priority Obligations under this Agreement. The Second Priority Representative, on behalf of itself and the other Second Priority Secured Parties, agrees that except as expressly set forth in this Section none of them shall seek or accept adequate protection without the prior written consent of the First Priority Representative.

5.5 Avoidance Issues. If any First Priority Secured Party is required in any Insolvency Proceeding or otherwise to disgorge, turn over or otherwise pay to the estate of any Loan Party, because such amount was avoided or ordered to be paid or disgorged for any reason, including without limitation because it was found to be a fraudulent or preferential transfer, any amount (a "Recovery"), whether received as proceeds of security, enforcement of any right of set-off or otherwise, then the First Priority Obligations shall be reinstated to the extent of such Recovery and deemed to be outstanding as if such payment had not occurred and the First Priority Obligations Payment Date shall be deemed not to have occurred. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto. The Second Priority Secured Parties agree that none of them shall be entitled to benefit from any avoidance action affecting or otherwise relating to any distribution or allocation made in accordance with this Agreement, whether by preference or otherwise, it being understood and agreed that the benefit of such avoidance action otherwise allocable to them shall instead be allocated and turned over for application in accordance with the priorities set forth in this Agreement.

5.6 Asset Dispositions in an Insolvency Proceeding. Neither the Second Priority Representative nor any other Second Priority Secured Party shall, in an Insolvency Proceeding or otherwise, oppose any sale or disposition of any assets of any Loan Party that is supported by the First Priority Secured Parties, and the Second Priority Representative and each other Second Priority Secured Party will be deemed to have consented under Section 363 of the Bankruptcy Code (and otherwise) to any sale supported by the First Priority Secured Parties and to have released their Liens on such assets in connection therewith; provided that the Liens securing the Second Priority Obligations will attach to the net proceeds of any such sale with the same relative priority as such Liens had on the assets so sold.

5.7 Separate Grants of Security and Separate Classification. The Second Priority Representative on behalf of each Second Priority Secured Party acknowledges and agrees that (a) the grants of Liens pursuant to the First Priority Security Documents and the Second Priority Security Documents constitute two separate and distinct grants of Liens and (b) because of, among other things, their differing rights in the Common Collateral, the Second Priority Obligations are fundamentally different from the First Priority Obligations and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the First Priority Secured Parties and Second Priority

Secured Parties in respect of the Common Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the Second Priority Secured Parties hereby acknowledge and agree that all distributions shall be made as if there were separate classes of senior and junior secured claims against the Loan Parties in respect of the Common Collateral, with the effect being that, to the extent that the aggregate value of the Common Collateral is sufficient (for this purpose ignoring all claims held by the Second Priority Secured Parties), the First Priority Secured Parties shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of Post-Petition Interest before any distribution is made in respect of the claims held by the Second Priority Secured Parties. The Second Priority Representative on behalf of each Second Priority Secured Party hereby acknowledges and agrees to turn over to the First Priority Secured Parties amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of the preceding sentence, even if such turnover has the effect of reducing the claim or recovery of the Second Priority Secured Parties.

5.8 No Waivers of Rights of First Priority Secured Parties. Nothing contained herein shall prohibit or in any way limit the First Priority Representative or any other First Priority Secured Party from objecting in any Insolvency Proceeding or otherwise to any action taken by any Second Priority Secured Party, including the seeking by any Second Priority Secured Party of adequate protection (except as provided in Section 5.4) or the asserting by any Second Priority Secured Party of any of its rights and remedies under the Second Priority Documents or otherwise.

5.9 Plans of Reorganization. No Second Priority Secured Party shall support or vote in favor of any plan of reorganization (and each shall be deemed to have voted to reject any plan of reorganization) unless such plan (a) pays off, in cash in full, all First Priority Obligations (or distributions thereunder are otherwise consistent in all respects with this Agreement) or (b) is accepted by the class of holders of First Priority Obligations voting thereon in accordance with Section 1126(c) of the Bankruptcy Code.

5.10 [Reserved].

5.11 Effectiveness in Insolvency Proceedings. This Agreement, which the parties hereto expressly acknowledge is a "subordination agreement" under Section 510(a) of the Bankruptcy Code, shall be effective before, during and after the commencement of an Insolvency Proceeding.

SECTION 6. **Second Priority Documents and First Priority Documents.**

(a) Each Loan Party and the Second Priority Representative, on behalf of itself and the Second Priority Secured Parties, agrees that it shall not at any time execute or deliver any amendment or other modification to any of the Second Priority Documents that would (i) be in violation of this Agreement or (ii) without the consent of the First Priority Representative, cause the terms and conditions of the Second Priority Documents to be materially more restrictive than such terms and conditions without giving effect to such amendment or modification.

(b) Each Loan Party and the First Priority Representative, on behalf of itself and the First Priority Secured Parties, agrees that it shall not at any time execute or deliver any amendment or other modification to any of the First Priority Documents in violation of this Agreement.

(c) In the event the First Priority Representative enters into any amendment, waiver or consent in respect of any of the First Priority Security Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any First Priority Security Document or changing in any manner the rights of any parties thereunder, then

such amendment, waiver or consent shall apply automatically to any comparable provision of the Comparable Second Priority Security Document without the consent of or action by any Second Priority Secured Party (with all such amendments, waivers and modifications subject to the terms hereof); provided that (other than with respect to amendments, modifications or waivers that secure additional extensions of credit and add additional secured creditors and do not violate the express provisions of the Second Priority Agreements), (i) no such amendment, waiver or consent shall have the effect of removing assets subject to the Lien of any Second Priority Security Document, except to the extent that a release of such Lien is permitted by Section 4.2(a), (ii) any such amendment, waiver or consent that materially and adversely affects the rights of the Second Priority Secured Parties and does not affect the First Priority Secured Parties in a like or similar manner shall not apply to the Second Priority Security Documents without the consent of the Second Priority Representative and (iii) notice of such amendment, waiver or consent shall be given to the Second Priority Representative no later than 30 days after its effectiveness, provided that the failure to give such notice shall not affect the effectiveness and validity thereof.

SECTION 7. **Reliance; Waivers; etc.**

7.1 Reliance. The First Priority Documents are deemed to have been executed and delivered, and all extensions of credit thereunder are deemed to have been made or incurred, in reliance upon this Agreement. The Second Priority Representative, on behalf of itself and the Second Priority Secured Parties, expressly waives all notice of the acceptance of and reliance on this Agreement by the First Priority Secured Parties. The Second Priority Documents are deemed to have been executed and delivered and all extensions of credit thereunder are deemed to have been made or incurred, in reliance upon this Agreement. The First Priority Representative expressly waives all notices of the acceptance of and reliance by the Second Priority Representative and the Second Priority Secured Parties.

7.2 No Warranties or Liability. The Second Priority Representative and the First Priority Representative acknowledge and agree that neither has made any representation or warranty with respect to the execution, validity, legality, completeness, collectability or enforceability of any other First Priority Document or any Second Priority Document. Except as otherwise provided in this Agreement, the Second Priority Representative and the First Priority Representative will be entitled to manage and supervise their respective extensions of credit to any Loan Party in accordance with law and their usual practices, modified from time to time as they deem appropriate.

7.3 No Waivers. No right or benefit of any party hereunder shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of such party or any other party hereto or by any noncompliance by any Loan Party with the terms and conditions of any of the First Priority Documents or the Second Priority Documents.

SECTION 8. **Obligations Unconditional.**

8.1 First Priority Obligations Unconditional. All rights and interests of the First Priority Secured Parties hereunder, and all agreements and obligations of the Second Priority Secured Parties (and, to the extent applicable, the Loan Parties) hereunder, shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any First Priority Document;

(b) any change in the time, place or manner of payment of, or in any other term of, all or any portion of the First Priority Obligations, or any amendment, waiver or other modification,

whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any First Priority Document;

(c) prior to the First Priority Obligations Payment Date, any exchange, release, voiding, avoidance or non-perfection of any security interest in any Common Collateral or any other collateral, or any release, amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of all or any portion of the First Priority Obligations or any guarantee or guaranty thereof; or

(d) any other circumstances that otherwise might constitute a defense available to, or a discharge of, any Loan Party in respect of the First Priority Obligations, or of any of the Second Priority Representative, or any Loan Party, to the extent applicable, in respect of this Agreement.

8.2 Second Priority Obligations Unconditional. All rights and interests of the Second Priority Secured Parties hereunder, and all agreements and obligations of the First Priority Secured Parties (and, to the extent applicable, the Loan Parties) hereunder, shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Second Priority Document;

(b) any change in the time, place or manner of payment of, or in any other term of, all or any portion of the Second Priority Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any Second Priority Document;

(c) any exchange, release, voiding, avoidance or non-perfection of any security interest in any Common Collateral or any other collateral, or any release, amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of all or any portion of the Second Priority Obligations or any guarantee or guaranty thereof; or

(d) any other circumstances that otherwise might constitute a defense available to, or a discharge of, any Loan Party in respect of the Second Priority Obligations or of the First Priority Representative or any Loan Party, in either case, to the extent applicable, in respect of this Agreement.

SECTION 9. **Miscellaneous.**

9.1 Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of any First Priority Document or any Second Priority Document, the provisions of this Agreement shall govern.

9.2 Continuing Nature of Provisions. This Agreement shall continue to be effective, and shall not be revocable by any party hereto, until the First Priority Obligation Payment Date shall have occurred. This is a continuing agreement and the First Priority Secured Parties and the Second Priority Secured Parties may continue, at any time and without notice to the other parties hereto, to extend credit and other financial accommodations, lend monies and provide indebtedness to, or for the benefit of, the Borrowers or any other Loan Party on the faith hereof.

9.3 Amendments; Waivers.

(a) No amendment or modification of any of the provisions of this Agreement shall be effective unless the same shall be in writing and signed by the First Priority Representative and the Second Priority Representative, and, in the case of amendments or modifications of Sections 3.5, 3.6, 9.3, 9.5 or 9.6 or any other provision that directly affect the rights or duties of any Loan Party, such Loan Party.

(b) It is understood that the First Priority Representative and the Second Priority Representative, without the consent of any other First Priority Secured Party or Second Priority Secured Party, may in their discretion determine that a supplemental agreement (which make take the form of an amendment and restatement of this Agreement) is necessary or appropriate to facilitate having additional indebtedness or other obligations ("Additional Debt") of any of the Loan Parties become First Priority Obligations or Second Priority Obligations, as the case may be, under this Agreement, which supplemental agreement shall specify whether such Additional Debt constitutes First Priority Obligations or Second Priority Obligations, provided that such Additional Debt is permitted to be incurred by the First Priority Agreement and Second Priority Agreement then extant, and is permitted by said Agreements to be subject to the provisions of this Agreement as First Priority Obligations or Second Priority Obligations, as applicable.

9.4 Information Concerning Financial Condition of the Borrowers and the other Loan Parties. Each of the Second Priority Representative and the First Priority Representative hereby assume responsibility for keeping itself informed of the financial condition of the Borrowers and each of the other Loan Parties and all other circumstances bearing upon the risk of nonpayment of the First Priority Obligations or the Second Priority Obligations. The Second Priority Representative and the First Priority Representative hereby agree that no party shall have any duty to advise any other party of information known to it regarding such condition or any such circumstances. In the event the Second Priority Representative or the First Priority Representative, in its sole discretion, undertakes at any time or from time to time to provide any information to any other party to this Agreement, it shall be under no obligation (a) to provide any such information to such other party or any other party on any subsequent occasion, (b) to undertake any investigation not a part of its regular business routine, or (c) to disclose any other information.

9.5 Governing Law. This Agreement shall be construed in accordance with and governed by the law of the State of New York, except as otherwise required by mandatory provisions of law and except to the extent that remedies provided by the laws of any jurisdiction other than the State of New York are governed by the laws of such jurisdiction.

9.6 Submission to Jurisdiction.

(a) Each First Priority Secured Party, each Second Priority Secured Party and each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court 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, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each such party hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each such party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any First Priority

Secured Party or Second Priority Secured Party may otherwise have to bring any action or proceeding against any Loan Party or its properties in the courts of any jurisdiction.

(b) Each First Priority Secured Party, each Second Priority Secured Party and each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so (i) any objection it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this Section and (ii) the defense of an inconvenient forum to the maintenance of such action or proceeding.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.7. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

9.7 Notices. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied (or other electronic transmission) or sent by overnight express courier service or United States mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy (or other electronic transmission) or five days after deposit in the United States mail (certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto (until notice of a change thereof is delivered as provided in this Section) shall be as set forth below each party's name on Schedule I attached to this Agreement, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

9.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and each of the First Priority Secured Parties and Second Priority Secured Parties and their respective successors and assigns, and nothing herein is intended, or shall be construed to give, any other Person any right, remedy or claim under, to or in respect of this Agreement or any Common Collateral.

9.9 Headings. Section headings used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.10 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, (a) the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the lien priorities, application or proceeds any other priorities set forth in this Agreement shall not be affected or impaired thereby. The invalidity of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.11 Other Remedies. For avoidance of doubt, it is understood that nothing in this Agreement shall prevent any Second Priority Secured Party from exercising any available remedy to accelerate the maturity of any indebtedness or other obligations owing under the Second Priority Agreement or to demand payment under any guarantee in respect thereof.

9.12 Counterparts; Integration; Effectiveness; Electronic Execution. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document, amendment, approval,

consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement or such Ancillary Document, as applicable. This Agreement shall become effective when it shall have been executed by each party hereto. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the First Priority Representative to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the First Priority Representative has agreed to accept any Electronic Signature, the First Priority Representative shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Second Priority Representative or any Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (b) upon the request of the First Priority Representative, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Second Priority Representative and each Loan Party hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among any of the parties hereto, Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (ii) the First Priority Representative may, at its option, create one or more copies of this Agreement and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of its business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (iii) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement and/or such Ancillary Document based solely on the lack of paper original copies of this Agreement and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (iv) waives any claim against the First Priority Representative or any Related Party of the First Priority Representative for any losses, claims (including intraparty claims), demands, damages or liabilities of any kind arising solely from the First Priority Representative's reliance on or use of Electronic Signatures and/or transmission by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any such liabilities arising as a result of the failure of the Second Priority Representative or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

9.13 **WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.**

9.14 Loan Document; Note Document. This Agreement is (a) a "Loan Document" (or any similar term) as defined in the Existing First Priority Agreement and (b) a "Note Document" (or any similar term) as defined in the Existing Second Priority Agreement.

9.15 Additional Loan Parties. Each Person that becomes a Loan Party after the date hereof shall become a party to this Agreement upon execution and delivery by such Person of a Joinder Agreement in the form of Exhibit E to the Existing First Priority Agreement.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

JPMORGAN CHASE BANK, N.A., as First Priority Representative for and on behalf of the First Priority Secured Parties

By: /s/ Rohan Bhatia
Name: Rohan Bhatia
Title: Vice President

Address for Notices: 131 S Dearborn St, Floor 04 Chicago, IL, 60603-5506

Attention: Loan and Agency Servicing
Telecopy No.: (646) 534-2288

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Second Priority Representative for and on behalf of the Second Priority Secured Parties

By: /s/ Anita Woolery
Name: Anita Woolery
Title: Vice President

PARTY CITY HOLDCO INC.

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Interim Chief Financial Officer

PARTY CITY CORPORATION

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Vice President, Treasurer

PC INTERMEDIATE HOLDINGS, INC.

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Chief Financial Officer and Assistant Secretary

PARTY CITY HOLDINGS INC., as Parent Borrower

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Interim Chief Financial Officer

AMSCAN INC.

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Vice President, Treasurer

AM-SOURCE, LLC

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Vice President, Treasurer

TRISAR, INC.

By: /s/ Jeremy Aguilar
Name: Jeremy Aguilar
Title: Vice President, Treasurer

if to any Loan Party, to the Ultimate Parent at:

Party City Holdings Inc.
100 Tice Boulevard
Woodcliff Lake, NJ 07677
Attn: Jeremy Aguilar,
Interim Chief Financial Officer
Email:

with a copy to:

Party City Holdings Inc.
100 Tice Boulevard
Woodcliff Lake, NJ 07677
Attn: Ian Heller,
Senior Vice President and General Counsel
Email:

if to the First Priority Representative, at:

JPMorgan Chase Bank, N.A.
131 S Dearborn St, Floor 04
Chicago, IL, 60603-5506
Attention: Loan and Agency Servicing
Email:

With a Copy to:

JPMorgan Chase Bank, N.A.
383 Madison Ave, Floor 23
New York, NY, 10179-0001
Attention: Bonnie David, Executive Director
Tel.: (212) 449-2509
Facsimile (646) 534-2288
No:
Email:

if to the Second Priority Representative, at:

Wilmington Savings Fund Society, FSB,
500 Delaware Avenue, 11th Floor
Wilmington, Delaware 19801
Attention: Global Capital Markets, Pat Healy
Fax No.: (302) 571-7081
Email:

EXHIBIT 10.3

Execution Version

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (including all exhibits hereto and as may be amended, supplemented or amended and restated from time to time in accordance with the terms hereof, this "*Agreement*") is made and entered into as of October 12, 2023, by and among Party City Holdco Inc., a Delaware corporation (the "*Company*"), and the other parties signatory hereto and any additional parties identified on the signature pages of any joinder agreement executed and delivered pursuant hereto.

WHEREAS, the Company and certain affiliated debtors filed the Fourth Amended Joint Plan of Reorganization of Party City Holdco, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code on August 31, 2-23, which was confirmed by the United States Bankruptcy Court for the Southern District of Texas on September 6, 2023 (as may be amended, supplemented, or otherwise modified from time to time, including all exhibits, schedules, supplements, appendices, annexes, and attachments thereto, the "*Plan*"); and

WHEREAS, the Plan provides that the Company may enter into registration rights agreements; and

WHEREAS, the Company and the Holders (as defined below) are entering into this Agreement in furtherance of the aforesaid provisions of the Plan.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each of the Holders agree as follows:

1. **Definitions.** Capitalized terms used and not otherwise defined herein that are defined in the Plan have the meanings given such terms in the Plan. As used in this Agreement, the following terms shall have the following meanings:

"*Advice*" has the meaning set forth in Section 16(c).

"*Affiliate*" means, with respect to any Person, or any other Person directly or indirectly controlling, controlled by, or under common control with, such Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made (including any Related Funds of such Person). For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person means the possession, directly or indirectly (including through one or more intermediaries), of the power or authority to direct or cause the direction of management of such Person, whether through the ownership of voting securities, by contract or otherwise.

"*Agreement*" has the meaning set forth in the Recitals.

"*Alternative IPO Entity*" has the meaning set forth in Section 2(i).

"*Automatic Shelf Registration Statement*" means an "automatic shelf registration statement" as defined in Rule 405 promulgated under the Securities Act, as such definition may be amended from time to time.

"*Bankruptcy Code*" means Title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as may be amended from time to time.

"*beneficially own*" (and related terms such as "beneficial ownership" and "beneficial owner") shall have the meaning given to such term in Rule 13d-3 under the Exchange Act, and any Person's beneficial ownership of securities shall be calculated in accordance with the provisions of such Rule.

"*Board*" means the Board of Directors of the Company or any authorized committee thereof.

"*Bought Deal*" has the meaning set forth in Section 7(a).

"*Business Day*" means any day, other than a Saturday or Sunday or a day on which commercial banks in New York City are authorized or required by law to be closed.

"*Commission*" means the Securities and Exchange Commission.

"*Company*" has the meaning set forth in the Preamble and includes the Company's successors by merger, acquisition, reorganization or otherwise.

"*Counsel to the Holders*" means (i) with respect to any Demand Registration, the one law firm selected by the Holders holding a majority of the Registrable Securities initially requesting such Demand Registration and (ii) with respect to any Underwritten Takedown or Piggyback Offering, the one law firm selected by the Majority Holders.

"*Demand Registration*" has the meaning set forth in Section 4(a).

"*Demand Registration Request*" has the meaning set forth in Section 4(a).

"*Effective Date*" means the date that a Registration Statement filed pursuant to this Agreement is first declared effective by the Commission.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"*Form S-1*" means Form S-1 under the Securities Act, or any other form hereafter adopted by the Commission for the general registration of securities under the Securities Act.

"*Form S-3*" means Form S-3 under the Securities Act, or any other form hereafter adopted by the Commission having substantially the same usage as Form S-3.

"*Form S-4*" means Form S-4 under the Securities Act, or any other form hereafter adopted by the Commission having substantially the same usage as Form S-4.

"*Form S-8*" means Form S-8 under the Securities Act, or any other form hereafter adopted by the Commission having substantially the same usage as Form S-8.

"*FINRA*" has the meaning set forth in Section 9.

"*Grace Period*" has the meaning set forth in Section 6(a)(B).

"*Holder*" or "*Holders*" means any holder of Registrable Securities that is also a party signatory to this Agreement, other than the Company, and their respective assignees and/or transferees permitted hereunder. A Person shall cease to be a Holder hereunder at such time as it ceases to hold any Registrable Securities.

"*Indemnified Party*" has the meaning set forth in Section 11(c).

"*Indemnifying Party*" has the meaning set forth in Section 11(c).

"*Initial Public Offering*" means (i) an initial public offering of the Reorganized PCHI Common Shares or any other equity interest, and/or one or more public offerings of common shares or other equity of any successor to, or Affiliate of, the Company or any other Alternative IPO Entity (such equity interests, together with any equity interests referenced in clause (iii) below, "*Successor Equity*") with an aggregate gross offering price (before deducting any applicable discounts and commission) of at least $100 million, in the aggregate for all such offerings, (ii) an offering which is an initial public offering of the Reorganized PCHI Common Shares or Successor Equity pursuant to an effective Registration Statement filed under the Securities Act that results in such Reorganized PCHI Common Shares or Successor Equity being listed on the New York Stock Exchange or the Nasdaq Stock Market LLC (which excludes, in the case of clause (i) and (ii), a registration of Reorganized PCHI Common Shares or Successor Equity (A) pursuant to a registration statement on Form S-8 (or other registration solely relating to an offering or sale to employees or directors of the Company pursuant to any employee equity plan or other employee benefit arrangement), (B) pursuant to a registration statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto), or (C) in connection with any dividend reinvestment or similar plan) or (iii) the closing of a business combination (in the form of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination) with or into a special purpose acquisition company or "blank-check" company (or a subsidiary thereof) (collectively, a "*SPAC*") after which the Reorganized PCHI Common Shares, the common equity securities of the SPAC or a subsidiary thereof, or any other Successor Equity are listed on the New York Stock Exchange or the Nasdaq Stock Market LLC.

"*Initial Shelf Expiration Date*" has the meaning set forth in Section 2(f).

"*Initial Shelf Registration Statement*" has the meaning set forth in Section 2(a).

"*IPO Lockup Period*" has the meaning set forth in Section 10(a).

"*Lockup Period*" has the meaning set forth in Section 10(a).

"*Losses*" has the meaning set forth in Section 11(a).

"*Majority Holders*" means, with respect to any Underwritten Offering, the Holders holding a majority of the Registrable Securities to be included in such Underwritten Offering held by all Holders that have made the request requiring the Company to conduct such Underwritten Offering (but not including any Holders that have exercised "piggyback" rights hereunder to be included in such Underwritten Offering).

"*Opt-Out Notice*" has the meaning set forth in Section 7(e).

"*Other Holder*" has the meaning set forth in Section 7(b).

"*Participating Holder*" has the meaning set forth in Section 2(j).

"*Person*" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"*Piggyback Notice*" has the meaning set forth in Section 7(a).

"*Piggyback Offering*" has the meaning set forth in Section 7(a).

"*Plan*" has the meaning set forth in the Recitals.

"*Plan Effective Date*" shall mean the date on which the Plan becomes effective.

"*Proceeding*" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"*Prospectus*" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"*Registrable Securities*" means, collectively, (a) as of the Plan Effective Date, all Reorganized PCHI Common Shares issued to any Holder or to any Affiliate or Related Fund of any Holder, either directly or pursuant to a transfer or assignment and any additional Reorganized PCHI Common Shares acquired by any Holder, Affiliate or

Related Fund of any Holder, including in connection with open market or other purchases or acquisitions, after the Plan Effective Date, (b) any additional Reorganized PCHI Common Shares paid, issued or distributed to any Holder or to any Affiliate or Related Fund of any Holder in respect of any such securities by way of a stock dividend, stock split or distribution, or in connection with a combination of securities, and any security into which such Reorganized PCHI Common Shares shall have been converted or exchanged in connection with a recapitalization, reorganization, reclassification, merger, consolidation, bonus issue, exchange, distribution, other reorganization, charter amendment or otherwise and (c) any options, warrants or other rights to acquire, and any securities received as a dividend or distribution in respect of, any of the securities described in clauses (a) and (b) above, in each case, beneficially owned by any Holder; *provided*, *however*, that as to any Registrable Securities, such securities shall cease to constitute Registrable Securities upon the earliest to occur of: (i) the date on which such securities are sold or disposed of pursuant to an effective Registration Statement, (ii) the date on which such securities are disposed of pursuant to Rule 144 (or any similar provision then in effect) promulgated under the Securities Act, (iii) the date on which such securities shall have been otherwise transferred and are represented by certificates or book entries not bearing a legend restricting transfer, (iv) with respect to Holders beneficially holding, together with their Related Funds and Affiliates, five percent (5.0%) or less of the outstanding Reorganized PCHI Common Shares, the date on which such securities can be sold pursuant to Rule 144 (or any similar provision then in effect) under the Securities Act without limitation thereunder on volume or manner of sale and without the need for current public information required by Rule 144(c)(1) as set forth in a written opinion to such effect, addressed, delivered and reasonably acceptable to the applicable transfer agent, or (v) the date on which such securities cease to be outstanding; *provided further*, *however*, that, except as described above, Registrable Securities shall not otherwise cease to constitute Registrable Securities due solely to the fact that such securities may be sold without restriction by the Commission.

"*Registration Statement*" means any one or more registration statements of the Company filed under the Securities Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement (including, without limitation, any Shelf Registration Statement), amendments and supplements to such registration statements, including post-effective amendments, all exhibits and documents incorporated by reference or deemed to be incorporated by reference in such registration statements.

"*Related Fund*" means, with respect to any Person, any fund, account or investment vehicle that is controlled, advised, sub-advised, managed or co-managed by such Person, by any Affiliate of such Person, or, if applicable, such Person's investment manager.

"*Related Party*" has the meaning set forth in Section 16(e).

"*Reorganized PCHI Common Shares*" means the equity securities of the Company.

"*Rule 144*" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

"*Rule 144A*" means Rule 144A promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

"*Rule 158*" means Rule 158 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

"*Rule 415*" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

"*Rule 424*" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

"*Securities Act*" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"*Selling Stockholder Questionnaire*" has the meaning set forth in Section 2(j).

"*Shelf Registration Statement*" means a Registration Statement filed with the Commission in accordance with the Securities Act for the offer and sale of Registrable Securities by Holders on a continuous or delayed basis pursuant to Rule 415.

"*SPAC*" has the meaning set forth in the definition of "Initial Public Offering."

"*Successor Equity*" has the meaning set forth in the definition of "Initial Public Offering."

"*Supermajority Holders*" means the Holders holding at least $66^{2/3}\%$ of all Registrable Securities at such time.

"*Trading Day*" means a day during which trading in the Reorganized PCHI Common Shares occurs in the Trading Market, or if the Reorganized PCHI Common Shares are not listed on a Trading Market, a Business Day.

"*Trading Market*" means whichever of the New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital

Market, or the OTC Markets Group marketplace on which the Reorganized PCHI Common Shares are listed or quoted for trading on the date in question.

"*Transfer*" has the meaning set forth in Section 13.

"*Underwritten Offering*" means an offering of Registrable Securities under a Registration Statement in which the Registrable Securities are sold to an underwriter for reoffering to the public.

"*Underwritten Offering Lockup Period*" has the meaning set forth in Section 10(a).

"*Underwritten Takedown*" has the meaning set forth in Section 2(h).

2. **Initial Shelf Registration.**

(a) Following the completion of an Initial Public Offering, the Company shall prepare a Shelf Registration Statement (as may be amended from time to time, the "*Initial Shelf Registration Statement*"), and shall include in the Initial Shelf Registration Statement the Registrable Securities of each Holder who shall request inclusion therein pursuant to Section 2(b) and Section 2(j). Promptly, and no later than the date that is the later of (i) 30 days after the completion of an Initial Public Offering and (ii) the date of expiration of any lockup agreement with the underwriters in such Initial Public Offering, the Company shall file the Initial Shelf Registration Statement with the Commission, *provided, however*, that the Company shall not be required to file or cause to be declared effective the Initial Shelf Registration Statement unless Holders request, in accordance with Section 2(j), the inclusion in the Initial Shelf Registration Statement of Registrable Securities constituting at least twenty-five percent (25%) of all Registrable Securities, and such Holders otherwise timely comply with the requirements of this Agreement with respect to the inclusion of such Registrable Securities in the Initial Shelf Registration Statement.

(b) The Company shall include in the Initial Shelf Registration Statement all Registrable Securities whose inclusion has been timely requested pursuant to Section 2(j); *provided, however*, that with respect to any Registration Statement to be filed in connection with this Agreement, the Company shall not be required to include an amount of Registrable Securities in excess of the amount as may be permitted to be included in such Registration Statement under the rules and regulations of the Commission and the applicable interpretations thereof by the staff of the Commission, in which case the number of Registrable Securities to be registered on such Registration Statement will be reduced on a pro rata basis based on the total number of Registrable Securities timely requested by Holders to be included.

(c) Upon the request of any Holder whose Registrable Securities are not included in the Initial Shelf Registration Statement at the time of such request, the Company shall use commercially reasonable efforts to amend the Initial Shelf Registration Statement to include the Registrable Securities of such Holder if the rules and regulations of the Commission would permit the addition of such Registrable

Securities to the Initial Shelf Registration Statement; *provided* that the Company shall not be required to amend the Initial Shelf Registration Statement more than once during any 180-day period.

(d) Within five (5) Business Days after receiving a request pursuant to Section 2(c), the Company shall give written notice of such request to all other Holders of Registrable Securities and shall include in such amendment all such Registrable Securities with respect to which the Company has received written requests for inclusion therein within fifteen (15) Business Days after the Company's giving of such notice; *provided* that such Registrable Securities are not already covered by an existing and effective Registration Statement that may be utilized for the offer and sale of the Registrable Securities requested to be registered in the manner so requested.

(e) The Initial Shelf Registration Statement shall be on Form S-1; *provided, however*, that, if the Company becomes eligible to register the Registrable Securities for resale by the Holders on Form S-3 (including without limitation a Form S-3 filed as an Automatic Shelf Registration Statement), the Company shall use commercially reasonable efforts to amend the Initial Shelf Registration Statement to a Shelf Registration Statement on Form S-3 or file a Shelf Registration Statement on Form S-3 in substitution of the Initial Shelf Registration Statement as initially filed as soon as reasonably practicable thereafter.

(f) The Company shall use commercially reasonable efforts to cause the Initial Shelf Registration Statement to be declared effective by the Commission as promptly as practicable after filing (and, for the avoidance of doubt, shall use commercially reasonable efforts to respond to outstanding comments of the Commission relating to such Shelf Registration Statement as quickly as practicable) and shall use commercially reasonable efforts to keep such Initial Shelf Registration Statement continuously effective, and not subject to any stop order, injunction or other similar order or requirement of the Commission, until the earlier of (i) the date the Company (A) is eligible to register the Registrable Securities for resale by Holders on Form S-3 and (B) has filed such Registration Statement with the Commission and which is effective and (ii) the date that all Registrable Securities covered by the Initial Shelf Registration Statement shall cease to be Registrable Securities (such earlier date, the "*Initial Shelf Expiration Date*").

(g) If the Initial Shelf Registration Statement is on Form S-1, then for so long as any Registrable Securities covered by the Initial Shelf Registration Statement remain unsold, the Company will file any supplements to the Prospectus or post-effective amendments required to be filed by applicable law in order to incorporate into such Prospectus any Current Reports on Form 8-K necessary or required to be filed by applicable law (other than any Form 8-K required to be filed under Item 2.02 or 7.01 thereof), any Quarterly Reports on Form 10-Q or any Annual Reports on Form 10-K filed by the Company with the Commission, or any other information necessary so that (i) the Initial Shelf Registration Statement shall not include any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading (or in the case of any prospectus, in light of the

circumstances such statements were made), and (ii) the Company complies with its obligations under Item 512(a)(1) of Regulation S-K; *provided*, *however*, that these obligations remain subject to the Company's rights under Section 6.

(h) Upon the demand of one or more Holders, the Company shall facilitate a "takedown" of Registrable Securities in the form of an Underwritten Offering (each, an *"Underwritten Takedown"*), in the manner and subject to the conditions described in Section 5; *provided* that (x) (i) the number of securities included in such "takedown" shall equal at least twenty-five percent (25%) of all Registrable Securities at such time or (ii) the Registrable Securities requested to be sold by the Holders in such "takedown" shall have an anticipated aggregate gross offering price (before deducting underwriting discounts and commission) of at least $50 million; or (y) the number of securities included in such "takedown" represent all of the Registrable Securities outstanding at the time of such "takedown."

(i) In the event that the Company elects to effect an underwritten registered offering or a direct listing of equity securities of any subsidiary, parent or other successor entity of the Company, or to effect a business combination, directly or indirectly, in the form of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination, with or into a special purpose acquisition company or "blank-check" company (each of the foregoing, an "*Alternative IPO Entity*" and collectively, "*Alternative IPO Entities*"), rather than receiving registration rights with respect to Reorganized PCHI Common Shares, the parties shall cause the Alternative IPO Entity to enter into an agreement with the Holders that provides the Holders with registration rights with respect to equity securities of the Alternative IPO Entity (whether common stock, ordinary shares or similar, in which event references to "Reorganized PCHI Common Shares" will be read *mutatis mutandis* as such securities) that such Holders beneficially own that are substantially the same as, and in any event no less favorable in the aggregate to, the registration rights provided in this Agreement.

(j) At least five (5) Business Days (but no more than fifteen (15) Business Days) prior to the date on which the Initial Shelf Registration Statement must be filed (subject to the proviso in Section 2(a)), the Company shall give written notice of such contemplated filing and date to all Holders. Other than any Holder that indicates to the Company in writing that it does not wish to be named as a "selling stockholder" in such Initial Shelf Registration Statement, each Holder agrees to furnish to the Company a completed questionnaire in the form attached hereto as Exhibit B (a "*Selling Stockholder Questionnaire*") in accordance with the final paragraph of Section 8, including, for the avoidance of doubt, the number of Registrable Securities that it wishes to include for registration on such Initial Shelf Registration Statement (any holder that returns such Selling Stockholder Questionnaire in accordance with Section 8, a "*Participating Holder*"). At least three (3) Business Days before filing the Initial Shelf Registration Statement, the Company will furnish to each Participating Holder a copy of a draft of the Selling Stockholder and Plan of Distribution sections (with respect to the Plan of Distribution section, only to the extent there have been any material changes to the form thereof attached hereteo as Exhibit A) for review and approval, which approval shall not be unreasonably withheld or delayed, and any objections to such draft disclosures must

be lodged within two (2) Business Days of such Participating Holder's receipt thereof. The Company shall use commercially reasonable efforts to include any changes to the Selling Stockholder section (including any footnotes) proposed by a Holder with respect to information concerning such Holder.

(k) All Registrable Securities owned or acquired by any Holder or any of its Affiliates or Related Funds shall be aggregated together for the purpose of determining the availability of any right under this Agreement.

3. **Subsequent Shelf Registration Statements**

(a) After the Effective Date of the Initial Shelf Registration Statement and for so long as any Registrable Securities remain outstanding, the Company shall use commercially reasonable efforts to, as promptly as possible, (A) become eligible and/or maintain its eligibility to register the Registrable Securities on Form S-3 after the Initial Shelf Expiration Date, and (B) meet the requirements of General Instruction VII of Form S-1 after the Initial Shelf Expiration Date.

(b) [reserved]

(c) After the Initial Shelf Expiration Date and for so long as any Registrable Securities remain outstanding, if there is not an effective Registration Statement which includes the Registrable Securities that are currently outstanding, the Company shall (i) if the Company is eligible to register the Registrable Securities on Form S-3, promptly file a Shelf Registration Statement on Form S-3 and use commercially reasonable efforts to cause such Registration Statement to be declared effective as promptly as practicable or, (ii) if the Company is not eligible at such time to register the Registrable Securities on Form S-3, promptly file a Shelf Registration Statement on Form S-1 and use commercially reasonable efforts to cause such Registration Statement to be declared effective as promptly as practicable.

(d) For so long as any Registrable Securities covered by such Shelf Registration Statement on Form S-1 remain unsold, the Company will file any supplements to the Prospectus or post-effective amendments required to be filed by applicable law in order to incorporate into such Prospectus any Current Reports on Form 8-K necessary or required to be filed by applicable law (other than any Form 8-K required to be filed under Item 2.02 or 7.01 thereof), any Quarterly Reports on Form 10-Q or any Annual Reports on Form 10-K filed by the Company with the Commission, or any other information necessary so that (i) such Shelf Registration Statement shall not include any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading (or in the case of any prospectus, in light of the circumstances such statements were made), and (ii) the Company complies with its obligations under Item 512(a)(1) of Regulation S-K; *provided*, *however*, that, in each case, these obligations remain subject to the Company's rights under Section 6.

(e) The Company will use commercially reasonable efforts to keep a Shelf Registration Statement that has become effective as contemplated by Section 2 and Section 3 continuously effective, and not subject to any stop order, injunction or other similar order or requirement of the Commission until the earlier of: (x) three (3) years following the Effective Date of such Shelf Registration Statement; and (y) the date that all Registrable Securities covered by such Shelf Registration Statement shall cease to be Registrable Securities; *provided, however*, that in the event of any stop order, injunction or other similar order or requirement of the Commission relating to any Shelf Registration Statement, if any Registrable Securities covered by such Shelf Registration Statement remain unsold, the period during which such Shelf Registration Statement shall be required to remain effective will be extended by the number of days during which such stop order, injunction or similar order or requirement is in effect; *provided further, however*, that if any Shelf Registration Statement was initially declared effective on Form S-3 and, prior to the date determined pursuant to Section 3(e), the Company becomes ineligible to use Form S-3, the period during which such Shelf Registration Statement shall be required to remain effective will be extended by the number of days during which the Company did not have an effective Registration Statement covering unsold Registrable Securities initially registered on such Shelf Registration Statement.

4. **Demand Registration**

(a) At any time after the completion of an Initial Public Offering, any Holder or group of Holders may request in writing ("*Demand Registration Request*") that the Company effect the registration of all or part of such Holder's or Holders' Registrable Securities with the Commission under and in accordance with the provisions of the Securities Act (each, a "*Demand Registration*"). The Company will file a Registration Statement covering such Holder's or Holders' Registrable Securities requested to be registered, and shall use commercially reasonable efforts to cause such Registration Statement to be declared effective, as promptly as practicable and no later than sixty (60) days after it receives such request; *provided, however*, that the Company will not be required to file a Registration Statement pursuant to this Section 4(a):

(A) unless (i) the number of Registrable Securities requested to be registered on such Registration Statement equals at least twenty-five percent (25%) of all Registrable Securities at such time or (ii) the Registrable Securities requested to be sold by the Holders pursuant to such Registration Statement have an anticipated aggregate gross offering price (before deducting underwriting discounts and commissions) of at least $50 million, disregarding any Registrable Securities subject to clause (B) below;

(B) with respect to any Registrable Securities requested to be registered that are already covered by an existing and effective Registration Statement and such Registration Statement may be utilized for the offer and sale of such Registrable Securities requested to be registered;

(C) during the period starting with the date thirty (30) days prior to a good faith estimate, with the approval of a simple majority of the Board, of the

date of filing of, and ending on the date ninety (90) days after the Effective Date of, a Company-initiated Registration Statement, provided that the Company is employing commercially reasonable efforts to cause such Registration Statement to become effective;

(D) for a period of up to ninety (90) days after the date of a Demand Notice for registration pursuant to this Section 4 if, at the time of such request (i) the Company is engaged, or has fixed plans with the approval of a simple majority of the Board to engage, within ninety (90) days of the time of such Demand Notice, in a firm commitment underwritten public offering of Reorganized PCHI Common Shares in which Holders of Registrable Securities may include their Registrable Securities pursuant to Section 7 or (ii) the Company is currently engaged in a self-tender or exchange offer and the filing of a Registration Statement would cause a violation of the Exchange Act; and

(E) if a registration statement filed by the Company shall have previously been initially declared effective by the Commission within the one hundred eighty (180) days preceding the date such Demand Registration Request is made or if an Underwritten Offering constituting a "takedown" from a Shelf Registration Statement shall have been previously made within the one hundred eighty (180) days preceding the date such Demand Registration Request.

Notwithstanding anything to the contrary in this Agreement, the Company shall not be obligated to effect more than six such Demand Registrations; *provided, however* that a Demand Registration shall not be considered made for purposes hereof unless the requested Registration Statement has been declared effective by the Commission for more than 75% of the full amount of Registrable Securities for which registration has been requested (subject to any reduction under Section 5(c) hereof). For the avoidance of doubt, the filing of the Initial Shelf Registration Statement shall not consitute a Demand Registration for any purpose hereunder.

(b) A Demand Registration Request shall specify (i) the then-current name and address of such Holder or Holders, (ii) the aggregate number of Registrable Securities requested to be registered, (iii) the total number of Registrable Securities then beneficially owned by such Holder or Holders, and (iv) the intended means of distribution. If at the time the Demand Registration Request is made the Company appears, based on public information available to such Holder or Holders, eligible to use Form S-3 for the offer and sale of the Registrable Securities, the Holder or Holders making such request may request that the registration be in the form of a Shelf Registration Statement (for the avoidance of doubt, the Company shall not be under the obligation to file a Shelf Registration on Form S-3 if, upon the advice of its counsel, it is not eligible to make such a filing).

(c) The Company may satisfy its obligations under Section 4(a) hereof by amending (to the extent permitted by applicable law and the rules and regulations of the Commission) any registration statement previously filed by the Company under the Securities Act and not yet declared effective by the Commission, so that such amended

registration statement will permit the disposition (in accordance with the intended methods of disposition specified as aforesaid) of all of the Registrable Securities for which a Demand Registration Request has been properly made under this Section 4. If the Company so amends a previously filed registration statement, it will be deemed to have effected a registration for purposes of Section 4(a) hereof; *provided, however*, that the Effective Date of the amended registration statement, as amended pursuant to this Section 4(c), shall be the "the first day of effectiveness" of such Registration Statement for purposes of determining the period during which the Registration Statement is required to be maintained effective in accordance with Section 4(e) hereof.

(d) Within five (5) Business Days after receiving a Demand Registration Request, the Company shall give written notice of such request to all other Holders of Registrable Securities and shall, subject to the provisions of Section 5(c) in the case of an Underwritten Offering, include in such registration all such Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten (10) Business Days after the Company's giving of such notice, *provided* that such Registrable Securities are not already covered by an existing and effective Registration Statement that may be utilized for the offer and sale of the Registrable Securities requested to be registered in the manner so requested.

(e) The Company will use commercially reasonable efforts to keep a Registration Statement that has become effective as contemplated by this Section 4 continuously effective, and not subject to any stop order, injunction or other similar order or requirement of the Commission:

(A) in the case of a Registration Statement other than a Shelf Registration Statement, until all Registrable Securities registered thereunder have been sold pursuant to such Registration Statement, but in no event later than two hundred and seventy (270) days from the Effective Date of such Registration Statement; and

(B) in the case of a Shelf Registration Statement, until the earlier of: (x) three (3) years following the Effective Date of such Shelf Registration Statement; and (y) the date that all Registrable Securities covered by such Shelf Registration Statement shall cease to be Registrable Securities;

provided, *however*, that in the event of any stop order, injunction or other similar order or requirement of the Commission relating to any Shelf Registration Statement, if any Registrable Securities covered by such Shelf Registration Statement remain unsold, the period during which such Shelf Registration Statement shall be required to remain effective will be extended by the number of days during which such stop order, injunction or similar order or requirement is in effect; *provided further, however*, that if any Shelf Registration Statement was initially declared effective on Form S-3 and, prior to the date determined pursuant to Section 4(e)(B), the Company becomes ineligible to use Form S-3, the period during which such Shelf Registration Statement shall be required to remain effective will be extended by the number of days during which the

Company did not have an effective Registration Statement covering unsold Registrable Securities initially registered on such Shelf Registration Statement.

(f) The Holder or Holders making a Demand Registration Request may, at any time prior to the Effective Date of the Registration Statement relating to such registration, revoke their request for the Company to effect the registration of all or part of such Holder's or Holders' Registrable Securities by providing a written notice to the Company. If, pursuant to the preceding sentence, the entire Demand Registration Request is revoked, then, at the option of the Holder or Holders who revoke such request, either (i) such Holder or Holders shall reimburse the Company for all of its reasonable and documented out-of-pocket expenses incurred in the preparation, filing and processing of the Registration Statement, which out-of-pocket expenses, for the avoidance of doubt, shall not include overhead expenses and which requested registration shall not count as one of the permitted Demand Registration Requests hereunder or (ii) the requested registration that has been revoked will be deemed to have been effected for purposes of Section 4(a) (for the avoidance of doubt, "or" as used in this clause is exclusive).

(g) If a Registration Statement filed pursuant to this Section 4 is a Shelf Registration Statement, then upon the demand of one or more Holders, the Company shall facilitate a "takedown" of Registrable Securities in the form of an Underwritten Offering, in the manner and subject to the conditions described in Section 5 hereof, *provided* that (x) (i) the number of securities included in such underwritten "takedown" shall equal at least twenty-five percent (25%) of all Registrable Securities at such time or (ii) the Registrable Securities requested to be sold by the Holders in such "takedown" shall have an anticipated aggregate offering price (before deducting underwriting discounts and commission) of at least $50 million; or (y) the number of securities included in such "takedown" represent all of the Registrable Securities outstanding at the time of such "takedown."

(h) A Demand Registration may also be in the form of an Underwritten Offering, in the manner and subject to the conditions described in Section 5 hereof, *provided* that (x) (i) the number of securities included in such underwritten Demand Registration shall equal at least twenty-five percent (25%) of all Registrable Securities at such time and (ii) the Registrable Securities requested to be sold by the Holders in such underwritten Demand Registration shall have an anticipated aggregate offering price (before deducting underwriting discounts and commission) of at least 50 million; or (y) the number of securities included in such underwritten Demand Registration represent all of the Registrable Securities outstanding at the time of such underwritten Demand Registration.

5. **Procedures for Underwritten Offerings.**

The following procedures shall govern Underwritten Offerings pursuant to Section 2(h) or Section 4(g), whether in the case of an Underwritten Takedown or otherwise.

(a) (i) The Majority Holders, with the consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed), shall select one or more

investment banking firm(s) of national standing to be the managing underwriter or underwriters for any Underwritten Offering pursuant to a Demand Registration Request or an Underwritten Takedown, and (ii) the Company shall select one or more investment banking firm(s) of national standing to be the managing underwriter or underwriters for any other Underwritten Offering, with the consent of a majority of the Holders participating in such Underwritten Offering pursuant to Section 7, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) All Holders proposing to distribute their securities through an Underwritten Offering, as a condition for inclusion of their Registrable Securities therein, shall agree to enter into an underwriting agreement with the underwriters; *provided, however*, that the underwriting agreement is in customary form and reasonably acceptable to the Company and the Majority Holders and *provided further, however*, that no Holder of Registrable Securities included in any Underwritten Offering shall be required to (i) make any representations or warranties to the Company or the underwriters or (ii) indemnify the Company or the underwriters (other than representations, warranties and/or indemnification regarding (x) such Holder's ownership of its Registrable Securities to be sold or transferred, (y) such Holder's power and authority to effect such transfer and (z) such matters pertaining to compliance with securities laws as may be reasonably requested).

(c) Notwithstanding anything to the contrary herein, if the managing underwriter or underwriters for an Underwritten Offering pursuant to a Demand Registration or an Underwritten Takedown advises the Holders that the total amount of Registrable Securities or other Reorganized PCHI Common Shares permitted to be registered is such as to materially adversely affect the success of such Underwritten Offering, the number of Registrable Securities or other Reorganized PCHI Common Shares to be registered on such Registration Statement will be reduced as follows: *first*, the Company shall reduce or eliminate the securities of the Company to be included by any Person other than a Holder or the Company; *second*, the Company shall reduce or eliminate any securities of the Company to be included by the Company; and *third*, the Company shall reduce the number of Registrable Securities to be included by any Holder, on a pro rata basis based on the total number of Registrable Securities requested by such Holders to be included.

(d) Within five (5) Business Days after receiving a request for an Underwritten Offering constituting a "takedown" from a Shelf Registration Statement, the Company shall give written notice of such request to all other Holders, and subject to the provisions of Section 5(c) hereof, include in such Underwritten Offering all such Registrable Securities with respect to which the Company has received written requests for inclusion therein within five (5) Business Days after the Company's giving of such notice; *provided*, *however*, that such Registrable Securities are covered by an existing and effective Shelf Registration Statement that may be utilized for the offer and sale of the Registrable Securities requested to be registered.

(e) The Company will not be required to undertake an Underwritten Offering pursuant to Section 2(h) or Section 4(g) if the Company has undertaken an Underwritten

Offering, whether for its own account or pursuant to this Agreement, within the one hundred eighty (180) days preceding the date of the request to the Company for such Underwritten Offering.

(f) Notwithstanding anything to the contrary in this Agreement, the Company shall not be obligated to effect more than four such Underwritten Offerings; *provided* that an Underwritten Offering shall not be considered made for purposes of this Section 5(f) unless it has resulted in the disposition by the Holders of at least 75% of the amount of Registrable Securities requested to be included subject to any reduction under Section 5(c) hereof.

6. **Grace Periods.**

(a) Notwithstanding anything to the contrary herein—

(A) the Company shall be entitled to postpone the filing or effectiveness of, or, at any time after a Registration Statement has been declared effective by the Commission, suspend the use of, a Registration Statement (including the Prospectus included therein) if in the good faith judgment of the Board, such registration, offering or use would reasonably be expected to materially affect in an adverse manner or materially interfere with any bona fide material financing of the Company or any material transaction under consideration by the Company or would require the disclosure of information that has not been, and is not otherwise required to be, disclosed to the public and the premature disclosure of which would reasonably be expected, in the good faith judgment of the Board, affect the Company in an adverse manner; or if the Board determines, in its good faith judgment, that a postponement is in the best interest of the Company due to an investigation or other event involving the Company; *provided however*, that in the event such Registration Statement relates to a Demand Registration Request or an Underwritten Offering pursuant to Section 2(h) or Section 4(g), then the Holders initiating such Demand Registration Request or such Underwritten Offering shall be entitled to withdraw the Demand Registration Request or request for the Underwritten Offering and, if such request is withdrawn, it shall not count against the limits imposed pursuant to Section 4(a) or Section 5(f) and the Company shall pay all reasonable and documented registration expenses in connection with such registration; and

(B) at any time after a Registration Statement has been declared effective by the Commission and there is no duty to disclose under applicable law, the Company may delay the disclosure of material non-public information concerning the Company if the disclosure of such information at the time would, in the good faith judgment of the Board, reasonably be expected to adversely affect the Company (the period of a postponement or suspension as described in clause (A) and/or a delay described in this clause (B), a "*Grace Period*").

(b) The Company shall promptly (i) notify the Holders in writing of the existence of the event or material non-public information giving rise to a Grace Period

(*provided* that the Company shall not disclose the content of such material non-public information to any Holder, without the express consent of such Holder) or the need to file a post-effective amendment, as applicable, and the date on which such Grace Period will begin, (ii) use commercially reasonable efforts to terminate a Grace Period as promptly as reasonably practicable and (iii) notify the Holders in writing of the date on which the Grace Period ends.

(c) The duration of any one Grace Period shall not exceed thirty (30) days, and the aggregate of all Grace Periods in total during any three hundred sixty-five (365) day period shall not exceed ninety (90) days (other than with the consent of the Majority Holders). For purposes of determining the length of a Grace Period, the Grace Period shall be deemed to begin on and include the date the Holders receive the notice referred to in clause (i) of Section 6(b) and shall end on and include the later of the date the Holders receive the notice referred to in clause (iii) of Section 6(b) and the date referred to in such notice. In the event the Company declares a Grace Period, the period during which the Company is required to maintain the effectiveness of an Initial Shelf Registration Statement or a Registration Statement filed pursuant to a Demand Registration Request shall be extended by the number of days during which such Grace Period is in effect.

7. **Piggyback Registration**

(a) Following the completion of an Initial Public Offering, if at any time, and from time to time, the Company proposes to—

(A) file a registration statement under the Securities Act with respect to a public offering of Reorganized PCHI Common Shares of the Company or any securities convertible or exercisable into Reorganized PCHI Common Shares (other than with respect to a registration statement (i) on Form S-8 or any successor form thereto, (ii) on Form S-4 or any successor form thereto or (iii) another form not available for registering the Registrable Securities for sale to the public), whether or not for its own account; or

(B) conduct an underwritten offering constituting a "takedown" of a class of Reorganized PCHI Common Shares or any securities convertible or exercisable into Reorganized PCHI Common Shares registered under a shelf registration statement previously filed by the Company;

the Company shall give written notice (the "*Piggyback Notice*") of such proposed filing or underwritten offering to each Holder at least five (5) Business Days before the anticipated filing date (*provided* that in the case of a "bought deal," "registered direct offering" or "overnight transaction" (a "*Bought Deal*"), such Piggyback Notice shall be given not less than two (2) Business Days prior to the expected date of commencement of marketing efforts. Such notice shall include the number and class of securities proposed to be registered or offered, the proposed date of filing of such registration statement or the conduct of such underwritten offering, any proposed means of distribution of such securities and any proposed managing underwriter of such securities and shall offer the

Holders the opportunity to register or offer such amount of Registrable Securities as each Holder may reasonably request on the same terms and conditions as the registration or offering of the other securities being registered thereunder (a "*Piggyback Offering*"). Subject to Section 7(b), the Company will include in each Piggyback Offering all Registrable Securities for which the Company has received written requests for inclusion within three (3) Business Days after the date the Piggyback Notice is given (*provided* that in the case of a Bought Deal, such written requests for inclusion must be received within one (1) Business Day after the date the Piggyback Notice is given); *provided*, *however*, that in the case of the filing of a registration statement, such Registrable Securities are not otherwise registered pursuant to an existing and effective Shelf Registration Statement under this Agreement, but in such case, the Company shall include such Registrable Securities in such underwritten offering if the Shelf Registration Statement may be utilized for the offering and sale of the Registrable Securities requested to be offered (without regard to the limitations on participation in Underwritten Offerings set forth in Section 2(h)); *provided further*, *however*, that in the case of an underwritten offering in the form of a "takedown" under a Shelf Registration Statement, such Registrable Securities are covered by an existing and effective Shelf Registration Statement that may be utilized for the offering and sale of the Registrable Securities requested to be offered.

(b) The Company will cause the managing underwriter or underwriters of the proposed offering to permit the Holders that have requested Registrable Securities to be included in the Piggyback Offering to include all such Registrable Securities on substantially the same terms and conditions as any similar securities, if any, of the Company. Notwithstanding the foregoing, if the managing underwriter or underwriters of such underwritten offering advises the Company and the selling Holders in writing that, in its view, the total amount of securities that the Company, such Holders and any other holders entitled to participate in such offering (such other holders, the "*Other Holders*") propose to include in such offering is such as to materially adversely affect the price, timing or distribution of such underwritten offering, then:

(A) if such Piggyback Offering is an underwritten primary offering by the Company for its own account, the Company will include in such Piggyback Offering: (i) *first*, all securities to be offered by the Company; (ii) *second*, up to the full amount of securities requested to be included in such Piggyback Offering by the Holders; and (iii) *third*, up to the full amount of securities requested to be included in such Piggyback Offering by all Other Holders;

(B) if such Piggyback Offering is an underwritten secondary offering for the account of Other Holders exercising "demand" rights (including pursuant to a Demand Registration Request), the Company will include in such registration: (i) *first*, all securities of the Other Holders exercising "demand" rights (including pursuant to a Demand Registration Request) requested to be included therein; (ii) *second*, up to the full amount of securities requested to be included in such Piggyback Offering by the Holders entitled to participate therein, allocated pro rata among such Holders on the basis of the amount of securities requested to be included therein by each such Holder; (iii) *third*, up to the full amount of securities proposed to be included in the registration by the Company; and (iv)

fourth, up to the full amount of securities requested to be included in such Piggyback Offering by the Other Holders entitled to participate therein, allocated pro rata among such Other Holders on the basis of the amount of securities requested to be included therein by each such Other Holder;

such that, in each case, the total amount of securities to be included in such Piggyback Offering is the full amount that, in the view of such managing underwriter, can be sold without materially adversely affecting the success of such Piggyback Offering.

(c) If at any time after giving the Piggyback Notice and prior to the time sales of securities are confirmed pursuant to the Piggyback Offering, the Company determines for any reason not to register or delay the registration of the Piggyback Offering, the Company may, at its election, give notice of its determination to all Holders, and in the case of such a determination, will be relieved of its obligation to register any Registrable Securities in connection with the abandoned or delayed Piggyback Offering, without prejudice.

(d) Any Holder of Registrable Securities requesting to be included in a Piggyback Offering may withdraw its request for inclusion by giving written notice to the Company of its intention to withdraw from that registration, at least three (3) Business Days prior to the anticipated Effective Date of the Registration Statement filed in connection with such Piggyback Offering, or in the case of a Piggyback Offering constituting a "takedown" off of a shelf registration statement, at least three (3) Business Days prior to the anticipated date of the filing by the Company under Rule 424 of a supplemental prospectus (which shall be the preliminary supplemental prospectus, if one is used in the "takedown") with respect to such offering; *provided*, *however*, that (i) the Holder's request be made in writing and (ii) the withdrawal will be irrevocable and, after making the withdrawal, a Holder will no longer have any right to include its Registrable Securities in that Piggyback Offering.

(e) Notwithstanding the foregoing, any Holder may deliver written notice (an "*Opt-Out Notice*") to the Company at any time requesting that such Holder not receive notice from the Company of any proposed registration or offering; *provided*, *however*, that such Holder may later revoke any such Opt-Out Notice in writing.

8. **Registration Procedures.**

If and when the Company is required to effect any registration under the Securities Act as provided in this Agreement, the Company shall use commercially reasonable efforts to:

(a) prepare and file with the Commission the requisite Registration Statement to effect such registration and thereafter use commercially reasonable efforts to cause such Registration Statement to become and remain effective, subject to the limitations contained herein;

(b) prepare and file with the Commission such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and to comply with the

provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by such Registration Statement until such time as (i) all of such Registrable Securities have been disposed of in accordance with the method of disposition set forth in such Registration Statement, subject to the limitations contained herein, or (ii) such Registration Statement is withdrawn in accordance with the terms of this Agreement;

(c) (i) before filing a Registration Statement or Prospectus or any amendments or supplements thereto (except for any amendment or supplement as a result of the filing of a periodic report, current report or any other document required to be filed by the Company under the Exchange Act), at the Company's expense, furnish to the Holders whose securities are covered by the Registration Statement copies of all such documents, other than documents that are incorporated by reference into such Registration Statement or Prospectus, proposed to be filed and such other documents reasonably requested by such Holders (which may be furnished by email), and afford Counsel to the Holders a reasonable opportunity to review and comment on such documents; and (ii) in connection with the preparation and filing of each such Registration Statement prepared in connection with an Underwritten Offering pursuant to this Agreement, (A) upon reasonable advance notice to the Company, give each of the foregoing such reasonable access to all financial and other records, corporate documents and properties of the Company as shall be necessary, in the reasonable opinion of Counsel to the Holders and the underwriters, to conduct a reasonable due diligence investigation for purposes of the Securities Act and Exchange Act, and (B) upon reasonable advance notice to the Company and during normal business hours, provide such reasonable opportunities to discuss the business of the Company with its officers, directors, employees and the independent public accountants who have certified its financial statements as shall be necessary, in the reasonable opinion of Counsel to the Holders and such underwriters, to conduct a reasonable due diligence investigation for purposes of the Securities Act and the Exchange Act; *provided* that as a condition to being provided any confidential information, any such Holder gaining access to information regarding the Company pursuant to this Section 8(c) shall agree to enter into a customary confidentiality agreement with the Company.

(d) notify each selling Holder of Registrable Securities, promptly after the Company receives notice thereof, of the time when such Registration Statement has been declared effective or a supplement to any Prospectus forming a part of such Registration Statement has been filed (except for any supplement as a result of the filing of a periodic report, current report or any other document required to be filed by the Company under the Exchange Act);

(e) with respect to any offering of Registrable Securities, furnish to each selling Holder of Registrable Securities, and the managing underwriters for such Underwritten Offering, if any, without charge, such number of copies of the applicable Registration Statement, each amendment and supplement thereto, the Prospectus included in such Registration Statement (including each preliminary Prospectus, final Prospectus, and any other Prospectus (including any Prospectus filed under Rule 424, Rule 430A or Rule 430B promulgated under the Securities Act and any "issuer free writing prospectus"

as such term is defined under Rule 433 promulgated under the Securities Act)), all exhibits and other documents filed therewith and such other documents as such seller or such managing underwriters may reasonably request including in order to facilitate the disposition of the Registrable Securities owned by such seller, and upon request, a copy of any and all transmittal letters or other correspondence to or received from, the Commission or any other governmental authority relating to such offer;

(f) (i) register or qualify all Registrable Securities covered by such Registration Statement under such other securities or Blue Sky laws of such states or other jurisdictions of the United States of America as the Holders covered by such Registration Statement shall reasonably request in writing, (ii) keep such registration or qualification in effect for so long as such Registration Statement remains in effect and (iii) take any other action that may be necessary or reasonably advisable to enable such Holders to consummate the disposition in such jurisdictions of the securities to be sold by such Holders, except that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it would not but for the requirements of this subsection (f) be obligated to be so qualified, to subject itself to taxation in such jurisdiction or to consent to general service of process in any such jurisdiction;

(g) subject to Section 8(f), cause all Registrable Securities included in such Registration Statement to be registered with or approved by such other federal or state governmental agencies or authorities as necessary upon the opinion of counsel to the Company or Counsel to the Holders of Registrable Securities included in such Registration Statement to enable such Holder or Holders thereof to consummate the disposition of such Registrable Securities in accordance with their intended method of distribution thereof;

(h) with respect to any Underwritten Offering, obtain and, if obtained, furnish to each Holder that is named as an underwriter in such Underwritten Offering and each other underwriter thereof, a signed

(A) opinion of outside counsel for the Company (including a customary 10b-5 statement), dated the date of the closing under the underwriting agreement and addressed to the underwriters, reasonably satisfactory (based on the customary form and substance of opinions of issuers' counsel customarily given in such an offering) in form and substance to such underwriters, if any, and

(B) "comfort" letter, dated the date of the underwriting agreement and another dated the date of the closing under the underwriting agreement and addressed to the underwriters and signed by the independent public accountants who have certified the Company's financial statements included or incorporated by reference in such registration statement, reasonably satisfactory (based on the customary form and substance of "cold comfort" letters of issuers' independent public accountant customarily given in such an offering) in form and substance to such Holder and any other underwriters,

in each case, covering substantially the same matters with respect to such Registration Statement (and the Prospectus included therein) and, in the case of the accountants' comfort letter, with respect to events subsequent to the date of such financial statements, as are customarily covered in opinions of issuer's counsel and in accountants' comfort letters delivered to underwriters in such types of offerings of securities;

(i) notify each Holder of Registrable Securities included in such Registration Statement at any time when a Prospectus relating thereto is required to be delivered under the Securities Act, upon discovery that, or upon the happening of any event as a result of which, the Prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and for which the Company chooses to suspend the use of the Registration Statement and Prospectus in accordance with the terms of this Agreement, and, at the written request of any such Holder, promptly prepare and furnish (at the Company's expense) to it a reasonable number of copies of a supplement to or an amendment of such Prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such Prospectus, as supplemented or amended, shall not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (subject to Section 6(f));

(j) notify the Holders of Registrable Securities included in such Registration Statement promptly of any request by the Commission for the amending or supplementing of such Registration Statement or Prospectus or for additional information;

(k) advise the Holders of Registrable Securities included in such Registration Statement promptly after the Company receives notice or obtains knowledge of any order suspending the effectiveness of a registration statement relating to the Registrable Securities at the earliest practicable moment and promptly use commercially reasonable efforts to obtain the withdrawal of such order;

(l) otherwise comply with all applicable rules and regulations of the Commission and any other governmental agency or authority having jurisdiction over the offering of Registrable Securities, and make available to its stockholders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months, but not more than eighteen (18) months, beginning with the first (1st) full calendar month after the Effective Date of such Registration Statement, which earnings statement shall satisfy the provisions of section 11(a) of the Securities Act and Rule 158 promulgated thereunder and which requirement will be deemed satisfied if the Company timely files complete and accurate information on Form 10-Q and 10-K and Current Reports on Form 8-K under the Exchange Act and otherwise complies with Rule 158 under the Securities Act;

(m) provide (i) and cause to be maintained a transfer agent and registrar for the Registrable Securities included in a Registration Statement no later than the Effective

Date thereof and (ii) a CUSIP and ISIN number for all Registrable Securities no later than the Effective Date;

(n) enter into such customary agreements (including an underwriting agreement in customary form) and take such other customary actions as the Holders beneficially owning a majority of the Registrable Securities included in a Registration Statement or the underwriters, if any, shall reasonably request in order to expedite or facilitate the disposition of such Registrable Securities, including customary indemnification; and provide reasonable cooperation, including causing at least one (1) executive officer and a senior financial officer to attend and participate in "road shows" and other information meetings organized by the underwriters, if any, as reasonably requested in an Underwritten Offering; *provided*, *however*, that the Company shall have no obligation to participate in more than three (3) such "road shows" requested hereunder in any twelve (12)-month period, such participation shall not unreasonably interfere with the business operations of the Company and the Company shall have no obligation to participate in more than one (1) such "road show" during any ninety (90) day period;

(o) if reasonably requested by the managing underwriter(s) or the Holders beneficially owning a majority of the Registrable Securities being sold in connection with an Underwritten Offering, promptly incorporate in a prospectus supplement or post-effective amendment such information relating to the plan of distribution for such shares of Registrable Securities provided to the Company in writing by the managing underwriters and the Holders holding a majority of the Registrable Securities being sold and that is required to be included therein relating to the plan of distribution with respect to such Registrable Securities, including without limitation, information with respect to the number of Registrable Securities being sold to such underwriters, the purchase price being paid therefor by such underwriters and with respect to any other terms of the Underwritten Offering of the Registrable Securities to be sold in such offering, and make any required filings with respect to such information relating to the plan of distribution as soon as practicable after notified of the information;

(p) cooperate with the Holders of Registrable Securities included in a Registration Statement and the managing underwriter(s), if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends (including by way of causing the transfer agent to remove any restrictive legends (including any electronic transfer restrictions) from such securities and providing or causing any customary opinions of counsel to be delivered to the transfer agent in connection with such removal in a reasonably prompt manner, and covering all related fees of the transfer agent in connection therewith), and enable such Registrable Securities to be in such share amounts and registered in such names as the managing underwriters, or, if none, the Holders beneficially owning a majority of the Registrable Securities being offered for sale, may reasonably request at least five (5) Business Days prior to any sale of Registrable Securities to the underwriters;

(q) cause all Registrable Securities included in a Registration Statement to be listed on a Trading Market on which similar securities issued by the Company are then listed, if at all, or quoted; and

(r) otherwise use commercially reasonable efforts to take all other steps necessary to effect the registration of such Registrable Securities contemplated hereby.

In addition, except as otherwise set forth in Section 2(j) and Section 7(a), at least fifteen (15) Trading Days prior to the first anticipated filing date of a Registration Statement for any registration under this Agreement, the Company will notify each Holder of the information the Company requires from that Holder, in the form of the Selling Stockholder Questionnaire, if any, which shall be completed and delivered to the Company promptly upon request and, in any event, within five (5) Trading Days prior to the applicable anticipated filing date. Each Holder further agrees that it shall not be entitled to be named as a selling security-holder in the Registration Statement or use the Prospectus for offers and resales of Registrable Securities at any time, unless such Holder has returned to the Company a completed and signed Selling Stockholder Questionnaire and a response to any requests for further information as reasonably requested by the Company and, if an Underwritten Offering, entered into an underwriting agreement with the underwriters in accordance with Section 5(b). If a Holder of Registrable Securities returns a Selling Stockholder Questionnaire or a request for further information, in either case, after its respective deadline, the Company shall be permitted to exclude such Holder from being a selling security holder in the Registration Statement or any pre-effective or post-effective amendment thereto. Each Holder acknowledges and agrees that the information in the Selling Stockholder Questionnaire or request for further information as described in this Section 8 will be used by the Company in the preparation of the Registration Statement and hereby consents to the inclusion of such information in the Registration Statement.

9. **Registration Expenses.** All fees and expenses incident to the Company's performance of or compliance with its obligations under this Agreement (excluding any underwriting discounts, fees or selling commissions or broker or similar commissions or fees (which shall be borne by Participating Holders on a pro rata basis), or transfer taxes of any Holder) shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees and expenses (including, without limitation, fees and expenses (A) with respect to filings required to be made with any Trading Market on which the Reorganized PCHI Common Shares are then listed for trading, if any, or quoted, (B) with respect to compliance with applicable state securities or Blue Sky laws (including, without limitation, fees and disbursements of counsel for the Company and any reasonable and documented fees and disbursements of counsel for the underwriters or Holders in connection with Blue Sky qualifications or exemptions of the Registrable Securities and determination of the eligibility of the Registrable Securities for investment under the laws of such jurisdictions as requested by the underwriters or the Holders, as applicable) and (C) if not previously paid by the Company in connection with an issuer filing, with respect to any filing that may be required to be made by any broker through which a Holder intends to make sales of Registrable Securities with the Financial Industry Regulatory Authority ("*FINRA*") pursuant to FINRA Rule 5110, so long as the broker is receiving no more than a customary brokerage commission in connection with such sale, (ii) all reasonable and documented expenses of any Persons in preparing or assisting in preparing, word

processing, printing and distributing any Registration Statement, any Prospectus, any free writing prospectus and any amendments or supplements thereto, any underwriting agreements, securities sales agreements or other similar agreements and any other documents relating to the performance of and compliance with this Agreement (including, without limitation, expenses of printing certificates for Registrable Securities and of printing prospectuses if the printing of prospectuses is reasonably requested by the Holders holding a majority of the Registrable Securities included in the Registration Statement), (iii) messenger, telephone and delivery expenses, (iv) reasonable and documented fees and disbursements of counsel for the Company, (v) the reasonable and documented fees and expenses incurred in connection with any road show for Underwritten Offerings, (vi) Securities Act liability insurance, if the Company so desires such insurance, (vii) all rating agency fees, if any, and any fees associated with making the Registrable Securities eligible for trading through The Depository Trust Company, and (viii) reasonable and documented fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company will pay the reasonable fees and disbursements of Counsel to the Holders, including, for the avoidance of doubt, any reasonable and documented expenses of Counsel to the Holders in connection with the filing or amendment of any Registration Statement, Prospectus or free writing prospectus hereunder or any Underwritten Offering.

10. **Lockups.**

(a) In connection with (i) an Initial Public Offering described in clause (ii) of the definition thereof, except with the written consent of the underwriters managing such Initial Public Offering, no Holder shall effect any sale or distribution (including sales pursuant to Rule 144) of equity securities of the Company, or any securities convertible into or exchangeable or exercisable for such securities, without prior written consent from the Company, during the seven (7) days prior to and the one hundred and eighty (180)-day period beginning on the date of closing of such Initial Public Offering (the "*IPO Lockup Period*"), except as part of such offering and (ii) any Underwritten Takedown or underwritten registration pursuant to a Demand Registration Request or other underwritten public offering of equity securities by the Company, except with the written consent of the underwriters managing such offering, no Holder shall effect any public sale or distribution (including sales pursuant to Rule 144) of equity securities of the Company, or any securities convertible into or exchangeable or exercisable for such securities during the seven (7) days prior to, and the ninety (90)-day period (or such lesser period as the underwriters may agree) beginning on the date of, the final prospectus filed in connection with such offering (the "*Underwritten Offering Lockup Period*" and, together with the IPO Lockup Period, each a "*Lockup Period*"), except as part of such offering, *provided*, that such Lockup Period restrictions are applicable on substantially similar terms to the Company and all of its executive officers and directors as reasonably requested by the underwriters, and reasonably acceptable to the Majority Holders; *provided* that the Lockup Period shall include customary carve-outs, including that nothing herein will prevent any Holder from making a distribution of Registrable Securities to any of its partners, members or stockholders thereof or a transfer of Registrable Securities to an Affiliate or Related Fund that is otherwise in compliance

with the applicable securities laws, so long as such distributees or transferees, as applicable, agree to be bound by the restrictions set forth in this Section 10(a) and so long as no public disclosure of such distribution is made. Each Holder agrees to execute a customary lockup agreement in favor of the Company's underwriters to such effect and, in any event, that the Company's underwriters in any relevant offering shall be third party beneficiaries of this Section 10(a). The provisions of this Section 10(a) will no longer apply to a Holder once such Holder ceases to hold Registrable Securities.

(b) In connection with any Underwritten Offering, the Company shall not effect any public sale or distribution of any of its equity securities, or any securities convertible into or exchangeable or exercisable for such securities, without prior written consent from the managing underwriter or underwriters, during the Lockup Period, except as part of such offering, *provided*, that such Lockup Period restrictions are applicable on substantially similar terms to the Majority Holders. The Company agrees to execute a customary lockup agreement in favor of the underwriters in any relevant offering to such effect and, in any event, that the underwriters in any relevant offering shall be third party beneficiaries of this Section 10(b). Notwithstanding the foregoing, the Company may effect a public sale or distribution of securities of the type described above and during the periods described above if such sale or distribution is made pursuant to registrations on Form S-4 or Form S-8 or any successor thereto or as part of any registration of securities of offering and sale to employees, directors or consultants of the Company and its subsidiaries pursuant to any employee stock plan or other employee benefit plan arrangement.

11. **Indemnification.**

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify, defend and hold harmless each Holder, the officers, directors, agents, partners, members, investment manager, managers, stockholders, Affiliates and employees of each of them, each Person who controls any such Holder (within the meaning of section 15 of the Securities Act or section 20 of the Exchange Act) and the officers, directors, partners, members, investment manager, managers, stockholders, agents and employees of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable costs of preparation and investigation and reasonable and documented attorneys' fees in connection with any third-party claims) and expenses (collectively, "*Losses*"), to which any of them may become subject, that arise out of or are based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus or (ii) any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that (A) such untrue statements, alleged untrue statements, omissions or alleged omissions are based upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to

such Holder or such Holder's proposed method of distribution of Registrable Securities and was provided by such Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto, or (B) in the case of an occurrence of an event of the type specified in Section 8(i), related to the use by a Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated and defined in Section 16(c) below, but only if and to the extent that following the receipt of the Advice, the misstatement or omission giving rise to such Loss would have been corrected, and *provided*, f*urther* that such indemnity shall not be available to any person to the extent that such Loses resulted from or are caused by bad faith, willful misconduct, gross negligence or fraudulent behavior of such person. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an Indemnified Party (as defined in Section 11(c)), shall survive the transfer of the Registrable Securities by the Holders, and shall be in addition to any liability which the Company may otherwise have. Paragraph (a) of this Section 11 shall not apply with respect to taxes.

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its respective directors, officers, agents and employees, each Person who controls the Company (within the meaning of section 15 of the Securities Act and section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, arising out of or based upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, or any form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statements or omissions are based upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein or (ii) to the extent, but only to the extent, that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was provided by such Holder expressly for use in a Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto or (iii) in the case of an occurrence of an event of the type specified in Section 8(i), to the extent, but only to the extent, related to the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated in Section 16(c), but only if and to the extent that following the receipt of the Advice the misstatement or omission giving rise to such Loss would have been corrected. In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an Indemnified Party (as defined

in Section 11(c)), shall survive the transfer of the Registrable Securities by the Holders, and shall be in addition to any liability which the Holder may otherwise have.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "*Indemnified Party*"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "*Indemnifying Party*") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all reasonable fees and expenses incurred in connection with the defense thereof; *provided*, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that such failure shall have materially and adversely prejudiced the Indemnifying Party in its ability to defend such action.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that in the reasonable judgment of such counsel a conflict of interest exists if the same counsel were to represent such Indemnified Party and the Indemnifying Party; *provided*, that the Indemnifying Party shall not be liable for the reasonable and documented fees and expenses of more than one separate firm of attorneys at any time for all Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld, delayed or conditioned. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable and documented fees and expenses of the Indemnified Party (including reasonable and documented fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section 11(c)) shall be paid to the Indemnified Party, as incurred, with reasonable promptness after receipt of written notice thereof to the Indemnifying Party; *provided*, that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally judicially determined to not be entitled to indemnification hereunder.

(d) Contribution. If a claim for indemnification under Section 11(a) or (b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 11(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 11(d), no Holder shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

12. **Section 4(a)(7), Rule 144 and Rule 144A; Other Exemptions; Rule 144 Assistance.**

(a) With a view to making available to the Holders of Registrable Securities the benefits of section 4(a)(7) of the Securities Act, Rule 144 and Rule 144A and other rules and regulations of the Commission that may at any time permit a Holder of Registrable Securities to sell securities of the Company without registration, until such time as when no Registrable Securities remain outstanding, the Company covenants that it will use commercially reasonable efforts to, (i) if it is subject to the reporting requirement of section 13 or 15(d) of the Exchange Act, file in a timely manner all reports and other documents required, if any, to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted thereunder, or, (ii) if it is not subject to the reporting requirement of section 13 or 15(d) of the Exchange Act, make available information necessary to comply with section 4(a)(7) of the Securities Act and Rule 144 and Rule 144A, if available, with respect to resales of the Registrable Securities under the Securities Act, at all times, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (x) section 4(a)(7) of the Securities Act and Rule 144 and Rule 144A (if available with respect to resales of the Registrable

Securities), as such rules may be amended from time to time, or (y) any other rules or regulations now existing or hereafter adopted by the Commission. Upon the reasonable request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such information requirements, and, if not, the specific reasons for non-compliance.

(b) The Company covenants that it shall use commercially reasonable efforts to take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell securities of the Company held by such Holder without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 promulgated under the Securities Act, including causing the transfer agent to remove any restrictive legends (including any electronic transfer restrictions) from such securities in connection with a sale under Rule 144 and providing or causing any customary opinions of counsel to be delivered to the transfer agent in connection with such removal as promptly as reasonably practical. The Company shall be responsible for the fees of the transfer agent associated with such issuance.

13. **Transfer of Registration Rights.** Any Holder may freely assign its rights hereunder on a pro rata basis in connection with any sale, transfer, assignment, or other conveyance (any of the foregoing, a "*Transfer*") of Registrable Securities to any transferee or assignee, including any Affiliate or Related Fund of any Holder; *provided*, that all of the following additional conditions are satisfied: (a) such Transfer is effected in accordance with applicable securities laws; (b) such transferee or assignee agrees in writing to become subject to the terms of this Agreement (including through the execution of a joinder hereto); and (c) the Company is given written notice by such Holder of such Transfer, stating the name and address of the transferee or assignee and identifying the Registrable Securities with respect to which such rights are being transferred or assigned and provide the amount of any other capital stock of the Company beneficially owned by such transferee or assignee; provided further, that (i) any rights assigned hereunder shall apply only in respect of the Registrable Securities that are Transferred and not in respect of any other securities that the transferee or assignee may hold or acquire following such assignment and (ii) any Registrable Securities that are Transferred may cease to constitute Registrable Securities following such Transfer in accordance with the terms of this Agreement.

14. **Further Assurances.** Each of the parties hereto shall execute all such further instruments and documents and take all such further action as any other party hereto may reasonably require in order to effectuate the terms and purposes of this Agreement.

15. **Cooperation.** It shall be a condition of each Holder's right under Sections 2, 3, 4 and 7 that such Holder use its commercially reasonable efforts to cooperate with the Company by entering into any undertakings and taking such other action relating to the conduct of the proposed offering which the Company or the underwriters may reasonably request solely to the extent necessary to ensure compliance with federal and state securities laws and the rules or other requirements of FINRA.

16. **Miscellaneous.**

(a) Remedies. Any Person having rights under any provision of this Agreement shall be entitled to enforce such rights specifically to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that any party may in its sole discretion apply to any court of law or equity of competent jurisdiction (without posting any bond or other security) for specific performance and for other injunctive relief in order to enforce or prevent violation of the provisions of this Agreement.

(b) Compliance. Each Holder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it (unless an exemption therefrom is available) in connection with sales of Registrable Securities pursuant to any Registration Statement and shall sell the Registrable Securities only in accordance with a method of distribution described in each Registration Statement.

(c) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of a Grace Period or any event of the kind described in Section 8(i), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "*Advice*") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company may provide appropriate stop orders to enforce the provisions of this paragraph.

(d) Number of Registrable Securities Outstanding. In order to determine the number of Registrable Securities outstanding at any time, and subject to Section 2(k) in all respects, upon the reasonable written request of the Company to Holders, each Holder shall promptly, and in any event within ten (10) Business Days of receipt of such request, inform the Company of the number of Registrable Securities that such Holder owns and that the Company may conclusively rely upon any certificate provided under this Agreement for the purpose of determining the number of such Registrable Securities.

(e) No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement, and notwithstanding the fact that certain of the Holders may be partnerships or limited liability companies, each of the Holders and the Company agrees and acknowledges that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any of the Holder's former, current or future direct or indirect equity holders, controlling persons, shareholders, directors, officers, employees, agents, Affiliates, members, financing sources, managers, general or limited partners or assignees (each, a "*Related Party*" and collectively, the "*Related Parties*"), in each case other than the current or former Holders or any of their respective assignees under this Agreement, whether by the enforcement of any assessment or by any legal or equitable Proceeding, or by virtue of any applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever

shall attach to, be imposed on or otherwise be incurred by any of the Related Parties, as such, for any obligation or liability of the the Holders under this Agreement or any documents or instruments delivered in connection herewith for any claim based on, in respect of or by reason of such obligations or liabilities or their creation; provided, however, nothing in this Section 16(e) shall relieve or otherwise limit the liability of the Company or any current or former Holder, as such, for any breach or violation of its obligations under this Agreement or such agreements, documents or instruments.

(f) Preservation of Rights. From and after the date of this Agreement, the Company shall not file or have declared effective a registration statement for any equity securities (other than a registration statement in connection with an Initial Public Offering) or on Form S-8, or any successor of such form, or a registration statement relating solely to the offer and sale to the Company's directors or employees pursuant to any employee stock plan or other employee benefit plan or arrangement) before the Initial Shelf Registration Statement is declared effective. From and after the date of this Agreement, the Company shall not enter into any agreement with any current or future holder of any securities of the Company that would allow such current or future holder to require the Company to include securities in the Initial Shelf Registration Statement, or in any Piggyback Offering on a basis that is on parity with or superior to, the Piggyback Offering rights granted to the Holders pursuant to Section 7.

(g) No Inconsistent Agreements. The Company has not entered, as of the date hereof, and the Company shall not enter, after the date of this Agreement, into any agreement with respect to its securities which is inconsistent with or grants registration rights that have parity with or are more favorable than the rights granted to the Holders in this Agreement or otherwise conflicts (in a manner that adversely affects Holders of Registrable Securities) with the provisions hereof in any material respect.

(h) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, or waived unless the same shall be in writing and signed by the Company and Holders holding at least a majority of the then outstanding Registrable Securities; *provided, however*, that any party may give a waiver as to itself; *provided further, however*, that no amendment, modification, supplement, or waiver that disproportionately and adversely affects, alters, or changes the interests of any Holder shall be effective against such Holder without the prior written consent of such Holder; *provided further, however*, that neither (x) the definitions of "Holders" and "Registrable Securities" in Section 1 nor (y) this Section 16 may be amended, modified or supplemented, or waived unless in writing and signed by the Supermajority Holders; and *provided further*, that the waiver of any provision with respect to any Registration Statement or offering may be given by Holders holding at least a majority of the then outstanding Registrable Securities entitled to participate in such offering or, if such offering shall have been commenced, having elected to participate in such offering. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of certain Holders and that does not directly or indirectly affect the rights of other Holders may be given by Holders holding a majority of the then outstanding Registrable Securities to which such waiver or consent relates; *provided, however*, that the provisions

of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the immediately preceding sentence. No waiver of any terms or conditions of this Agreement shall operate as a waiver of any other breach of such terms and conditions or any other term or condition, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision hereof. No written waiver hereunder, unless it by its own terms explicitly provides to the contrary, shall be construed to effect a continuing waiver of the provisions being waived and no such waiver in any instance shall constitute a waiver in any other instance or for any other purpose or impair the right of the party against whom such waiver is claimed in all other instances or for all other purposes to require full compliance with such provision. The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the right of such party thereafter to enforce each provision of this Agreement in accordance with its terms.

(i) Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed given if delivered personally, sent via electronic facsimile or email (with confirmation), mailed by registered or certified mail (return receipt requested) or delivered by an express courier (with confirmation) at the following address (or at such other address as may be specified by like notice):

(A) If to the Company:

Party City Holdco Inc.
100 Tice Boulevard
Woodcliff Lake, New Jersey 07677
Attn: General Counsel

Email:

with a copy (which shall not constitute notice) to:
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Facsimile: (212) 757-3990
Attention: Paul M. Basta
Kenneth S. Ziman
Christopher J. Hopkins
David Huntington

Email:

(B) If to the Holders (or to any of them), to the address set forth on its signature page hereto (including any joinder hereto) or such other address as may be designated in writing hereafter by such Holder.

If any time period for giving notice or taking action hereunder expires on a day which is a Saturday, Sunday or legal holiday in the State of New York or the jurisdiction in which the Company's principal office is located, the time period shall automatically be extended to the Business Day immediately following such Saturday, Sunday or legal holiday.

(j) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns (including any trustee in bankruptcy). In addition, and whether or not any express assignment shall have been made, the provisions of this Agreement which are for the benefit of the Holders of Registrable Securities (or any portion thereof) as such shall be for the benefit of and enforceable by any subsequent holder of any Registrable Securities (or of such portion thereof); *provided*, that such subsequent holder of Registrable Securities shall be required to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Company, agreeing to be bound by its terms. Subject to Section 2(i) hereof, no assignment or delegation of this Agreement by the Company, or any of the Company's rights, interests or obligations hereunder, shall be effective against any Holder without the prior written consent of the Supermajority Holders; *provided, further*, *however*, that no such assignment or delegation that disproportionately and adversely affects, alters, or changes the interests of any Holder shall be effective against such Holder without the prior written consent of such Holder (other than an assignment in connection with the reincorporation of the Company or its businesses in another jurisdiction).

(k) Execution and Counterparts. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement.

(l) Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) to the extent such rules or provisions would cause the application of the laws of any jurisdiction other than the State of New York. Each of the parties to this Agreement consents and agrees that any action to enforce this Agreement or any dispute, whether such dispute arises in law or equity, arising out of or relating to this Agreement, shall be brought exclusively in the United States District Court for the Southern District of New York or any New York State Court sitting in New York City. The parties hereto consent and agree to submit to the exclusive jurisdiction of such courts. Each of the parties to this Agreement waives and agrees not to assert in any such dispute, to the fullest extent permitted by applicable law, any claim that (i) such party and such party's property is immune from any legal process issued by such courts or (ii) any litigation or other proceeding commenced in such courts is brought in an inconvenient forum. The parties hereby agree that mailing of process or other papers in connection with any such action or proceeding to an address provided in writing by the recipient of such mailing, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof and hereby waive any objections to service in the manner herein provided.

(m) Waiver of Jury Trial. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(n) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

(o) Descriptive Headings; Interpretation; No Strict Construction. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns, pronouns, and verbs shall include the plural and vice versa. Reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and, if applicable, hereof. The words “include”, “includes” or “including” in this Agreement shall be deemed to be followed by “without limitation”. The use of the words “or,” “either” or “any” shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. All references to laws, rules, regulations and forms in this Agreement shall be deemed to be references to such laws, rules, regulations and forms, as amended from time to time or, to the extent replaced, the comparable successor thereto in effect at the time. All references to agencies, self-regulatory organizations or governmental entities in this Agreement shall be deemed to be references to the comparable successors thereto from time to time.

(p) Entire Agreement. This Agreement and any certificates, documents, instruments and writings that are delivered pursuant hereto, constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof and supersedes all prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

(q) Termination. The obligations of the Company and of any Holder, other than those obligations contained in Section 11 and this Section 16, shall terminate with respect to the Company and such Holder as soon as such Holder no longer beneficially owns any Registrable Securities.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

PARTY CITY HOLDCO INC.

By: /s/ Ian R. Heller
Name: Ian R. Heller
Title: General Counsel & Corporate Secretary

IN WITNESS WHEREOF, the undersigned parties have executed this Registration Rights Agreement as of the date first written above.

HOLDERS:

, on
behalf of one or more advisory clients
and/or related vehicles

By: /s/ Michael Weinstock
Name: Michael Weinstock
Title: Chief Executive Officer

EXHIBIT A

PLAN OF DISTRIBUTION

Each Selling Stockholder (the "Selling Stockholders") of the securities and any of their pledgees, donees, assignees, transferees, and successors-in-interest may, from time to time, sell any or all of their securities or interests in any securities covered hereby on any stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales or dispositions may be at fixed or negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell securities under Rule 144 or any other exemptions from registration under the Securities Act of 1933, as amended (the "Securities Act"), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other broker-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a

supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

In connection with the sale of the securities or interests therein, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The Selling Stockholders may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholders and any broker-dealers or agents that are involved in selling the securities may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

Selling Stockholders will be subject to the prospectus delivery requirements of the Securities Act including Rule 172 thereunder. In addition, any securities covered by this prospectus which qualify for sale pursuant to Rule 144 under the Securities Act may be sold under Rule 144 rather than under this prospectus or any other exemptions from registration under the Securities Act. The Selling Stockholders have advised us that there is no underwriter or coordinating broker acting in connection with the proposed sale of the resale securities by the Selling Stockholders.

The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted

period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of securities of the common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

EXHIBIT B

FORM OF SELLING STOCKHOLDER QUESTIONNAIRE

The undersigned (the "*Selling Stockholder*") beneficial owner of Reorganized PCHI Common Shares understands that Party City Holdco Inc. (the "*Company*") intends to file with the Securities and Exchange Commission (the "*Commission*") a registration statement on Form S-1 or, if eligible, Form S-3 (the "*Registration Statement*") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "*Securities Act*"), of certain Registrable Securities in accordance with the terms of the Registration Rights Agreement, dated as of October 12, 2023 (including all exhibits thereto and as may be amended, supplemented or amended and restated from time to time in accordance with the terms thereof, the "*Registration Rights Agreement*"), by and among the Company, the other parties signatory thereto and any additional parties identified on the signature pages of any joinder thereto. Each capitalized term not otherwise defined herein has the meaning given to it in the Registration Rights Agreement.

In order to sell or otherwise dispose of any Registrable Securities pursuant to the Registration Statement, the Selling Stockholder must be named as a selling stockholder in the related prospectus and deliver a prospectus to the purchasers of Registrable Securities. To facilitate naming of the Selling Stockholder as a selling stockholder in the Registration Statement, the Selling Stockholder must complete, execute, acknowledge and deliver this Selling Stockholder Questionnaire prior to filing of the Registration Statement.

Certain legal consequences arise from being named as selling stockholder in the Registration Statement and the related prospectus. Accordingly, the Selling Stockholder is advised to consult its own legal counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

The Selling Stockholder hereby gives notice to the Company of its intention to sell or otherwise dispose of Registrable Securities beneficially owned by it and listed below in Item 3(b) pursuant to the Registration Statement. The Selling Stockholder, by signing and returning this Selling Stockholder Questionnaire, understands that it shall be bound by the terms and conditions of this Selling Stockholder Questionnaire.

The Selling Stockholder must deliver this Selling Stockholder Questionnaire to the Company by . The Company shall be permitted to exclude any Selling Stockholder from being a selling stockholder in the Registration Statement if this Selling Stockholder Questionnaire is delivered to the Company after such date.

The Selling Stockholder hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

1. (a) Full Legal Name of Selling Stockholder:

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities listed in Item (3) below are held:

(c) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) through which Registrable Securities listed in Item (3) below are held:

2. Address for Notices to Selling Stockholder:

Telephone:
Fax:
Email address:
Contact
Person:

3. Beneficial Ownership of Registrable Securities:

This Item (3) covers beneficial ownership of the Company's equity securities. Please consult Appendix A to this Selling Stockholder Questionnaire for information as to the meaning of "beneficial ownership." Except as set forth below in this Item (3), the Selling Stockholder does not beneficially own any Registrable Securities.

(a) Number of Registrable Securities beneficially owned:

(b) Number of Registrable Securities which the Selling Stockholder wishes to be included in the Registration Statement:

4. Beneficial Ownership of other equity securities of the Company owned by the Selling Stockholder.

Except as set forth below in this Item (4), the Selling Stockholder is not the beneficial or registered owner of any securities of the Company other than the Registrable Securities listed above in Item (3).

(a) Type and amount of other securities beneficially owned by the Selling Stockholder:

(b) CUSIP No(s). of other securities beneficially owned by the Selling Stockholder:

5. Relationship with the Company:

(a) Have you or any of your affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the Selling Stockholder) held any position or office or have you had any other material relationship with the Company (or its predecessors or affiliates) within the past three years?

☐ Yes

☐ No

(b) If so, please state the nature and duration of your relationship with the Company:

6. Broker-Dealer Status:

(a) Is the Selling Stockholder a broker-dealer registered pursuant to Section 15 of the Exchange Act?

☐ Yes

☐ No

If so, please answer the question below.

If the Selling Stockholder is a registered broker-dealer, please indicate whether the Selling Stockholder acquired its Registrable Securities for investment or acquired them as transaction-based compensation for investment banking or similar services.

Note that if the Selling Stockholder is a registered broker-dealer and received its Registrable Securities other than as transaction-based compensation, the Company is required to identify the Selling Stockholder as an underwriter in the Registration Statement and related prospectus.

(b) Affiliation with Broker-Dealers:

Is the Selling Stockholder an affiliate of a registered broker-dealer? For purposes of this Item 6(b), an "*affiliate*" of a specified person or entity means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.

☐ Yes

☐ No

If so, please answer the remaining questions in this section:

(i) Please describe the affiliation between the Selling Stockholder and any registered broker-dealers:

_____

_____

(ii) If the Selling Stockholder, at the time of its acquisition of the Registrable Securities, had any agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities, please describe such agreements or understandings:

_____

_____

Note that if the Selling Stockholder is an affiliate of a broker-dealer and at the time of the acquisition of the Registrable Securities had any agreements or understandings, directly or indirectly, to distribute the securities, the Company must identify the Selling Stockholder as an underwriter in the prospectus.

7. Nature of Beneficial Holding. The purpose of this question is to identify the ultimate natural person(s) or publicly held entity that exercise(s) sole or shared voting or dispositive power over the Registrable Securities.

(a) Is the Selling Stockholder required to file, or is it a wholly-owned subsidiary of a company that is required to file, periodic and other reports (for example, Forms 10-K, 10-Q and 8-K) with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act?

☐ Yes

☐ No

(b) State whether the Selling Stockholder is an investment company, or a subsidiary of an investment company, registered under the Investment Company Act of 1940, as amended:

☐ Yes

☐ No

(c) If a subsidiary, please identify the publicly held parent entity:

_____

_____

If you answered "*No*" to questions (a) and (b) above, please identify the controlling person(s) of the Selling Stockholder (the "*Controlling Entity*"). If the Controlling Entity is not a natural person or a publicly held entity, please identify each controlling person(s) of such Controlling Entity. This process should be repeated until you reach natural persons or a publicly held entity that exercise sole or shared voting or dispositive power over the Registrable Securities:

PLEASE NOTE THAT THE COMMISSION REQUIRES THAT THESE NATURAL PERSONS BE NAMED IN THE PROSPECTUS

If you need more space for this response, please attach additional sheets of paper. Please be sure to indicate your name and the number of the item being responded to on each such additional sheet of paper, and to sign each such additional sheet of paper before attaching it to this Selling Stockholder Questionnaire. Please note that you may be asked to answer additional questions depending on your responses to the above questions.

The Selling Stockholder acknowledges that it understands its obligation to comply with the provisions of the Exchange Act and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Registrable Securities pursuant to the Registration Statement. The Selling Stockholder agrees that neither it nor any person acting on its behalf shall engage in any transaction in violation of such provisions.

The Selling Stockholder agrees to provide such information as may be required by law or under the Registration Rights Agreement for inclusion in the Registration Statement and any additional information the Company may reasonably request and to promptly notify the Company of any inaccuracies or changes in the information provided that may occur at any time while the Registration Statement remains effective.

In the event the Selling Stockholder transfers all or any portion of the Registrable Securities listed in Item (3) above after the date on which such information is provided to the Company, the Selling Stockholder shall notify the transferee(s) at the time of transfer of its rights and obligations under this Selling Stockholder Questionnaire and the Registration Rights Agreement.

By signing this Selling Stockholder Questionnaire, the Selling Stockholder consents to the disclosure of the information contained herein in its answers to Items (1) through (6) and, to the extent required under securities laws, Item 7 above and the inclusion of such information in

the Registration Statement, the related prospectus and any state securities or Blue Sky applications. The Selling Stockholder understands that such information shall be relied upon by the Company without independent investigation or inquiry in connection with the preparation or amendment of the Registration Statement, the related prospectus and any state securities or Blue Sky applications.

Once this Selling Stockholder Questionnaire is executed by the Selling Stockholder and delivered to the Company, the terms of this Selling Stockholder Questionnaire and the representations, warranties and indemnification contained herein shall be binding on, shall inure to the benefit of, and shall be enforceable by the respective successors, heirs, personal representatives and assigns of the Company and the Selling Stockholder with respect to the Registrable Securities beneficially owned by such Selling Stockholder and listed in Item (3) above.

This Selling Stockholder Questionnaire shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) to the extent such rules or provisions would cause the application of the laws of any jurisdiction other than the State of New York.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Selling Stockholder Questionnaire to be executed and delivered either in person or by its authorized agent.

Dated:

Selling Stockholder:

By: _____
Name:
Title:

Please email a PDF of the fully completed and executed Selling Stockholder Questionnaire to:

Appendix A

DEFINITION OF "BENEFICIAL OWNERSHIP"

1. A "Beneficial Owner" of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares:

(a) Voting power which includes the power to vote, or to direct the voting of, such security; and/or

(b) Investment power which includes the power to dispose, or direct the disposition of, such security.

Please note that either voting power or investment power, or both, is sufficient for you to be considered the beneficial owner of shares.

2. Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of the federal securities acts shall be deemed to be the beneficial owner of such security.

3. Notwithstanding the provisions of paragraph (1), a person is deemed to be the "beneficial owner" of a security if that person has the right to acquire beneficial ownership of such security within 60 days, including but not limited to any right to acquire: (a) through the exercise of any option, warrant or right; (b) through the conversion of a security; (c) pursuant to the power to revoke a trust, discretionary account or similar arrangement; or (d) pursuant to the automatic termination of a trust, discretionary account or similar arrangement; *provided*, *however*, any person who acquires a security or power specified in (a), (b) or (c) above, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power.

EXHIBIT 10.4

STOCKHOLDERS AGREEMENT
dated as of

October 12, 2023

by and among

PARTY CITY HOLDCO INC.

and

EACH OF THE STOCKHOLDERS PARTY HERETO

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ARTICLE 6

MISCELLANEOUS

STOCKHOLDERS AGREEMENT (this "**Agreement**"), dated as of October 12, 2023 (the "**Effective Date**"), by and among (i) Party City Holdco Inc., a Delaware corporation (the "**Corporation**"), (ii) each Person (as defined below) set forth on Schedule A hereto and (iii) any other Person who shall hereafter become a Party hereto as set forth herein (each Person in clauses (ii) and (iii), a "**Stockholder**" and collectively, the "**Stockholders**").

W I T N E S S E T H:

WHEREAS, on January 17, 2023, the Corporation and certain affiliated debtors filed voluntary petitions in the United States Bankruptcy Court for the Southern District of Texas seeking relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**");

WHEREAS, on September 6, 2023, the United States Bankruptcy Court for the Southern District of Texas in Case No. 23-90005 (DRJ) entered an order confirming the Fourth Amended Joint Plan of Reorganization of *Party City Holdco Inc. and Its Debtor Affiliates* dated August 31, 2023 pursuant to the Bankruptcy Code (as may be amended, supplemented, or otherwise modified from time to time, including all exhibits, schedules, supplements, appendices, annexes, and attachments thereto, the "**Plan of Reorganization**");

WHEREAS, pursuant to the Plan of Reorganization, the Corporation is authorized to enter into this Agreement and each Stockholder is deemed to hold its Common Stock (as defined below), as applicable, subject to the terms and conditions of this Agreement;

WHEREAS, all Persons who after the date hereof are issued Common Stock or receive Common Stock pursuant to a Transfer from an existing holder of Common Stock must become a party to this Agreement by signing a joinder agreement in the form of Exhibit A hereto; and

WHEREAS, the parties hereto desire to establish certain rights and obligations with respect to the Stockholders and other matters relating to the corporate governance of the Corporation.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions*. As used in this Agreement, the following terms shall have the meanings indicated below:

"**Accelerated Buyer**" has the meaning set forth in Section 3.01(g).

"**Accelerated Sale Notice**" has the meaning set forth in Section 3.01(g).

"**Affiliate**" means, with respect to a specified Person, each other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified. As used in this definition, "**control**" (including with correlative meanings, "**controlled by**" and "**under common control with**") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of voting securities or by contract or other agreement). Notwithstanding the foregoing, for purposes of this Agreement, none of the Stockholders or their respective Affiliates, solely by virtue of being Stockholders of the Corporation, shall be considered Affiliates of any other Stockholders or such other Stockholders' Affiliates or Related Persons.

"**Affiliate Transaction**" means any contract, agreement, transaction or other arrangement (whether written or unwritten) between the Corporation or any of its Subsidiaries, on the one hand, and (i) any Person (together with its Related Persons) directly or indirectly owning, controlling or holding the power to vote (including pursuant to a contract, agreement, arrangement or other understanding), 10% or more of the Fully Diluted Party Common Stock, or any officer, director or Affiliate of any such person or such person's Related Persons, (ii) any officer or director of the Corporation or any of its Subsidiaries or any Affiliate of any of the foregoing persons (excluding any compensation arrangements or any payments or awards pursuant to the Management Incentive Plan or any similar incentive compensation or equity purchase plans of the Corporation or any of its Subsidiaries and any customary indemnification, expense advance or reimbursement in accordance with policies or contracts of the Corporation or any of its Subsidiaries, including any forms thereof (which, for the avoidance of doubt, shall not require reapproval by the Board of Directors absent material modifications thereto), in each case that are approved by a majority of the Board of Directors or a committee of the Board of Directors (disregarding for this purpose clause (iii) of Section 2.06)), (iii) any members of the "immediate family" (as such terms are respectively defined in Rule 16a-1 of the Securities Exchange Act of 1934) of any of the persons referenced in clause (i) or clause (ii), on the other hand, (iv) any Person in which a Stockholder (together with its Related Persons) who holds 10% or more of the Fully Diluted Party Common Stock directly or indirectly owns, controls or holds the power to vote (including pursuant to a contract, agreement, arrangement or other understanding) 20% or more of the outstanding equity of such Person or (v) any third party in which any officer or director of the Corporation or any of its Subsidiaries also serves as an officer or director of such third party; *provided*, that "Affiliate Transactions" shall not include any contract, agreement, transaction or other arrangement that is solely between the Corporation and/or any one or more of its Subsidiaries or among any of the Corporation's Subsidiaries.

"**Agreement**" has the meaning set forth in the Preamble.

"**All-In Yield**" means, as to any debt for borrowed money, the yield thereof incurred or payable by the applicable borrower generally to all lenders of such debt in an amount equal to the sum of (a) the applicable margin and (b) original issue discount,

make-whole premium and upfront fees; provided that (i) original issue discount, make-whole premium and upfront fees shall be equated to interest rate assuming a life to maturity on a straight line basis (or, if less, the stated life to maturity at the time of incurrence of the applicable debt); and (ii) "All-In Yield" shall not include amendment fees, arrangement fees, structuring fees, commitment fees, underwriting fee and any similar fees payable to any lead arranger (or its Affiliates) in connection with the commitment or syndication of such debt, consent fees paid to consenting lenders, ticking fees on undrawn commitments and any other fees not paid or payable generally to all lenders in the primary syndication of such debt and (iii) the interest rate (exclusive of margin) after giving effect to any (A) Eurocurrency Rate, (B) SOFR or (C) Base Rate floor, as each of (A)-(C) are to be defined in the applicable definitive documentation underlying such debt incurrence.

"**Amendment**" has the meaning set forth in the Recitals.

"**Anagram Noteholders**" means the holders of the Anagram Notes.

"**Anagram Notes**" means, collectively (i) the 15.00% PIK/Cash Senior Secured First Lien Notes due 2025 issued by Anagram International, Inc. and Anagram Holdings, LLC pursuant to the Indenture, dated as of July 30, 2020, by and among Anagram International, Inc. and Anagram Holdings, LLC, as issuers, the guarantors party thereto, and Ankura Trust Company, LLC, as trustee and collateral trustee, as may be amended, supplemented, or otherwise modified from time to time, and (ii) the 10.00% PIK/Cash Senior Secured Second Lien Notes due 2026 issued by Anagram International, Inc. and Anagram Holdings, LLC pursuant to the Indenture, dated as of July 30, 2020, by and among Anagram International, Inc. and Anagram Holdings, LLC, as issuers, the guarantors party thereto, and Ankura Trust Company, LLC, as trustee and collateral trustee, as may be amended, supplemented, or otherwise modified from time to time.

"**Anagram Transaction**" means a transaction by and among the Corporation, the Anagram Wholly-Owned Subsidiaries and Anagram Noteholders in connection with the restructuring of the Anagram Notes.

"**Anagram Wholly-Owned Subsidiaries**" means, collectively, Anagram Holdings, LLC, Anagram International, Inc. and Anagram International Holdings, Inc.

"**Board of Directors**" means, as of any date, the Board of Directors of the Corporation in office on that date.

"**Business Day**" means any day other than a Saturday, Sunday or day on which commercial banks in the State of New York are authorized or required by Law to close for business.

"**Bylaws**" means the Second Amended and Restated Bylaws of the Corporation (as may be amended, restated or amended and restated from time to time).

"**Cause**" means, with respect to any Director, (i) the commission of an act of fraud, embezzlement, misappropriation, willful misconduct or breach of fiduciary duty

against the Corporation, (ii) conviction, plea of guilty or nolo contendere to (x) a felony or (y) any crime involving fraud, dishonesty or moral turpitude, (iii) causing material harm, financial or otherwise, to the Corporation, (iv) material breach of any Corporation policy, or (v) gross negligence or willful misconduct in the performance of such Director's duties to the Corporation.

"**CG**" means Capital Research and Management Company or one of its Affiliates or funds or accounts that it manages or advises, in each case, that is a Stockholder and has been designated in writing as "CG" by Capital Research and Management Company.

"**Charter**" means the Third Amended and Restated Certificate of Incorporation of the Corporation (as may be amended, restated or amended and restated from time to time).

"**Common Stock**" means the common stock, par value $0.01 per share, of the Corporation.

"**Company Sale**" means (i) the occurrence of a merger, consolidation, share exchange, business combination or other sale involving the Corporation and its Subsidiaries or similar corporate transaction involving the Corporation and its Subsidiaries, whether or not the Corporation is the surviving entity in any such transaction, other than a transaction which would result in the voting power of the securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or owning entity) at least a majority of the voting power of the securities of the Corporation or such surviving or owning entity immediately after such transaction (any transaction referred to in this clause (i), a "**Business Combination**"), (ii) any Transfer of a majority of the outstanding Common Stock in any transaction or series of related transactions (any transaction or series of related transactions referred to in this clause (ii), a "**Share Transfer**") or (iii) any direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Corporation followed by a distribution of the proceeds ("**Asset Sale**").

"**Competitor**" means (i) any Person (together with its Related Persons) that owns or operates assets involved in the retail or online retail industry (including party retailers), other than the Corporation and its Subsidiaries (collectively, "**Party Goods Companies**"), (ii) any Person (together with its Related Persons) that directly or indirectly (A) holds equity interests in any Party Goods Company where such interests collectively represent greater than 50% of the asset value, or account for greater than 50% of the revenue of, such Person, or (B) controls (as such term is defined in the definition of "Affiliate") any Party Goods Company or (iii) any other Person as determined from time to time that the Board of Directors determines in good faith poses a material competitive risk to the Corporation or any of its Subsidiaries; *provided* that in the case of clauses (i) or (ii), the Board of Directors (excluding the vote of any Director appointed by, or otherwise affiliated with, such specified Competitor referenced in this proviso (as defined without giving effect to this proviso)) may determine in good faith

that a Person that would be a Competitor pursuant to the foregoing clauses (i) or (ii) shall be deemed to not be a Competitor, notwithstanding clauses (i) or (ii) of this definition; *provided further* that (x) no Stockholder as of the Effective Date shall be deemed a "Competitor" for any purposes hereunder and (y) no Person that is a financial-investment firm, collective-investment vehicle or private investment fund and in each case that does not control any "Competitor" shall be deemed a "Competitor".

"**Confidential Information**" means, with respect to the Corporation, all information concerning the Corporation and its Subsidiaries, including, but not limited to, ideas, business strategies, innovations and materials, all aspects of the business plan of the Corporation and its Subsidiaries, proposed operation and products, corporate structure, financial and organizational information, analyses, proposed partners, software code and system and product designs, employees and their identities, equity ownership, the methods and means by which the Corporation or its Subsidiaries plan to conduct their respective businesses, all trade secrets, trademarks, tradenames and all intellectual property associated with the business of the Corporation and its Subsidiaries; *provided* that the term "Confidential Information" does not include information or material that:

(i) is in the possession of a Stockholder at the time of disclosure by the Corporation or its Subsidiaries so long as, to the knowledge of such Stockholder, such information or material is not subject to any prior obligation of confidentiality owed to the Corporation or any of its Subsidiaries with respect to such information;

(ii) before or after it has been disclosed to a Stockholder by the Corporation, or any of its Subsidiaries, becomes publicly available, not as a result of any action or inaction of such Stockholder or any of its Representatives in violation of this Agreement;

(iii) is disclosed to a Stockholder or its Representatives by a third party not, to the knowledge of such Stockholder, in violation of any obligation of confidentiality owed to the Corporation or any of its Subsidiaries with respect to such information; or

(iv) is independently developed (without the use of any Confidential Information) by a Stockholder or any of its Representatives without violating any confidentiality agreement with, or other obligation of secrecy to, the Corporation or any of its Subsidiaries.

"**Corporation**" has the meaning set forth in the Preamble.

"**Covered Person**" means (i) each Director or officer of the Corporation or any of its Subsidiaries and each former Director or officer of the Corporation or any of its Subsidiaries and (ii) each Stockholder and each former Stockholder and each of their respective Representatives.

"**Designating Stockholder Indemnified Actions**" means the following: (i) the purchase, sale, or rescission of any Security of the Debtors or the Reorganized Debtors,

(ii) the assertion or enforcement of rights and remedies against the Debtors, (iii) the subject matter of, or the transactions or events giving rise to, any Claim, Cause of Action, or Interest that is treated in the Plan, (iv) the business or contractual arrangements between any Debtor and any Designating Stockholder, its Affiliates or its or their respective Representatives, (v) the Debtors' in- or out-of-court restructuring efforts, (vi) intercompany transactions between or among a Debtor or an Affiliate of a Debtor and another Debtor or an Affiliate of a Debtor, (vii) the Chapter 11 Cases, including the Filing of the Chapter 11 Cases, (viii) the DIP Facility, (ix) the Prepetition ABL Credit Agreement, (x) the Secured Notes Indentures, (xi) the formulation, preparation, dissemination, negotiation, resolution, agreement on, or Filing of the Restructuring Support Agreement, the Disclosure Statement, the Backstop Agreement, the Rights Offering, the DIP Non-Cash Takeout Option, the ABL Exit Facility, the New Second Lien Notes, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Creditors' Committee Settlement, the Mudrick Settlement, the Confirmation Order, or any aspect of the Restructuring Transactions, including but not limited to any contract, instrument, release, or other agreement or document created, entered into, or not entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Backstop Agreement, the Rights Offering, the DIP Non-Cash Takeout Option, the New Second Lien Notes, ABL Exit Facility, the Creditors' Committee Settlement, the Mudrick Settlement, the Plan (including, for the avoidance of doubt, the Plan Supplement), and the Confirmation Order, (xii) the pursuit of Confirmation, (xiii) the pursuit of Consummation, (xiv) the administration and implementation of the Plan, (xv) any action or actions taken in furtherance of or consistent with the administration of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or (xvi) any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to any of the foregoing. Defined terms used in the foregoing clauses (i) through (xvi) but not otherwise defined herein shall have the respective meaning set forth in the Plan of Reorganization.

"**Designating Stockholder Indemnified Persons**" has the meaning set forth in Section 5.02(a).

"**Designating Stockholder Transferred Share Portion**" means, with respect to any given Designating Stockholder as of the Effective Date, the aggregate number of Transfer Shares proposed to be transferred by the Transferring Stockholder pursuant to the Transfer Notice *multiplied by* a fraction, the numerator of which is the number of shares of Fully Diluted Party Common Stock held (directly or indirectly) by such Designating Stockholder (together with their Related Persons) and the denominator of which is the total number of shares of Fully Diluted Party Common Stock held (directly or indirectly) by all of the Stockholders.

"**Designating Stockholders**" means, collectively, each Large Stockholder and each Minority Designating Stockholder.

"**Designating Stockholders Conference Call**" has the meaning set forth in Section 4.01(b).

"**Director**" has the meaning set forth in Section 2.01.

"**Disproportionately Affected Stockholder**" has the meaning set forth in Section 6.06.

"**DKP**" means Davidson Kempner Capital Management LP or one of its Affiliates that is a Stockholder and has been designated in writing as "DKP" by Davidson Kempner Capital Management LP.

"**Drag-Along Buyer**" has the meaning set forth in Section 3.03(a)(i).

"**Drag-Along Rights**" has the meaning set forth in Section 3.03(a).

"**Drag-Along Sale**" has the meaning set forth in Section 3.03(a).

"**Drag-Along Sale Notice**" has the meaning set forth in Section 3.03(c).

"**Drag-Along Sellers**" has the meaning set forth in Section 3.03(a).

"**Excess Shares**" has the meaning set forth in Section 3.01(d).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Fully Diluted Party Common Stock**" means, as of any given date, the aggregate number of issued and outstanding shares of Common Stock held by the Stockholders (together with their Related Persons) as of such date after giving effect to a hypothetical conversion on such date of all of the issued and outstanding equity securities held by the Stockholders (together with their Related Persons) that are convertible into or exchangeable for Common Stock (but for the avoidance of doubt, excluding Common Stock issued pursuant to the Management Incentive Plan or any other compensation or incentive plan approved by the Board of Directors).

"**Governmental Entity**" means (a) the United States of America, (b) any other sovereign nation, (c) any state, province, district, territory or other political subdivision of (a) or (b) of this definition, including any county, municipal or other local subdivision of the foregoing, or (d) any entity exercising executive, legislative, judicial, regulatory or administrative functions of government on behalf of (a), (b) or (c) of this definition.

"**Independent Director**" means (i) with respect to any person who is a Director designated by any Designating Stockholder, that such person is neither an employee nor an Affiliate of the Corporation, any Designating Stockholder or any of their respective Related Persons, and has no, and has had no, relationship with the Corporation, any Designating Stockholder or with any of their respective Related Persons which is material to that person's ability to be independent from the Corporation and such Designating Stockholder in connection with the duties as an Independent Director, (ii) with respect to any other Director (other than the CEO Director), a Director that is independent from: (A) the Corporation pursuant to the standard for independence under the rules of the New

York Stock Exchange (as if such rules applied to the Corporation); and (B) each (a) Stockholder that holds (together with its Related Persons) more than one percent (1%) of the Fully Diluted Party Common Stock, and (b) Person that has an outstanding loan to the Corporation or its Subsidiaries (together with each Stockholder of more than one percent (1%) of the Fully Diluted Party Common Stock, the "**Interested Parties**"), which Director shall not have a material relationship with any Interested Party, as determined by the Board of Directors in good faith, including, but not limited to, serving or formerly serving (within the last three years) as an employee, director, officer or partner of an Interested Party, being an immediate family member of a current or former (within the last three years) employee, director, officer or partner of an Interested Party, receiving in excess of $120,000 of direct compensation from an Interested Party in any of the last three years, or having a financial interest in an Interested Party.

"**Individual Excess Shares**" has the meaning set forth in Section 3.01(d).

"**IPO**" has the meaning set forth in Section 3.01(f).

"**Issuance Notice**" has the meaning set forth in Section 3.01(b).

"**Joinder**" means a Joinder to this Agreement in substantially the form attached hereto as **Exhibit A**.

"**Joint Minority Designating Stockholder Termination Date**" means the earliest date from and after the Effective Date on which the Minority Designating Stockholders (together with their respective Related Persons), collectively, hold less than 15% of the Fully Diluted Party Common Stock in the aggregate.

"**Large Stockholder**" means, as of the Effective Date, each of (i) SP and (ii) CG.

"**Large Stockholder Termination Date**" means, with respect to a Large Stockholder, the earliest date from and after the Effective Date on which such Large Stockholder (together with its respective Related Persons) holds less than 15% of the Fully Diluted Party Common Stock in the aggregate.

"**Law**" means all laws, statutes, ordinances, rules, regulations and orders of any Governmental Entity.

"**Listing**" has the meaning set forth in Section 3.01(f).

"**Management Incentive Plan**" means the initial management incentive compensation program to be established and implemented by the Board of Directors after the Effective Date, in accordance with the Plan of Reorganization.

"**Minority Designating Stockholder**" means, as of the Effective Date, each of DKP and Monarch.

"**Monarch**" means Monarch Alternative Capital LP or one of its Affiliates that is a Stockholder and has been designated in writing as "Monarch" by Monarch Alternative Capital LP.

"**National Securities Exchange**" means any U.S. national securities exchange, including, without limitation, the New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market and the Nasdaq Capital Market. For the avoidance of doubt, National Securities Exchange does not include an "over-the-counter" system or network.

"**New Securities**" means any and all (A) shares of Common Stock or other equity securities of the Corporation, (B) equity securities of any Subsidiary of the Corporation, (C) securities exchangeable into, or convertible or exercisable for, securities of the type specified in clause (A) or (B), (D) options, warrants or other rights to acquire securities of the type specified in clause (A), (B) or (C), and (E) debt for borrowed money incurred or issued by the Corporation or any of its Subsidiaries that, as of the date of issuance or incurrence, provides a holder thereof with an All-In Yield equal to or in excess of 12.00%; *provided* that New Securities shall not include: (1) securities issued to employees, officers, directors or consultants pursuant to the Management Incentive Plan or any other equity-based compensation or incentive plans approved by the Board of Directors or included in the Plan of Reorganization, (2) securities issued in connection with a stock split, payment of dividends or any similar recapitalization, reclassification, distribution, exchange or readjustment of shares approved by the Board of Directors, (3) shares of Common Stock or any indebtedness, in each case, issued or distributed pursuant to the Plan of Reorganization, (4) securities issued as consideration in any business combination, consolidation, merger or acquisition transaction or joint venture involving the Corporation or any of its Subsidiaries, (5) securities issued in connection with an Anagram Transaction, (6) securities issued upon the conversion, exchange or exercise of any securities convertible into or exchangeable or exercisable for securities (i) of the type specified in clause (1), (2), (3), (4) or (5) or (ii) that were subject to the Securities Purchase Right or specifically excluded from the Securities Purchase Right, (7) securities issued in an IPO, (8) securities issued as a *bona-fide* "equity kicker" to a lender (or its Affiliate designee) in connection with any incurrence of indebtedness from a lender, or to any other vendor, customer or consultant in the ordinary course of business or (9) securities issued by any Subsidiary of the Corporation to the Corporation or to any of its other Subsidiaries.

"**Organizational Documents**" means the Charter and Bylaws.

"**Other Stockholders**" has the meaning set forth in Section 3.03(a).

"**Party**" means each Person who is a party to this Agreement pursuant to the Plan of Reorganization, by virtue of signing this Agreement or by virtue of signing a Joinder.

"**Person**" means any individual, firm partnership, company or other entity, and shall include any successor (by merger or otherwise) of such entity.

"**Plan of Reorganization**" has the meaning set forth in the Recitals.

"**Preemptive Rightsholder**" has the meaning set forth in Section 3.01(a).

"**Preemptive Share**" has the meaning set forth in Section 3.01(a).

"**Proposed Transferee**" has the meaning set forth in Section 4.03(b).

"**Registration Rights Agreement**" means that Registration Rights Agreement (including all exhibits thereto and as may be amended, supplemented or amended and restated from time to time in accordance with the terms thereof), dated as of the date hereof, by and among the Corporation and the other parties signatory thereto and any additional parties identified on the signature pages of any joinder agreement executed and delivered pursuant thereto.

"**Related Persons**" means, with respect to a Person, and without duplication, (i) such Person's Affiliates and (ii) any fund, account, investment vehicle or co-investment vehicle that is controlled, managed, advised or sub-advised by such Person or any of its Affiliates or the same investment manager, advisor or sub-advisor as such Person or any Affiliate of such investment manager, advisor or sub-advisor.

"**Representatives**" means, with respect to a Person, such Person's Related Persons and its and their respective partners, members, shareholders, managers, directors, officers, employees, advisors, legal counsel, accountants, tax advisors, investment advisers, agents and other representatives.

"**SEC**" means the U.S. Securities and Exchange Commission, including any governmental body or agency succeeding to the functions thereof.

"**Secured Site**" has the meaning set forth in Section 4.02.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future Law.

"**Securities Purchase Right**" has the meaning set forth in Section 3.01(a).

"**SP**" means Silver Point Capital, L.P. or one of its Affiliates that is a Stockholder and has been designated in writing as "SP" by Silver Point Capital, L.P.

"**Stockholders**" has the meaning set forth in the Preamble.

"**Subsidiary**" means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or

more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of the voting interests thereof are at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof; *provided* that in the case of this clause (b), if a Person has the right to serve as the "manager" (or comparable role) of a limited liability company, partnership, association or other business entity (other than a corporation), such limited liability company, partnership, association or other business entity (other than a corporation) and each of its Subsidiaries shall be deemed to be a Subsidiary of such Person.

"**Tag-Along Notice**" has the meaning set forth in Section 3.02(b).

"**Tag-Along Offerees**" has the meaning set forth in Section 3.02(a).

"**Tag-Along Per Share Consideration**" has the meaning set forth in Section 3.02(b).

"**Tag-Along Pro Rata Portion**" has the meaning set forth in Section 3.02(b).

"**Tag-Along Right**" has the meaning set forth in Section 3.02(a).

"**Tag-Along Seller**" has the meaning set forth in Section 3.02(a).

"**Tag-Along Transfer**" has the meaning set forth in Section 3.02(a).

"**Tag-Along Transferee**" has the meaning set forth in Section 3.02(b).

"**Tagging Stockholder**" has the meaning set forth in Section 3.02(a).

"**Transfer**" (and, with correlative meanings, "**Transferee**", "**Transferor**", "**Transferred**" and "**Transferring**") means, with respect to any Common Stock or any other equity securities, (a) when used as a verb, to sell, assign, dispose of, exchange, pledge, encumber, hypothecate, reduce beneficial ownership of or otherwise transfer such Common Stock, or other equity securities or any participation or interest therein, whether directly or indirectly (including pursuant to a derivative transaction), and (b) when used as a noun, a sale, assignment, disposition, exchange, pledge, encumbrance, hypothecation, reduction in beneficial ownership or other transfer of such Common Stock, or other equity securities or any participation or interest therein, whether directly or indirectly (including pursuant to a derivative transaction). The term "Transfer", together with its correlative meanings above, will include a direct or indirect transfer (or series of related direct or indirect transfers) of any interest in a Stockholder if the value of the Common Stock held (directly or indirectly) by the Stockholder constitutes more than ten percent (10%) of the value being transferred disregarding any cash, cash equivalents and marketable securities involved in such transfer.

ARTICLE 2
CORPORATE GOVERNANCE; CERTAIN COVENANTS

Section 2.01. *Board of Directors; Selection of Directors; Board Committees.*

(a) *Board Constitution*. A Board of Directors shall be constituted for the Corporation. The Board of Directors shall consist of five (5) directors (each, a "**Director**" and collectively, the "**Director**"), of whom (i) one shall be the individual that is the Chief Executive Officer of the Corporation at the relevant time (the "**CEO Director**"), (ii) two shall be the individuals that each Large Stockholder has designated to the Board of Directors (each, a "**Large Stockholder Director**" and collectively, the "**Large Stockholder Directors**"), (iii) one shall be the individual that is jointly designated by the Large Stockholders (the "**Joint Large Stockholder Director**") and (iv) one shall be the individual that is jointly designated by the Minority Designating Stockholders (the "**Joint Minority Designating Stockholder Director**"), and, in each case of (ii)-(iv), all such Directors shall be Independent Directors selected in accordance with Section 2.01(b). For the avoidance of doubt, termination, resignation or other removal of the individual then serving as Chief Executive Officer shall automatically result in the deemed resignation from the Board of Directors of such individual from the position of CEO Director, and the appointment of a new Chief Executive Officer shall automatically result in the deemed appointment to the Board of Directors of such new Chief Executive Officer as the CEO Director. Subject to the following proviso, the Board of Directors shall select a Director (other than the CEO Director) to serve as the Chairman of the Board (the "**Chairman**") from time to time, having such responsibilities as are determined by the Board of Directors; provided that the Large Stockholders shall have the right to jointly select the initial Director that shall be designated as the Chairman (which may be a Large Stockholder Director or another Director (other than the CEO Director)). The Corporation and each Stockholder shall take such action as may be required under applicable Law, the Organizational Documents and this Agreement to cause the Board of Directors to consist of the number of authorized Directors specified in this Section 2.01(a) and to be composed of the Directors specified in Section 2.01(a) and Section 2.01(b). From and after the Effective Date, (i) the Corporation agrees to include in the slate of director nominees to be voted upon by Stockholders at any annual or special meeting of stockholders of the Corporation at which directors are to be elected, or as otherwise permitted under the Bylaws, any directors designated in accordance with Section 2.01(a) or Section 2.01(b) and (ii) each Stockholder agrees to vote, or cause to be voted, all Common Stock owned by such Stockholder (together with its Related Persons), or over which such Stockholder (together with its Related Persons) has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that at any annual or special meeting of stockholders of the Corporation at which directors are to be elected or as otherwise permitted under the Bylaws, any directors designated in accordance with Section 2.01(a) or Section 2.01(b), and in each case of (i) and (ii), the Corporation and each Stockholder (together with its Related Persons) shall cause the election of such designees to the Board of Directors, including designating such individuals to be elected as Directors as provided herein. The right of a Designating Stockholder to designate a Director pursuant to this Section 2.01 shall cease following the

Large Stockholder Termination Date, the Joint Minority Designating Stockholder Termination Date or the date upon which SP no longer has the right to designate the Continuing Large Stockholder Director, as applicable. Following such time, the applicable designated Director shall be entitled to complete his or her then-remaining term as a Director. Such Director seat shall thereafter be nominated by (i) the Board of Directors or (ii) any other Stockholder proposing an alternative slate of Directors (subject to compliance with any applicable provisions in the Organizational Documents), in each case at any annual meeting of Stockholders and each such Director shall then be elected by the vote of a plurality of the votes cast with respect to the Directors at any meeting for the election of Directors at which a quorum is present.

(b) *Selection of Independent Directors*.

(i) With respect to each Large Stockholder, prior to the Large Stockholder Termination Date, such Large Stockholder shall have the right to designate one Large Stockholder Director to the Board of Directors.

(ii) Prior to the Joint Minority Designating Stockholder Termination Date, the Minority Designating Stockholders, collectively, shall have the right to designate the Joint Minority Designating Stockholder Director to the Board of Directors.

(iii) SP and the other Large Stockholder shall have the right to jointly designate the initial Joint Large Stockholder Director to the Board of Directors.

(iv) Following the initial term of the Joint Large Stockholder Director, the Large Stockholder (other than SP) acknowledges and agrees to permanently waive its continuing designation right with respect to such Joint Large Stockholder Director, while SP shall continue to have the right to designate the Joint Large Stockholder Director (now, a "**Continuing Large Stockholder Director**") so long as such Continuing Large Stockholder Director is an Independent Director and SP (together with its Related Persons) holds at least 30% of the Fully Diluted Party Common Stock in the aggregate.

(v) The Directors as of the Effective Date are Bradley Weston (in such person's capacity as the CEO Director), Robert Hull (in such person's capacity as the Large Stockholder Director designated by SP), Anthony Truesdale (in such person's capacity as the other Large Stockholder Director), Neal Goldman (in such person's capacity as the Joint Large Stockholder Director) and Mark King (in such person's capacity as the Joint Minority Designating Stockholder Director).

(vi) For the avoidance of doubt, (A) the Director designation rights of the Designating Stockholders pursuant to this Section 2.01 (and the related rights pursuant to this Article 2 in the case of removal or vacancies) are contractual rights of the Designating Stockholders and are not subject to any vote of any other Stockholders, (B) the right of SP to designate the Continuing Large Stockholder

Director to the Board of Directors is a contractual right that is personal to SP and not transferrable to a third-party Transferee in connection with a Transfer to such third-party Transferee by SP of its ownership of Common Stock or otherwise, (C) the right of the Minority Designating Stockholders to designate the Joint Minority Designating Stockholder Director are contractual rights that are personal to each of DKP and Monarch and are not transferrable to a third-party Transferee in connection with a Transfer to such third-party Transferee by either DKP or Monarch, as applicable, of their respective ownership of Common Stock or otherwise and (D) the right of each Large Stockholder to designate one Large Stockholder Director to the Board of Directors is transferrable to a third-party Transferee in connection with a Transfer to such third-party Transferee by either Large Stockholder of its ownership of Common Stock; provided, that such third-party Transferee acquires at least 15% of the Fully Diluted Party Common Stock in the aggregate in such transfer; provided, further, that any such third-party Transferee may elect to waive this designation right for any period of time by providing prompt written notice to the Board of Directors.

(c) The Corporation shall be entitled to request from time to time as determined by the Corporation from each Designating Stockholder, and each Designating Stockholder agrees to provide to the Corporation upon such request, reasonably satisfactory evidence of such Designating Stockholder's then-present ownership of Common Stock in order to verify the applicable of the rights of such Designating Stockholder under this Agreement.

(d) *Board Committees*. The Board of Directors may designate one (1) or more Board of Director committees (each, a "**Board Committee**") consisting of two (2) or more Directors, which, to the extent provided in such designation, shall have and may exercise, subject to the provisions of this Agreement, the powers and authority granted hereunder. The presence of each Large Stockholder Director and, once designated, the Continuing Large Stockholder Director shall be required to constitute a quorum for the transaction of business at any meeting of any Board Committee; provided, that, if a quorum cannot be established at a duly called Board Committee meeting due to the absence of either Large Stockholder Director or, once designated, the Continuing Large Stockholder Director, then a quorum shall not require the presence of such absent Director at a second duly called meeting of such Board Committee. Such Board Committee(s) shall have such name or names as may be determined from time to time by the Board of Directors. A majority of all the members of any such Board Committee may determine its action and fix the time and place, if any, of its meetings and specify what notice thereof, if any, shall be given, unless the Board of Directors shall otherwise provide. Subject to the foregoing, the Board of Directors shall have power to change the members of any such Board Committee at any time, to fill vacancies, and to discharge any such Board Committee, either with or without cause, at any time.

Section 2.02. *Removal of Directors.* Any Director may be removed from the Board of Directors in the manner allowed by applicable Law, this Agreement and the Organizational Documents; provided, that any Large Stockholder Director, Joint Minority Designating Stockholder Director, Joint Large Stockholder Director or, once

applicable, Continuing Large Stockholder Director may be removed and replaced, with or without cause and for any reason or no reason at any time, by (and only by) the Person(s) entitled to designate such Director, as applicable, pursuant to Section 2.01(b). A Director may also resign of his or her own volition at any time, by written notice to the Corporation.

Section 2.03. *Board Recommendation.* Prior to holding any meeting of Stockholders (or obtaining a written consent in lieu thereof, unless such consent becomes effective prior to the Board of Directors having a reasonable opportunity to make a recommendation) at which a determination under Section 2.01 or Section 2.02 will be made, the Board of Directors shall submit to the Stockholders in writing the recommendation of the Board of Directors with respect to the determination(s) to be made.

Section 2.04. *Board Vacancies*. If there is a vacancy on the Board of Directors for any reason, such vacancy shall be filled (i) in the case of a vacancy of a Large Stockholder Director, by the applicable Large Stockholder, (ii) in the case of a vacancy of a Joint Minority Designating Stockholder Director, by the Minority Designating Stockholders, (iii) in the case of a vacancy of the Continuing Large Stockholder Director, by SP and (iv) in the case of any other vacancy, such Director seat shall thereafter be nominated by (i) the Board of Directors or (ii) the Stockholders (together with their Related Persons) collectively holding at least 50% of the Fully Diluted Party Common Stock that are proposing an alternative slate of Director(s) to fill any such vacancy (subject to compliance with any applicable provisions in the Organizational Documents), in each case at the next annual meeting of Stockholders and each such Director shall then be elected by the vote of a plurality of the votes cast with respect to the Directors at any meeting for the election of Directors at which a quorum is present.

Section 2.05. *Meetings of the Board of Directors; Quorum.*

(a) Meetings of the Board of Directors shall be held at least once per fiscal quarter of the Corporation on such dates and at such places and times as may be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Board of Directors on at least 72 hours' prior written notice (which includes e-mail). The Chairman shall preside at all meetings of the Board of Directors at which he or she is present and shall exercise such powers and perform such other duties as shall be determined from time to time by the Board of Directors; provided, that if the Chairman is absent from any such meeting, any vice Chairman designated by the Board of Directors shall preside over such meeting. Meetings of the Board of Directors may be held by telephone conference or other communications equipment by means of which all participating Directors can simultaneously hear each other during the meeting.

(b) A majority of the voting power of the Directors then in office, including the presence of at least each Large Stockholder Director and, once designated, the Continuing Large Stockholder Director shall be required to constitute a quorum; provided, that, if a quorum cannot be established at a duly called regular or special meeting of the Board of Directors due to the absence of either Large Stockholder Director

or, once designated, the Continuing Large Stockholder Director, then a quorum shall not require the presence of such absent Director at a second duly called regular or special meeting of the Board of Directors.

Section 2.06. *Action by the Board of Directors.* Except as set forth in the Charter, each Director shall have one vote on each matter presented to the Board of Directors for approval and all actions of the Board of Directors shall require (a) the affirmative vote of at least a majority of all the Directors in office at a meeting at which a quorum is present, provided such directors constitute a quorum or (b) the unanimous written consent of the Directors in office; *provided* that (i) if there is a vacancy on the Board of Directors and an individual has been selected to fill such vacancy in accordance with Section 2.01, the first order of business shall be to fill such vacancy in accordance with the terms of this Agreement, (ii) matters relating to the Chairman or Chief Executive Officer of the Corporation shall require the affirmative vote of at least a majority of the Directors in office at a meeting at which a quorum is present (provided that for purposes of this clause (ii), the Chairman of the Board of Directors or the Chief Executive Officer, as applicable, shall not be a Director in office for purposes of such approval) and (iii) the entry into, consummation, amendment, modification (including by waiver) or termination of any Affiliate Transaction shall require the approval of at least four of the five Directors (including at least one non-interested Director with respect to such Affiliate Transaction) in office at a meeting at which quorum is present; *provided, however*, that the approval of the Board of Directors shall not be required for any given Affiliate Transaction (x) if such Affiliate Transaction (or related transactions) is on terms and conditions that are equal to or more beneficial to the Corporation than the terms and conditions pursuant to which an independent third party would provide the goods or perform the services that are the subject of the Affiliate Transaction (or related transactions), (y) with respect to acquisitions of New Securities in accordance with Section 3.01(a) or (z) with respect to acquisitions of debt securities of the Corporation or any of its Subsidiaries to which preemptive rights would not otherwise apply in accordance with Section 3.01, but for which the Board of Directors still elects to apply preemptive rights. For the avoidance of doubt, a Director shall not be prohibited from voting to approve any such Affiliate Transaction solely due to the fact they were nominated or approved as a Director by such interested Person.

Section 2.07. *Charter or Bylaw Provisions.* Each Stockholder agrees to vote all of its Common Stock or execute proxies or written consents, as the case may be, and to take all other actions necessary, to ensure that the Charter and Bylaws (a) facilitate, and do not at any time conflict with, any provision of this Agreement and (b) permit each Stockholder to receive the benefits to which each such Stockholder is entitled under this Agreement. The Charter and Bylaws shall provide for (i) the elimination of the liability of each Director to the maximum extent permitted by applicable Law and (ii) indemnification of, and advancement of expenses for, each Director for acts on behalf of the Corporation to the maximum extent permitted by applicable Law.

Section 2.08. *Matters Requiring Approval by the Stockholders.*

(a) Except as set forth in the Charter, in this Section 2.08, Section 2.09 or required under applicable Law, no Stockholder shall have any consent rights over actions to be taken by the Board of Directors, the Corporation or any of its Subsidiaries (including, for the avoidance of doubt, the right to initiate an IPO or Company Sale).

(b) The Corporation shall not, and shall not permit any Subsidiary of the Corporation to, incur any indebtedness of $50 million or greater, in one deal or a series of related deals, without the prior written consent of Stockholders holding not less than a majority of the Fully Diluted Party Common Stock; *provided* that the Bankruptcy Court's order confirming the Plan shall constitute prior written consent over the ABL Exit Facility and the New Second Lien Notes (each as defined in the Plan). For the avoidance of doubt, such consent right shall apply in the context of refinancing of existing debt of the Corporation or any of its Subsidiaries on market terms.

(c) Notwithstanding anything to the contrary in Section 6.04, the Board of Directors shall not implement the Management Incentive Plan without the prior written consent of Stockholders holding not less than a majority of the Fully Diluted Party Common Stock.

Section 2.09. *Compensation of Directors; Expenses.* Subject to the prior written consent of Stockholders holding not less than a majority of the Fully Diluted Party Common Stock, the Board of Directors shall have the authority (as an expense of the Corporation) to fix the compensation of Directors (other than the CEO Director or any Director that is an employee of the Corporation or any of its Subsidiaries, who shall not receive additional compensation for serving as a Director). No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. The Corporation shall pay all reasonable out-of-pocket expenses incurred by each Director in connection with attending regular and special meetings of the Board of Directors and any Board Committee on which the Director is a member, and any such meetings of the board of directors or equivalent body of any Subsidiary of the Corporation and any committee thereof, in each case, on which the Director is a member.

Section 2.10. *Meetings of Stockholders.*

(a) Meetings of the Stockholders shall be held at least annually on such dates and at such places and times as may be determined by the Board of Directors. Special meetings of Stockholders may be called at any time by the Board of Directors or by Stockholders holding not less than a majority of the Fully Diluted Party Common Stock, in each case on at least 72 hours' prior written notice (which includes e-mail).

(b) No action may be taken at a meeting of the Stockholders unless Stockholders holding not less than a majority of the Fully Diluted Party Common Stock are present in person. At any meeting of the Stockholders at which a quorum is present, an action undertaken by Stockholders representing a simple majority of the Stockholders present shall be the action of the Stockholders. Any action required or permitted to be taken by the Stockholders at such meeting may be taken without a meeting, if consent to such action is delivered in writing or via electronic transmission by such number of Stockholders that would be required if such action were voted on at a meeting of the

Stockholders. Such written consent or a record of such electronic transmission shall be filed with the records of the Corporation.

ARTICLE 3
PREEMPTIVE RIGHTS; TAG-ALONG RIGHTS; DRAG-ALONG RIGHTS; TRANSFERS

Section 3.01. *Preemptive Rights.*

(a) Subject to Section 3.01(g), the Corporation hereby grants to each Stockholder that owns (including all shares owned by such Stockholder's Related Persons) at least 3% of the Fully Diluted Party Common Stock as of the close of business on the record date determined by the Board of Directors (each such Stockholder, together with each such Related Person of such Stockholder, a "**Preemptive Rightsholder**"), which record date shall not be more than ten (10) Business Days prior to, and shall not be later than, the Corporation's delivery of the Issuance Notice, the right to purchase up to its *pro rata* portion (based on the number of shares of Fully Diluted Party Common Stock owned by such Stockholder as of the close of business on the record date, as a percentage of the total number of shares of Fully Diluted Party Common Stock owned by all of the Preemptive Rightsholders) of any New Securities that the Corporation or any of its Subsidiaries proposes to sell or issue for cash at any time and from time to time after the date hereof (with respect to a Preemptive Rightsholder, such Preemptive Rightsholder's "**Preemptive Share**"). The rights of Preemptive Rightsholders to purchase New Securities pursuant to this Section 3.01 (the "**Securities Purchase Right**") shall apply at the time of issuance of any right, warrant, or option or convertible or exchangeable security that constitutes a New Security, and not to the subsequent conversion, exchange or exercise of such New Security in accordance with its terms.

(b) The Corporation shall give each Preemptive Rightsholder written notice of any proposed issuance or sale of New Securities that is subject to the Securities Purchase Right, at least ten (10) Business Days prior to the proposed issuance or sale. Such notice (an "**Issuance Notice**") shall set forth the material terms and conditions of the proposed transaction, including the proposed manner of issuance or sale, a description of the New Securities, the total number of New Securities proposed to be issued or sold, the proposed issuance or sale date, the proposed purchase price per share, if applicable, and (if known) the name and address of the proposed purchaser of the New Securities.

(c) At any time during the ten (10) Business Days following receipt of an Issuance Notice, each Preemptive Rightsholder shall have the right, but not the obligation, to irrevocably elect, by written notice to the Corporation, to purchase up to its Preemptive Share of the New Securities at the purchase price set forth in the Issuance Notice and upon the other terms and conditions specified in the Issuance Notice; *provided, however*, that no Preemptive Rightsholder shall be obligated (or permitted without the Corporation's consent) to purchase any New Securities pursuant to this Section 3.01 unless all required regulatory approvals, if any, applicable to such purchase have been obtained. Except as provided in the next sentence, the purchase of New Securities by the electing Preemptive Rightsholders shall be consummated concurrently with the consummation of the issuance or sale described in the Issuance Notice. The

closing of the purchase of New Securities by any electing Preemptive Rightsholder may be extended beyond the closing of the transaction described in the Issuance Notice, to the extent necessary to (i) obtain required approvals of any Governmental Entity and other required regulatory approvals which such Preemptive Rightsholder shall be diligently pursuing in good faith (and the Corporation shall use its commercially reasonable efforts to obtain any approvals required to be obtained by it provided that the Corporation shall not be required to incur any out-of-pocket unreimbursed expenses in connection therewith other than those expenses that are not related to any specific Preemptive Rightsholder or specific group of Preemptive Rightsholders) and (ii) permit the Preemptive Rightsholder to complete its internal capital call process following receipt of the Issuance Notice; *provided*, *however*, in each case such Preemptive Rightsholder shall have no more than 180 days (in the case of obtaining approvals) or 30 days (in the case of completing an internal capital call) after delivery of the applicable Issuance Notice to obtain such approvals or complete such internal capital call process. If a Preemptive Rightsholder does not obtain the required approvals or complete its internal capital calls within the time set forth in the preceding sentence, such Preemptive Rightsholder shall be deemed to have not exercised its Securities Purchase Right and the Corporation shall have the right to issue such New Securities in accordance with the Issuance Notice, and references to the date the applicable Issuance Notice was given in Section 3.01(d) shall be deemed to refer to the date that the period set forth in the preceding sentence ended. Notwithstanding anything to the contrary contained herein, in the event that the closing of any purchase of New Securities by any Preemptive Rightsholder is extended pursuant to this paragraph, such extension shall not preclude the consummation of the issuance or sale of the remaining New Securities described in the Issuance Notice from occurring prior to such closing.

(d) To the extent that one or more Preemptive Rightsholders do not timely exercise their Securities Purchase Rights in accordance with the terms and conditions set forth in this Section 3.01, or elect to exercise any such rights less than in full (the difference between the maximum number of New Securities such Preemptive Rightsholder could have elected to purchase under this Section 3.01 and the number of New Securities for which such Preemptive Rightsholder exercised its preemptive rights under this Section 3.01, such Preemptive Rightsholder's "**Individual Excess Shares**" and the Individual Excess Shares of all such Preemptive Rightsholders, the "**Excess Shares**"), then the Corporation (or the applicable Subsidiary) shall offer to sell to the Preemptive Rightsholders that have validly elected to purchase all of their Preemptive Share of the New Securities, the Excess Shares *pro rata* (based on the number of shares of Common Stock owned by such Preemptive Rightsholder without giving effect to the issuance pursuant to the Issuance Notice) *divided* by the number of shares of Fully Diluted Party Common Stock owned by all Preemptive Rightsholders exercising in full their Securities Purchase Rights and at the same price and on the same terms as those specified in the Issuance Notice, and such Preemptive Rightsholders shall have the right to acquire all or any portion of such Excess Shares within two (2) Business Days following the expiration of the period specified in Section 3.01 by delivering written notice thereof to the Corporation. The Corporation shall continue to offer additional portions to Preemptive Rightsholders validly electing to purchase their full *pro rata* portion of such Excess Shares pursuant to this Section 3.01(d) until the earlier of (i) all New Securities proposed

to be issued by the Corporation or its Subsidiaries and with respect to which Preemptive Rightsholders were entitled to exercise their rights under this Section 3.01 have been allocated to the Preemptive Rightsholders or (ii) no Preemptive Rightsholder remains who has any further right to purchase (including as a result of having waived its rights to purchase) Excess Shares pursuant to the foregoing provision.

(e) Following compliance with the terms and conditions set forth in this Section 3.01, the Corporation (or its applicable Subsidiary) shall be free to consummate the proposed issuance or sale of all or any portion of the remaining New Securities that the Preemptive Rightsholders have not elected to purchase, on terms no less favorable to the Corporation or any of its Subsidiaries than those set forth in the Issuance Notice; *provided*, that (i) such issuance or sale is closed within ninety (90) days after the date the related Issuance Notice was given, except that, if such issuance or sale is subject to regulatory approval, such ninety (90)-day period shall be extended until the expiration of five (5) Business Days after all such approvals have been received, but in no event later than one hundred and ninety (190) days after the related Issuance Notice was given, and (ii) the price at which the New Securities are transferred must be equal to or higher than the purchase price described in the Issuance Notice. In the event that the Corporation (or its applicable Subsidiary) has not sold such New Securities within such ninety (90)-day period (as may be extended as set forth in the preceding sentence), the Corporation (or its applicable Subsidiary) shall not thereafter issue or sell any New Securities without first again offering such securities to the Stockholders entitled to preemptive rights in the manner provided in this Section 3.01.

(f) The rights and obligations set forth in this Section 3.01 shall automatically terminate upon, and shall cease to have any force or effect following, the earlier of (i) the date the Common Stock is listed on a National Securities Exchange in the United States (a "**Listing**"), or (ii) the consummation of the first public offering and sale of Common Stock by the Corporation (other than on Form S-8 or its equivalent), pursuant to an effective registration statement under the Securities Act (such public offering and sale, an "**IPO**").

(g) Notwithstanding anything to the contrary contained herein, the Corporation and/or any of its Subsidiaries may issue or sell New Securities to any purchaser (an "**Accelerated Buyer**") without first complying with the provisions of this Section 3.01 if the Board of Directors determines in good faith that it is in the best interests of the Corporation to consummate such issuance or sale without having first complied with such provisions; *provided*, that in connection with any such issuance or sale, the Corporation shall give the Preemptive Rightsholders written notice of such issuance or sale as promptly as practicable, which notice (an "**Accelerated Sale Notice**") shall describe in reasonable detail (a) the material terms and conditions of the issuance or sale of the New Securities to the Accelerated Buyer, including the number or amount and description of the New Securities issued, the issuance or sale date, the purchase price per share, and the name and address of the Accelerated Buyer and (b) the rights of the Preemptive Rightsholders to purchase New Securities, pursuant to this paragraph, in connection with such issuance or sale. In the event of any such issuance or sale of New Securities to an Accelerated Buyer, each Preemptive Rightsholder shall have the right, at any time during

the ten (10) Business Days following receipt of the Accelerated Sale Notice, to elect to purchase New Securities in an amount equal to the amount of such New Securities it would have been entitled to purchase if the issuance or sale to the Accelerated Buyer had instead been completed without regard to this Section 3.01(g), including pursuant to Section 3.01(d). If one or more Preemptive Rightsholders exercise the election to make a purchase, the Corporation shall give effect to each such exercise by either (i) requiring that the Accelerated Buyer sell down a portion of its New Securities, or (ii) issuing additional New Securities to such Preemptive Rightsholder, or a combination of (i) and (ii), so long as such action effectively provides such Preemptive Rightsholder with the same number of New Securities it would have received had this paragraph not been utilized.

(h) A Preemptive Rightsholder may assign its Securities Purchase Right to any Person or Persons (whether or not a Stockholder) that agree to be bound by the provisions of this Agreement applicable to the Preemptive Rightsholder by executing a Joinder.

Section 3.02. *Tag-Along Rights.*

(a) If at any time prior to the earlier of a Listing or the consummation of an IPO, any one or more Stockholders (collectively with their Related Persons) (collectively, the "**Tag-Along Seller**") propose to Transfer shares of Common Stock that constitute more than fifty percent (50%) of the total shares of Common Stock to one or more purchasers that are not Related Persons of the Tag-Along Seller (and are not otherwise being Transferred pursuant to a Drag-Along Sale under Section 3.03) in any transaction or series of related transactions (a "**Tag-Along Transfer**"), then, each other Stockholder (each such Stockholder, together with each other respective Affiliate of such Stockholder, collectively the "**Tag-Along Offerees**") shall have the right (a "**Tag-Along Right**") to exercise tag-along rights in accordance with the terms and conditions set forth in this Section 3.02 (any such Stockholder exercising such rights, a "**Tagging Stockholder**"). The rights and obligations set forth in this Section 3.02 shall automatically terminate upon, and shall cease to have any force or effect following, the earlier of (i) a Listing or (ii) the consummation of an IPO.

(b) The Tag-Along Seller shall promptly give written notice (a "**Tag-Along Notice**") to the Corporation setting forth the number of shares of Common Stock proposed to be Transferred by the Tag-Along Seller, the name and address of the proposed Transferee (the "**Tag-Along Transferee**"), the proposed purchase price for each such share of Common Stock (which shall be the same price per share with respect to each share of outstanding Common Stock proposed to be Transferred) (the "**Tag-Along Per Share Consideration**"), and any other material terms and conditions of the Tag-Along Transfer. Upon receipt of any such Tag-Along Notice, the Corporation shall promptly (but in no event later than seven (7) Business Days following receipt thereof) provide such Tag-Along Notice (the "**Tag-Along Notice Period**") to each Tag-Along Offeree. Each Tag-Along Offeree shall have a period of ten (10) Business Days from the mailing date of the Tag-Along Notice by the Corporation to elect to sell in the Tag-Along Transfer a number of shares of Common Stock up to its Tag-Along Pro Rata Portion at a price per share equal to the Tag-Along Per Share Consideration. Any Tag-Along Offeree

may exercise such right by delivery of an irrevocable written notice to the Tag-Along Seller and the Corporation specifying the number of shares of Common Stock such Tag-Along Offeree desires to include in the Tag-Along Transfer. Unless the Tag-Along Transferee agrees to purchase all the shares of Common Stock proposed to be Transferred by the Tag-Along Seller and the Tagging Stockholders, (i) each Tagging Stockholder shall be entitled to include in the Tag-Along Transfer a number of shares of Common Stock determined by multiplying (A) the total number of shares of Common Stock that the Tag-Along Transferee has agreed to purchase in the Tag-Along Transfer by (B) a fraction, the numerator of which is the number of shares of Common Stock proposed to be Transferred by such Tagging Stockholder in the Tag-Along Transfer and the denominator of which is the total number of shares of Common Stock proposed to be Transferred by the Tag-Along Seller and all Tagging Stockholders and (ii) the Tag-Along Seller shall be entitled to include the number of shares of Common Stock that the Tag-Along Transferee has agreed to purchase in the Tag-Along Transfer minus the total number of shares of Common Stock that the Tagging Stockholders are entitled to sell pursuant to the foregoing clause (i). The Tag-Along Seller shall have a period of one hundred and twenty (120) calendar days following the expiration of the ten (10) day period referred to above to consummate the Tag-Along Transfer, on the payment terms specified in the Tag-Along Notice (which 120-day period shall be extended if any of the transactions contemplated by the Tag-Along Notice are subject to regulatory approval until the expiration of five (5) Business Days after all such approvals have been received, but in no event later than 180 days following the end of the Tag-Along Notice Period). If the Tag-Along Seller and the Tag-Along Transferee (i) have not consummated the Tag-Along Transfer in the time period set forth in the preceding sentence or (ii) propose to consummate the Tag-Along Transfer at a different price or on different terms than those set forth in the Tag-Along Notice, then the Tag-Along Seller shall not be permitted to consummate the Tag-Along Transfer without again giving the Tag-Along Offerees the opportunity to Transfer shares of Common Stock in accordance with this Section 3.02. As used herein, "**Tag-Along Pro Rata Portion**" means a number of shares of Common Stock determined by multiplying (i) the number of shares of Common Stock owned by the applicable Tag-Along Offeree by (ii) a fraction, the numerator of which is the number of shares of Common Stock proposed to be Transferred by the Tag-Along Seller in the Tag-Along Transfer and the denominator of which is the aggregate number of shares of Common Stock held by the Tag-Along Seller immediately prior to such Tag-Along Transfer.

(c) Notwithstanding anything contained in this Section 3.02, there shall be no liability or obligation on the part of the Tag-Along Seller to the Tag-Along Offerees or any other Person if the Tag-Along Transfer pursuant to this Section 3.02 is not consummated for whatever reason. Whether to effect a Tag-Along Transfer pursuant to this Section 3.02 by the Tag-Along Seller is in the sole and absolute discretion of the Tag-Along Seller. No Tagging Stockholder shall be obligated to pay any fees or expenses (other than its own) incurred in connection with any consummated or unconsummated Tag-Along Transfer, except each Tagging Stockholder may be obligated to bear its *pro rata* share (based on each such Tagging Stockholder's share of the aggregate proceeds paid with respect to such Tag-Along Transfer) of the reasonable documented out-of-pocket fees and expenses incurred by the Tag-Along Seller in connection with a

consummated Tag-Along Transfer to the extent such fees and expenses are incurred for the benefit of all Tagging Stockholders and are not otherwise paid by the Corporation or another Person.

(d) Each Tagging Stockholder (i) shall be required to give representations and warranties (in a form customary for transactions of the nature of the Tag-Along Transfer), solely with respect to its due organization, authority, noncontravention of laws and agreements in respect of its participation in the transaction its unencumbered ownership and title to its shares of Common Stock being transferred in the Tag-Along Transfer, (ii) shall not be required to agree to any restrictive covenant (such as a non-compete or non-solicit or similar restriction) other than a customary confidentiality covenant, (iii) shall not be required to provide any indemnification with respect to any representations, warranties, covenants or agreements made by any Tag-Along Seller and (iv) shall not be subject, in excess of its ratable share of the shares of Common Stock being transferred in the Tag-Along Transfer, to any holdback(s) or escrow(s) in respect of potential indemnification obligations (including with respect to indemnification for breaches of representations, warranties, covenants or agreements of the Corporation) or purchase price adjustment(s) pursuant to the applicable definitive purchase agreement.

(e) subject to Section 3.03(b), upon the consummation of the Tag-Along Transfer, each Tagging Stockholder will receive the same form of consideration for its Tag-Along Pro Rata Portion shares of Common Stock as is received by the Tag-Along Seller; and

(f) if the Tag-Along Seller is given an option as to the form and amount of consideration to be received as a result of the Tag-Along Transfer, all Tagging Stockholders will be given the same option other than to the extent prohibited by Law; *provided, however*, no Tagging Stockholder shall be entitled to receive any form of consideration that such holder would be ineligible to receive as a result of such holder's failure to satisfy any condition, requirement or limitation that is established in good faith and generally applicable to the Corporation's stockholders.

Section 3.03. *Drag-Along Rights*.

(a) If holders of Common Stock (the "**Drag-Along Sellers**") owning more than 50% of the Fully Diluted Party Common Stock propose to Transfer all (but not less than all) of the shares of Common Stock held by them in a *bona fide* arms'-length negotiated Company Sale that is approved by the Board of Directors for consideration payable in cash and/or freely tradeable and marketable securities (a "**Drag-Along Sale**"), the Drag-Along Sellers may at their option (the "**Drag-Along Rights**") require each other holder of Common Stock ("**Other Stockholders**") to:

(i) sell all (but not less than all) of the Common Stock owned by such Other Stockholder to the Person(s) to whom the Drag-Along Sellers propose to sell their shares of Common Stock (that in any case are not Related Persons of the Drag-Along Sellers) (the "**Drag-Along Buyer**") and on the same terms and conditions as the Drag-Along Sellers;

(ii) if such Drag-Along Sale requires Stockholder approval, with respect to all shares of Common Stock that such Other Stockholder owns or over which such Other Stockholder otherwise exercises voting power, vote (in person, by proxy or by action by written consent, as applicable) all shares of Common Stock in favor of, and adopt, such Drag-Along Sale and to vote in opposition to any and all other proposals that could reasonably be expected to delay or impair the ability of the Drag-Along Sellers to consummate such Drag-Along Sale;

(iii) subject to Section 3.03(d)(ii), execute and deliver all related documentation and take such other action in support of the Drag-Along Sale as shall reasonably be requested by the Corporation or the Drag-Along Sellers in order to carry out the terms and provision of this Section 3.03, including, without limitation, executing and delivering instruments of conveyance and transfer, and any purchase agreement, merger agreement, indemnity agreement, escrow agreement, consent, waiver, governmental filing, share certificates duly endorsed for transfer (free and clear of impermissible liens, claims and encumbrances), and any similar or related documents;

(iv) irrevocably appoint each of the individuals identified as a "Drag-Along Agent" in the Drag-Along Sale Notice as his, her or its agent and attorney-in-fact (the "**Drag-Along Agents**") (with full power of substitution) to execute all agreements, instruments and certificates and take all action necessary to effectuate any Drag-Along Sale as contemplated hereunder (including to Transfer such Other Stockholder's shares of Common Stock on the terms set forth in the Drag-Along Sale Notice), grants to each Drag-Along Agent a proxy (which shall be deemed to be coupled with an interest and to be irrevocable) to vote (including acting by written consent, if requested) all shares of Common Stock having voting power held by such Person and exercise any consent rights applicable thereto in favor of any such Drag-Along Sale as provided hereunder; provided, however, that the Drag-Along Agents shall not exercise such powers-of-attorney or proxies with respect to any such Person unless such Person refuses or fails to comply with its obligations hereunder within such period of time as may be reasonably specified by the Drag-Along Sellers;

(v) not deposit, and to cause their Related Persons not to deposit, except as provided in this Agreement, any shares of Common Stock owned by such Other Stockholder in a voting trust or subject any shares of Common Stock to any arrangement or agreement with respect to the voting of such Common Stock, unless specifically requested to do so by the acquirer in connection with the Drag-Along Sale; and

(vi) refrain from exercising any dissenters' rights or rights of appraisal under applicable Law at any time with respect to such Drag-Along Sale.

(b) If the consideration to be paid in exchange for the shares of Common Stock pursuant to this Section 3.03 includes any securities and due receipt thereof by any holder of Common Stock would require (x) the registration or qualification of such securities or

of any Person as a broker or dealer or agent with respect to such securities or (y) the provision to any Stockholder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, the Corporation may cause to be paid to any such Other Stockholder in lieu thereof, against surrender of the shares of Common Stock which would have otherwise been sold by such Stockholder, an amount in cash equal to the fair value of the securities which such Other Stockholder would otherwise receive as of the date of the issuance of such securities in exchange for the shares of Common Stock (based on the market price of such other securities if such securities are listed on a National Securities Exchange, or as determined in good faith by the Corporation if not so listed), provided that such Other Stockholder shall have the right to object to the determination and require the Corporation retain an independent third-party accounting, valuation, appraisal or investment banking firm of national standing mutually acceptable to the Corporation and the Other Stockholder to determine the then current fair market value of the shares of Common Stock. The Corporation and the Other Stockholder (or if more than one Other Stockholder is objecting, all objecting Other Stockholders) shall each bear one-half of the fees and expenses of the independent third-party accounting, valuation, appraisal or investment banking firm selected as set forth in the preceding sentence.

(c) If the Drag-Along Sellers elect to exercise their Drag-Along Rights, the Drag-Along Sellers shall provide notice of such proposed Drag-Along Sale to the Corporation at least thirty (30) Business Days prior to the consummation of the Drag-Along Sale (a "**Drag-Along Sale Notice**"). The Drag-Along Sale Notice shall set forth the principal terms and conditions of the proposed Drag-Along Sale, including (a) the form and structure of the proposed Drag-Along Sale, (b) the consideration to be received in the proposed Drag-Along Sale for the Common Stock (including, if applicable, the formula by which such consideration is to be determined and the payment terms, including a description of any freely tradeable and marketable securities), (c) the name and address of the prospective Drag-Along Buyer(s), (d) if known, the proposed date for the Drag-Along Sale, (e) the name of each Drag-Along Agent (as defined below) and (f) all other material terms and conditions of the Drag-Along Sale. Upon receipt of any such Drag-Along Sale Notice, the Corporation shall promptly (but in no event later than seven (7) Business Days following receipt thereof) give written notice of such Drag-Along Sale Notice to each Other Stockholder.

(d) Notwithstanding anything contained in this Section 3.03, the obligations of the Other Stockholders to participate in a Drag-Along Sale are subject to the following conditions:

(i) the Drag-Along Sale must include all Other Stockholders and all shares of Common Stock owned by the Other Stockholders;

(ii) each Other Stockholder (A) shall be required to give representations and warranties (in a form customary for transactions of the nature of the Drag-Along Sale), solely with respect to its due organization, authority, noncontravention of laws and agreements in respect of its participation in the

transaction and its unencumbered ownership and title to its shares of Common Stock being transferred in the Drag-Along Sale, (B) shall not be required to agree to any restrictive covenant (such as a non-compete or non-solicit or similar restriction) other than a customary confidentiality covenant, (C) shall not be required to enter into a lock-up provision with respect to any freely tradeable and marketable securities received as consideration in a Drag-Along Sale, (D) shall not be required to provide any indemnification (x) with respect to any representations, warranties, covenants or agreements made by any Drag-Along Seller, the Corporation (except pursuant to a holdback or escrow as described in clause (E) below) or any other Person (other than severally in connection with any such representation and warranty it makes as to itself) or (y) in an amount exceeding the net proceeds received by such Other Stockholder in connection with the Drag-Along Sale (other than in the case of actual and intentional fraud of such Other Stockholder), and (E) shall not be subject, in excess of its ratable share of the shares of Common Stock being transferred in the Drag-Along Sale, to any holdback(s) or escrow(s) in respect of potential indemnification obligations (including with respect to indemnification for breaches of representations, warranties, covenants or agreements of the Corporation) or purchase price adjustment(s) pursuant to the applicable definitive purchase agreement;

(iii) subject to Section 3.03(b), upon the consummation of the Drag-Along Sale, each Other Stockholder will receive the same form of consideration for its shares of Common Stock as is received by the Drag-Along Sellers; and

(iv) if any Drag-Along Sellers are given an option as to the form and amount of consideration to be received as a result of the Drag-Along Sale, all Other Stockholders will be given the same option other than to the extent prohibited by Law; *provided, however*, no Other Stockholder shall be entitled to receive any form of consideration that such holder would be ineligible to receive as a result of such holder's failure to satisfy any condition, requirement or limitation that is established in good faith and generally applicable to the Corporation's stockholders.

(e) If any Other Stockholder should fail to deliver the documentation required to be delivered by such Other Stockholder to the Drag-Along Sellers pursuant to this Section 3.03, the Corporation shall cause the books and records of the Corporation to show that such shares of Common Stock owned by such Other Stockholder (together with their Related Persons) are bound by the provisions of this Section 3.03 and that such shares of Common Stock shall be deemed to be Transferred to the prospective Drag-Along Buyer upon consummation of the Drag-Along Sale.

(f) The Drag-Along Seller shall have a period of one hundred twenty (120) days from the date of the Drag-Along Sale Notice to consummate the Drag-Along Sale on the terms and conditions set forth in such Drag-Along Sale Notice, provided that, if such Drag-Along Sale is subject to regulatory approval, such 120-day period shall be extended until the expiration of five (5) Business Days after all such approvals have been received, but in no event later than 180 days following the date of the Drag-Along Sale

Notice. If the Drag-Along Sale shall not have been consummated during such period, the Drag-Along Seller shall return to each of the Other Stockholders all applicable instruments such Other Stockholders delivered for Transfer pursuant hereto, together with any other documents in the possession of the Drag-Along Seller executed by the Other Stockholders in connection with such proposed Transfer, and all the restrictions on Transfer contained in this Agreement or otherwise applicable at such time with respect to such shares of Common Stock held (directly or indirectly) by the Other Stockholders shall again be in effect.

(g) Concurrently with the consummation of the Drag-Along Sale pursuant to this Section 3.03, the Drag-Along Seller shall give notice thereof to the Other Stockholders, shall remit to each of the Other Stockholders that have surrendered the applicable instruments the total consideration (the cash portion of which is to be paid in accordance with such Other Stockholder's instructions for payment) for the shares of Common Stock that are Transferred by such Other Stockholders pursuant to this Section 3.03 hereto (but subject to reduction for any applicable escrows or holdbacks and any transaction expenses) and shall furnish such other evidence of the completion and time of completion of the Drag-Along Sale and the terms thereof as may be reasonably requested by such Other Stockholders.

(h) No Other Stockholder shall be obligated to pay any fees or expenses (other than its own) incurred in connection with any consummated or unconsummated Drag-Along Sale, except each Other Stockholder may be obligated to bear its *pro rata* share (based on each such Other Stockholder's share of the aggregate proceeds paid with respect to such Drag-Along Sale) of the reasonable documented out-of-pocket fees and expenses incurred by the Drag-Along Seller(s) in connection with a consummated Drag-Along Sale to the extent such fees and expenses are incurred for the benefit of all Other Stockholders and are not otherwise paid by the Corporation or another Person.

(i) This Section 3.03 and the rights and obligations contained herein shall terminate upon the earlier of (i) a Listing or (ii) the consummation of an IPO and shall thereafter have no force or effect.

Section 3.04. *Certain Rights of Designating Stockholders Applicable to All Transfers*.

(a) If any Stockholder (including a Designating Stockholder) desires to make a Transfer (other than in the case of a (i) Transfer to a Related Person of such Stockholder or (ii) Drag-Along Sale) (the "**Transferring Stockholder**") of all or any portion of its shares of Common Stock, the Transferring Stockholder shall provide each of the Designating Stockholders as of the Effective Date (the "**Prospective Transferee Designating Stockholders**") with a written notice (a "**Transfer Notice**") of its desire to Transfer such shares of Common Stock, which shall specify the number of shares of Common Stock such Transferring Stockholder wishes to Transfer (the "**Transfer Shares**"), the purchase price for such Transfer Shares and any other terms and conditions material to the Transfer proposed by the Transferring Stockholder.

(b) Each Prospective Transferee Designating Stockholder shall have the right to deliver to the Transferring Stockholder an irrevocable written notice (the "**Transfer Election Notice**") within ten (10) Business Days after delivery of the Transfer Notice (the "**Transfer Election Period**"), indicating that such Prospective Transferee Designating Stockholder (or its respective Related Persons) desires to acquire an amount of Transfer Shares up to its Designating Stockholder Transferred Share Portion, on the terms and conditions set forth in the Transfer Notice.

(c) Upon delivery of such Transfer Election Notice during the Transfer Election Period, the Prospective Transferee Designating Stockholder shall consummate the Transfer of any Transfer Shares to be purchased by such Prospective Transferee Designating Stockholder, in accordance with Section 3.04(a) at the price and on the terms and conditions set forth in the Transfer Notice within 30 days after the end of the Transfer Election Period (subject to extension to the extent necessary to obtain required governmental approvals that are required by the binding, definitive agreement entered into to give effect to such Transfer of Transfer Shares), and the Transferring Stockholder and the purchasing Prospective Transferee Designating Stockholder shall execute such documents as are reasonably required by the Transferring Stockholder in connection with the sale of such Transfer Shares to such Prospective Transferee Designating Stockholder.

(d) If a Prospective Transferee Designating Stockholder does not provide a Transfer Election Notice to the Transferring Stockholder before the end of the Transfer Election Period, or if the consummation of the transactions contemplated by the Transfer Election Notice has not occurred within 180 days, such Prospective Transferee Designating Stockholder shall be deemed to have declined the offer contained in the Transfer Notice and the Transferring Stockholder may Transfer such Transfer Shares to a third party (other than a Competitor) at any time within 45 days (subject to extension to the extent necessary to obtain required governmental approvals that are required by the binding, definitive agreement entered into to give effect to such Transfer of Transfer Shares), at a price which is not less than the purchase price and on other terms and conditions not materially more favorable to such third party Transferee than those specified in the Transfer Notice.

(e) To the extent that one or more Prospective Transferee Designating Stockholders do not timely exercise their purchase rights with respect to the Transfer Shares in accordance with the terms and conditions set forth in this Section 3.04, or elect to exercise any such rights for less than the full Designating Stockholder Transferred Share Portion (the difference between the maximum number of the Designating Stockholder Transferred Share Portion such Prospective Transferee Designating Stockholder could have elected to purchase under this Section 3.04 and the number of Transfer Shares for which such Prospective Transferee Designating Stockholder exercised its purchase rights under this Section 3.04, such Prospective Transferee Designating Stockholder's "**Individual Excess Transfer Shares**" and the Individual Excess Transfer Shares of all such Prospective Transferee Designating Stockholders, the "**Excess Transfer Shares**"), then the Transferring Stockholder shall offer to sell to the Prospective Transferee Designating Stockholders that have validly elected to purchase all of their Designating Stockholder Transferred Share Portion of the Transfer Shares, the

Excess Transfer Shares *pro rata* (based on the number of shares of Common Stock owned by such Prospective Transferee Designating Stockholder without giving effect to the number of shares of Common Stock such Transferring Stockholder wishes to Transfer pursuant to the Transfer Notice) *divided* by the number of shares of Fully Diluted Party Common Stock owned by all Prospective Transferee Designating Stockholders exercising in full their right to purchase Transfer Shares up to their Designating Stockholder Transferred Share Portion and at the same price and on the same terms as those specified in the Transfer Notice, and such Prospective Transferee Designating Stockholder shall have the right to acquire all or any portion of such Excess Transfer Shares within two (2) Business Days following the expiration of the Transfer Election Period by delivering written notice thereof to the Transferring Stockholder. The Transferring Stockholder shall continue to offer additional Transfer Shares to Prospective Transferee Designating Stockholders validly electing to purchase their full *pro rata* portion of such Excess Transfer Shares pursuant to this Section 3.04(e) until the earlier of (i) all Transfer Shares proposed to be sold by the Transferring Stockholder and with respect to which Prospective Transferee Designating Stockholders were entitled to exercise their rights under this Section 3.04 having been allocated to the Prospective Transferee Designating Stockholders or (ii) no Prospective Transferee Designating Stockholders remaining who have any further right to purchase (including as a result of having waived their rights to purchase) Excess Transfer Shares pursuant to the foregoing provision.

(f) For the avoidance of doubt, the rights provided to each Designating Stockholder contained in this Section 3.04 are personal to each such Designating Stockholder and are not transferrable to a third-party Transferee in connection with a Transfer to such third-party Transferee by a Designating Stockholder (or any of its Related Persons) of its or their respective ownership of shares of Common Stock.

Section 3.05. *Conditions Applicable to All Transfers*.

(a) Without limiting the provisions of this Agreement, each Stockholder agrees that it shall not Transfer any Common Stock at any time if such Transfer would not comply with the terms of this Agreement. For the avoidance of doubt, subject to compliance with Section 3.04 and this Section 3.05, any Stockholder may transfer any Common Stock, together with its rights (except as set forth in Section 2.01(b)(vi) and Section 3.04(f)) under Section 2.01 of this Agreement with respect to Director designation rights (and the related rights pursuant to this Article 2 in the case of removal or vacancies) to any Person, at any time. As a condition precedent to any Transfer, the Corporation may require an opinion of legal counsel reasonably satisfactory to it that registration under the Securities Act is not required. Each Person who hereafter acquires Common Stock in a Transfer from a Stockholder and is not already a Stockholder shall, as a condition to the effectiveness of such Transfer, execute and deliver a Joinder, and any Transfer in which the acquirer of Common Stock does not so deliver a Joinder (if applicable) shall be void *ab initio*.

(b) At any time prior to the earlier of an IPO or the Corporation otherwise becoming subject to the periodic reporting obligations of the Exchange Act, the

Corporation and any transfer agent for the Common Stock may refuse to register any transfer of shares of Common Stock if, as a result of such transfer, the Common Stock would be held of record by more than 300 holders. Each Stockholder agrees to cooperate with the Corporation with respect to any actions approved by the Board of Directors to ensure the Corporation remains below 300 holders at all times. If the Corporation becomes aware that the Common Stock becomes held of record by more than 250 holders, the Corporation will notify all Stockholders of such fact.

(c) Notwithstanding anything to the contrary in this Agreement, no Stockholder shall Transfer any shares of Common Stock (i) to a Competitor (except pursuant to a Company Sale) without the prior written consent of the Board of Directors (which may be given or withheld in the Board of Director's sole discretion) or (ii) if such Transfer would cause the Corporation to become subject to the registration requirements of the Investment Company Act of 1940, as amended.

(d) Each Stockholder that Transfers any shares of Common Stock as permitted by this Agreement shall use its reasonable best efforts to provide or cause to be provided to any prospective Transferee of such Stockholder (subject to Section 4.03) a copy of this Agreement (including by such proposed Transferee receiving access to this Agreement pursuant to the Secured Site).

(e) To the fullest extent permitted by applicable Law, any Transfer not in compliance with the provisions of this Agreement shall be void *ab initio*, and such proposed Transferee shall not be entitled to any rights or benefits arising hereunder until all applicable provisions have been satisfied.

ARTICLE 4
INFORMATION

Section 4.01. *Information Requirements*.

(a) The Corporation will provide, or cause to be provided, to each Stockholder (other than a Competitor) within fifteen (15) calendar days after each of the following periods: (i) (x) as soon as available, and in any event no later than December 31, 2024, (A) a copy of the audited consolidated balance sheet of the Corporation and its consolidated Subsidiaries for the fiscal year ending December 31, 2022 and the related audited consolidated statements of income and of cash flows for such year, in each case, in accordance with GAAP, and (B) a management's discussion and analysis of the material operational and financial developments during such fiscal year, (y) as soon as available, and in any event no later than September 30, 2024, (A) a copy of the audited consolidated balance sheet of the Corporation and its consolidated Subsidiaries for the fiscal year ending December 31, 2023 and the related audited consolidated statements of income and of cash flows for such year, in each case, in accordance with GAAP, and (B) a management's discussion and analysis of the material operational and financial developments during such fiscal year and (z) within 90 days after the end of each subsequent fiscal year, commencing with the fiscal year ending December 31, 2024, (A) a copy of the audited consolidated balance sheet of the Corporation and its consolidated

Subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows for such year, in each case, in accordance with GAAP, and (B) a management's discussion and analysis of the material operational and financial developments during such fiscal year, (ii) within 45 days (or 75 days in the case of the fiscal quarter ending September 30, 2023) after the end of each of the first three quarterly periods of each fiscal year of the Corporation, commencing with the fiscal quarter ending September 30, 2023, (A) the unaudited consolidated balance sheet of the Corporation and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, in each case in accordance with GAAP (subject to normal year-end audit adjustments and the lack of complete footnotes) and (B) a management's discussion and analysis of the material operational and financial developments during such fiscal quarter, (iii) within 10 Business Days (or 15 Business Days in the case of the calendar month ending September 30, 2023) after the end of each calendar month, commencing with the month ending September 30, 2023, a financial reporting package (including the month end "flash" numbers for the month just ended), containing a summary of the previous month's financial results of operations or such other related financial information as may be reasonably requested by such Stockholder, (iv) (A) within 60 days after the end of each fiscal year and approval thereof by the Board of Directors, an annual budget of the Corporation or any of its Subsidiaries for the next fiscal year presented on a monthly basis, which includes the projected consolidated balance sheets of the Corporation and its consolidated Subsidiaries and the related consolidated statements of income and cash flows for each fiscal month of such fiscal year, including all relevant material operating assumptions used to derive such figures and (B) within 20 days after any material reforecast of such budget and approval thereof by the Board of Directors, such reforecast annual budget, including all relevant material operating assumptions used to derive such reforecast figures and (v) provide notice as promptly as practicable (but in no event later than five Business Days) to each such Stockholder of the occurrence of any material events with respect to the Corporation or its Subsidiaries, including the occurrence of any material adverse change in the business of the Corporation or its Subsidiaries or any commencement, settlement, termination or other resolution of any material litigation by the Corporation or any of its Subsidiaries; provided, that, notwithstanding the delivery dates set forth in this Section 4.01(a), to the extent any documentation required to be provided to a Stockholder pursuant to this Section 4.01(a) is provided to either the lenders under the ABL Exit Facility (as defined in the Plan of Reorganization) or the trustee under the New Second Lien Notes Indenture (as defined in the Plan of Reorganization), such documentation shall also be provided simultaneously to each Stockholder; provided further that, in the case of clause (v), (x) the Corporation may omit from such disclosure any terms of such event if the Corporation determines in its good faith judgment that disclosure of such terms would otherwise cause material competitive harm to the business, assets, operations, financial position or prospects of the Corporation and its Subsidiaries, taken as a whole (except that such non-disclosure shall be limited only to those specific provisions that would cause material competitive harm and not the occurrence of the event itself), and (y) no such disclosure will be required to include a summary of the terms of, any employment or compensatory arrangement agreement, plan or understanding between the Corporation

(or any of the Corporation's Subsidiaries) and any director, manager or executive officer, of the Corporation (or any of the Corporation's Subsidiaries). With respect to the items in clauses (i) – (v), (x) the Corporation shall provide, or provide access to, such information to all such Stockholders entitled to receive such information pursuant to this Section 4.01 at the same time and (y) all such Stockholders must agree to be bound by a customary confidentially agreement in a form reasonably acceptable to the Board of Directors (which may, at the Corporation's election, be on a "click-through" basis) before accessing such information. The Corporation will provide, or cause to be provided, to each Stockholder (together with their Related Persons) (and in each case, other than a Competitor) who directly or indirectly owns, controls or holds the power to vote (including pursuant to a contract, agreement, arrangement or other understanding), 7% or more of the Fully Diluted Party Common Stock, upon a written request by such Stockholder and at the sole expense of such Stockholder, reasonable access during normal business hours to the books and records, financial and operating data and such other information of the Corporation and its Subsidiaries as may reasonably be requested. Any such Stockholder that receives any information pursuant to the foregoing sentence shall be deemed to be in receipt of material non-public information and agrees to be restricted until such information is publicly announced or cleansed or deemed to be stale, as reasonably determined by the Corporation.

(b) (i) For a period of 12 months following the Effective Date, the Corporation shall host a conference call up to once per month together with the Designating Stockholders and (ii) following the 12-month anniversary of the Effective Date, an "earnings call" up to once per quarter with the Designating Stockholders which shall take place as promptly as reasonably practicable after the distribution of the financial statements for the applicable quarter, which shall include a reasonable opportunity for questions from such Designating Stockholders (any such call, a "**Designating Stockholders Conference Call**"); provided, that in each case of (i) and (ii), a Designating Stockholder shall only have the right to participate in a Designating Stockholder Conference Call to the extent such Designating Stockholder remains entitled to designate a Director pursuant to Section 2.01 or such Designating Stockholder (together with its Related Persons) holds at least 15% of the Fully Diluted Party Common Stock in the aggregate; provided, further, that the Corporation shall provide the date and dial-in information for such call and post such information to the Secured Site at least three (3) days prior to any Designating Stockholders Conference Call.

(c) The presence of (i) at least two Directors (other than any member of management of the Corporation) of the Board of Directors and (ii) any senior management member of the Corporation that is reasonably requested by any Designating Stockholder at least two (2) days prior to any Designating Stockholders Conference Call shall be required at each Designating Stockholders Conference Call. At least two (2) Business Days prior to each Designating Stockholders Conference Call, the Corporation shall provide (or cause to be provided) all materials to be presented during such Designating Stockholder Conference Call to the respective internal legal teams designated by each Designating Stockholder for pre-clearance. To the extent any of the materials to be presented on the Designating Stockholder Conference Call are requested by any such internal legal teams to be redacted, such materials shall not be shared with

the Designating Stockholders except in redacted form, unless any of the Designating Stockholders request to obtain such materials in unredacted form, and the Corporation shall promptly inform each Designating Stockholder of any request by another Designating Stockholders to obtain unredacted materials or participate in any discussion relating thereto. During any Designating Stockholders Conference Call, in the event a Designating Stockholder that obtained materials in unredacted form wishes to discuss any portion of the materials that is redacted, the Designating Stockholders participating in the Designating Stockholders Conference Call shall first be provided an opportunity to exit such call prior to any discussion relating thereto. As soon as practicable following a Designating Stockholder Conference Call, the Corporation shall upload all materials that were pre-cleared (if applicable, in redacted form) to the Secured Site.

(d) Each of the Designating Stockholders shall have the right, but not the obligation, to request and promptly receive access to weekly KPI reporting that is produced by the Corporation or its Subsidiaries in the ordinary course of its operations; *provided* that any such information received by the Designating Stockholder shall be treated confidentially in accordance with Section 4.03. To the extent a Designating Stockholder requests to receive such access, the Corporation shall promptly notify each other Designating Stockholder that a Designating Stockholder has requested to receive access to weekly KPI reporting. For the avoidance of doubt, the Corporation shall have no obligation to upload any weekly KPI reporting materials to the Secured Site for cleansing purposes or to otherwise cleanse any weekly KPI reporting materials.

(e) No Competitor shall be entitled to receive the information, or have any of the rights, described in this Section 4.01.

(f) Notwithstanding anything to the contrary in this Section 4.01, solely with respect to Section 4.01(a)(v), no Stockholder shall be entitled to receive any materials to the extent required to be received under Section 4.01(a)(v), as reasonably determined by the Board of Directors based on the advice of counsel to the Corporation (which may be internal counsel), to maintain the attorney-client privilege protections of such materials; *provided* that the Corporation shall use its commercially reasonable efforts to minimize such withholdings and exclusions.

(g) Notwithstanding the disclosure obligations set forth in this Section 4.01, to the extent applicable to the Corporation, the Corporation shall comply in all material respects with the applicable requirements and provisions of Regulation FD (17 C.F.R. § 243.100, as amended, modified, restated or supplemented from time to time).

Section 4.02. *Access to Information*. The Corporation may satisfy its obligations under Section 4.01 by providing each Stockholder access to a confidential website such as Intralinks or Epiq and timely posting such information on such website (which website shall have a system of email notification of new postings, the "**Secured Site**").

Section 4.03. *Confidentiality; Sale Support*. (a) Each Stockholder agrees that Confidential Information furnished and to be furnished to it has been and may in the future be made available in connection with such Stockholder's investment in the

Corporation. Each Stockholder agrees that it shall use, and that it shall direct any Person to whom Confidential Information is disclosed pursuant to clauses (i) through (v) below to use, the Confidential Information only in connection with its investment in the Corporation and not for any other purpose (including to disadvantage competitively the Corporation or any of its Subsidiaries). Each Stockholder further acknowledges and agrees that it shall not disclose any Confidential Information to any Person, except that Confidential Information may be disclosed:

(i) to such Stockholder's Representatives (other than a Competitor) in the normal course of the performance of their duties or, in connection with such credit arrangement, to any financial institution providing, or potentially providing, credit to such Stockholder;

(ii) for purposes of reporting to its, or its Related Persons', stockholders and direct and indirect equity holders and limited partners, in each case other than a Competitor, the performance of the Corporation and its Subsidiaries (or otherwise in connection with customary fundraising, marketing, information or reporting activities of such Persons) and for purposes of including applicable information in financial statements to the extent required by applicable Law or applicable accounting standards; *provided* with respect to the immediately preceding clauses (i) and (ii), any such Persons receiving Confidential Information shall be informed by the Stockholder of the Confidential Information, such Person shall agree or otherwise be obligated to keep such information confidential, and to comply with the use restrictions, in accordance with the provisions of this Section 4.03 and any Stockholder disclosing such Confidential Information will be liable for any unauthorized disclosures or use of such Confidential Information in violation of this Section 4.03 by any such Persons;

(iii) to any Person to whom such Stockholder is contemplating a *bona fide* Transfer of its Common Stock, other than a Competitor; *provided* that such Transfer would not be in violation of the provisions of this Agreement or the Charter and such potential Transferee agrees to enter into and be bound by a customary confidentiality agreement in a form reasonably acceptable to the Board of Directors (and in any event no less restrictive than the confidentiality obligations set forth in Section 4.03) of which the Corporation shall be made an express third-party beneficiary and any Stockholder disclosing such Confidential Information will be liable to the Corporation for any breaches of this Section 4.03 by any such Persons;

(iv) to any regulatory authority or rating agency to which the Stockholder or any of its Related Persons is subject or with which it has regular dealings; *provided* that such authority or agency is advised of the confidential nature of such information;

(v) to the extent related to the tax treatment and tax structure of the transactions contemplated by this Agreement (including all materials of any kind, such as opinions or other tax analyses that the Corporation, its Affiliates or its

Representatives have provided to such Stockholder relating to such tax treatment and tax structure); *provided* that the foregoing does not constitute an authorization to disclose the identity of any existing or future party to the transactions contemplated by this Agreement or their Affiliates or Representatives, or, except to the extent relating to such tax structure or tax treatment, any specific pricing terms or commercial or financial information;

(vi) if the prior written consent of the Chief Executive Officer, Chief Financial Officer or General Counsel of the Corporation or the Board of Directors shall have been obtained; or

(vii) to the extent required by applicable Law, rule or regulation (including complying with any oral or written questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process to which a Stockholder is subject); *provided* that such Stockholder agrees to give the Corporation prompt notice of such request(s), to the extent practicable and permitted by Law, so that the Corporation may seek an appropriate protective order or similar relief (and the Stockholder shall cooperate with such efforts by the Corporation (at the expense of the Corporation), and shall in any event make only the minimum disclosure required by such law, rule or regulation).

(b) Notwithstanding Section 4.03(a)(iii), in connection with a potential Transfer, any transferring Stockholder shall be entitled to share Confidential Information provided by the Corporation to a *bona fide* potential transferee (a "**Proposed Transferee**"); *provided*, that (A) the Proposed Transferee enters into a customary non-disclosure agreement with the Corporation on terms reasonably acceptable to the Corporation, (B) the transferring Stockholder is fully liable for any breach of such non-disclosure agreement by the Proposed Transferee and (C) in the case of a Transfer that is not a Company Sale, the Proposed Transferee is not a Competitor. In assessing the reasonableness of a request made pursuant to this Section 4.03(b), the Corporation may take into account the size of the interest subject to the applicable potential transfer.

(c) Nothing contained herein shall prevent the use (subject, to the extent possible, to a protective order) of Confidential Information in connection with the assertion or defense of any claim by or against the Corporation, its Subsidiaries or any Stockholder or will restrict in any manner the ability of the Corporation or its Subsidiaries to comply with its disclosure obligations under applicable Law. Furthermore, nothing contained herein shall in any way limit or otherwise modify any confidentiality obligations owed by any Stockholder to the Corporation or its Subsidiaries pursuant to any other agreement entered into by such Stockholder, the Corporation or any of their respective Subsidiaries, and this Section 4.03 shall be in addition to such other agreement.

ARTICLE 5
INDEMNIFICATION AND EXCULPATION; WAIVERS

Section 5.01. *Indemnification and Exculpation.*

(a) To the fullest extent permitted by applicable Law, the Corporation shall indemnify, hold harmless and defend each Covered Person from and against any and all losses, claims, damages, liabilities, whether joint or several, expenses (including legal fees and expenses), judgments, fines and amounts paid in settlement (collectively, "**Indemnified Losses**"), incurred or suffered by such Covered Person, as a party or otherwise, in connection with any threatened, pending or completed claim, demand, action, suit or proceeding, whether civil, criminal, administrative or investigative, whether formal or informal, and whether or not by or in the right of the Corporation, arising out of or in connection with any act or omission, or alleged act or omission, performed or omitted to be performed by such Covered Person in connection with or in any way related to the business or the operation of the Corporation or any Subsidiary of the Corporation, unless it is determined in a final, non-appealable judgment of a court of competent jurisdiction that the Indemnified Losses were the result of Cause with respect to such Covered Person. Notwithstanding the foregoing, other than any claim to enforce its rights under this Article 5, the Corporation shall not be obligated to indemnify any Covered Person in connection with any action, suit or proceeding initiated by such Covered Person unless the initiation of such action, suit or proceeding is approved by the Board of Directors.

(b) No Covered Person shall be liable to the Corporation or to any Stockholder for any loss or damage sustained by the Corporation or any Stockholder, unless it is determined in a final, non-appealable judgment of a court of competent jurisdiction that the loss or damage shall have been the result of Cause with respect to such Covered Person. The negative disposition of any claim, demand, action, suit or proceeding, whether civil, criminal, administrative or investigative, whether formal or informal, and whether by or in the right of the Corporation, by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not, of itself, create a presumption that the Covered Person acted in a manner contrary to the standard set forth in the previous sentence.

(c) To the fullest extent permitted by applicable Law, costs and expenses (including attorneys' fees and expenses) incurred by a Covered Person in defending or otherwise participating in any claim, demand, action, suit or proceeding subject to this Section 5.01 shall be advanced by the Corporation prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Corporation of an undertaking by or on behalf of the Covered Person to repay such amount in the event it is ultimately determined that the Covered Person is not entitled to be indemnified therefor pursuant to this Section 5.01.

(d) The Corporation hereby acknowledges that certain of the Covered Persons may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more other Persons (but not including any such other Person to the extent such Person would have an obligation to provide indemnification, advancement of expenses and/or insurance pursuant to a contractual obligation to the Corporation or any of its Subsidiaries) (collectively, the "**Secondary Indemnitors**"), which may include Persons who employ a Covered Person or of which a Covered Person is a partner or member or whose respective Affiliates, affiliated investment funds, managed funds and

management companies, if applicable, have such Covered Person as a partner or member. The Corporation hereby agrees (i) that it is the indemnitor of first resort in respect of the matters in this Section 5.01 (i.e., the Corporation's obligations to each Covered Person are primary and any obligation of the Secondary Indemnitors to advance expenses and/or provide indemnification for the same expenses and liabilities incurred by Covered Persons are secondary) and (ii) that it shall be required to advance the full amount of expenses incurred by Covered Persons and shall be liable for the full amount of any Indemnified Losses to the extent legally permitted and as required by the terms of this Agreement or any other agreement between the Corporation and the relevant Covered Person, without regard to any rights that such Covered Person may have against any Secondary Indemnitor. The Corporation further agrees that no advancement or payment by any Secondary Indemnitor shall affect the foregoing and that any relevant Secondary Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of the relevant Covered Persons against the Corporation. The Corporation and each Covered Person agree that the Secondary Indemnitors are express third party beneficiaries of this Section 5.01.

(e) The indemnification provided by this Section 5.01 shall be in addition to any other rights to which any Covered Person may be entitled under this Agreement or any other agreement with the Corporation or any other Person, as a matter of law or otherwise, and shall inure to the benefit of the heirs, legal representatives, successors, assigns and administrators of the Covered Person.

Section 5.02. *Specific Indemnity.*

(a) To the fullest extent permitted by applicable Law, the Corporation shall indemnify, hold harmless and defend each Designating Stockholder as of the Effective Date and each of their respective Affiliates and Representatives (collectively, the "**Designating Stockholder Indemnified Persons**") from and against any and all Indemnified Losses, incurred or suffered by any such Designating Stockholder Indemnified Person in connection with any threatened, pending or completed claim, demand, action, suit or proceeding, whether civil, criminal, administrative or investigative, whether formal or informal, arising out of or in connection with any act or omission, or alleged act or omission, performed or omitted to be performed by any such Designating Stockholder Indemnified Person in connection with or in any way related to the Designating Stockholder Indemnified Actions, unless it is determined in a final, non-appealable judgment of a court of competent jurisdiction that the Indemnified Losses were the result of a Designating Stockholder Indemnified Persons' willful misconduct, gross negligence, or actual fraud.

(b) To the fullest extent permitted by applicable Law, costs and expenses (including attorneys' fees and expenses) incurred by a Designating Stockholder Indemnified Person in defending or otherwise participating in any claim, demand, action, suit or proceeding subject to this Section 5.02 shall be advanced by the Corporation prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Corporation of an undertaking by or on behalf of the Designating Stockholder Indemnified Person to repay such amount in the event it is ultimately determined that the

Designating Stockholder Indemnified Person is not entitled to be indemnified therefor pursuant to this Section 5.02.

Section 5.03. *Insurance*. The Corporation may purchase and maintain insurance on behalf of any Person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of such Person's status as such, whether or not the Corporation would have the power to indemnify such Person against such liability under applicable Law or Section 5.01.

Section 5.04. *Rights to Rely on Legal Counsel, Accountants; Other Matters.*

(a) No Covered Person shall be liable, responsible or accountable in damages or otherwise to the Corporation or any Stockholder for any performance or omission to perform any acts in reliance on the advice of accountants or legal counsel for the Corporation.

(b) The Corporation may, by action of its Board of Directors, provide indemnification to such of the officers, Directors, directors, managers, employees, agents or other representatives of the Corporation and its Subsidiaries, and such other Persons as the Board of Directors may determine, in each case, to such extent and to such effect as the Board of Directors shall determine to be appropriate.

(c) Neither the amendment nor repeal of this Article 5, nor, to the fullest extent permitted by applicable Law, any modification of law, shall adversely affect any right or protection of any Person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

(d) The indemnification obligations set forth in this Article 5 shall survive the termination of this Agreement.

Section 5.05. *Waiver of Corporate Opportunities*. Each of the Corporation and the Stockholders recognizes that the Stockholders and their respective Affiliates (other than the Corporation and its Subsidiaries) and all of their respective partners, principals, directors, officers, members, managers and/or employees, including any of the foregoing who serve as officers, directors or employees of the Corporation or any of its Subsidiaries (collectively, "**Exempt Persons**"), have or may in the future have other business interests, activities and investments or opportunities with respect thereto, some of which may be in conflict or competition with the business of the Corporation, and that such Exempt Persons are entitled to carry on such other business interests, activities and investments and/or compete with the Corporation or pursue such opportunities, even if such interests, activities and investments are adverse to the interests of the Corporation or one or more of its Stockholders, and shall have no obligation to present any such

opportunities to the Corporation or any other Person. Neither the Corporation, its Subsidiaries, the Stockholders (or their respective Affiliates) nor any other Person shall have any right, by virtue of this Agreement, in or to such activities, or the income or profits derived therefrom, and the pursuit of such activities, even if competitive with the business of the Corporation or any of its Subsidiaries, by a Exempt Person (or any of their Affiliates or any other Person with which such Exempt Person is acting) shall not be deemed wrongful or improper or constitute a breach of any duty or obligation (contractual, fiduciary or otherwise). Each of the Exempt Persons, in their sole discretion, may offer an opportunity to participate in any such business or venture to any Person, including any Stockholders or their respective Affiliates without any duty or obligation to any other Person. The taking by any such Exempt Person (or its respective Affiliates or any other Person with which such Exempt Person is acting), or the offering or other transfer by any such Exempt Person to another Person, of any potential business opportunity shall not constitute or be construed or interpreted as (a) a breach or violation of any duty (contractual, fiduciary or otherwise, including any duty under this Agreement or any other applicable Law) or (b) receipt by any such Exempt Person or its respective Affiliates or other Persons with which it is acting of an improper benefit, or an improper personal benefit, in money, property, services or otherwise. This Section 5.05 is being adopted notwithstanding any duty (including any fiduciary duty) that would otherwise exist at law, in equity or otherwise.

ARTICLE 6
MISCELLANEOUS

Section 6.01. *Registration Rights*. In connection with, and substantially concurrently with the execution of this Agreement, the Corporation and each Holder of Registrable Securities (each as defined in the Registration Rights Agreement) shall enter into the Registration Rights Agreement.

Section 6.02. *Legends*.

(a) All shares of Common Stock issued to any Person shall bear a legend, or be evidenced by notations in a book entry system including a legend, in substantially the following form:

> "THE SECURITIES EVIDENCED HEREBY ARE SUBJECT TO VARIOUS CONDITIONS INCLUDING CERTAIN RESTRICTIONS ON ANY OFFER, SALE, DISPOSITION, TRANSFER AND VOTING AS SET FORTH IN THE STOCKHOLDERS AGREEMENT, DATED AS OF OCTOBER 12, 2023 (THE "**STOCKHOLDERS AGREEMENT**"), BY AND AMONG PARTY CITY HOLDCO INC. (THE "**CORPORATION**"), AND THE STOCKHOLDERS PARTY THERETO FROM TIME TO TIME, AND THE CERTIFICATE OF INCORPORATION AND BYLAWS OF THE CORPORATION, EACH AS MAY BE AMENDED AND MODIFIED FROM TIME TO TIME. NO REGISTRATION OR TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS AND RECORDS OF THE CORPORATION OR ITS TRANSFER AGENT UNLESS AND UNTIL SUCH RESTRICTIONS SHALL

HAVE BEEN COMPLIED WITH. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF RECORD OF SUCH SECURITIES A COPY OF THE STOCKHOLDERS AGREEMENT, CERTIFICATE OF INCORPORATION AND BYLAWS, CONTAINING THE ABOVE REFERENCED RESTRICTIONS ON TRANSFERS AND VOTING OF SECURITIES, UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS."

(b) All shares of Common Stock issued to any Person, unless the Corporation determines in good faith such shares were issued in reliance on the exemption from registration under the Securities Act provided by Section 1145 of the Bankruptcy Code or another exemption such that the Transfer of such shares are not restricted under the U.S. federal securities laws shall be evidenced by notations in a book entry system including a legend in substantially the following form:

"THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, OR AN EXEMPTION THEREFROM AND, IN EACH CASE, IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS. AS A CONDITION TO ANY TRANSFER, THE CORPORATION RESERVES THE RIGHT TO REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE CORPORATION, THAT SUCH REGISTRATION IS NOT REQUIRED."

(c) The Corporation acting in good faith may make any necessary modifications to the legends set forth in this Article 6 for such legends to comply with applicable Law and to achieve the purpose and intent of the transfer restrictions set forth herein. If any shares of Common Stock cease to be subject to any and all restrictions on Transfer set forth in this Agreement, the Charter and the Bylaws, the Corporation, upon the written request of the holder thereof, shall amend the notations in the book entry system (or, if certificated, issue to such holder a new certificate) evidencing such shares accordingly.

Section 6.03. *Specific Enforcement*. Each Party acknowledges that the remedies at Law of the other Parties for a breach or threatened breach of this Agreement would be inadequate and, in recognition of this fact, any Party, without posting any bond, and in addition to all other remedies that may be available, shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy that may then be available.

Section 6.04. *MIP*. By no later than the date that is 90 days after the Effective Date, the Board of Directors shall use its commercially reasonable efforts to implement the Management Incentive Plan, in accordance with the Plan of Reorganization; *provided*

that there shall be no corresponding change to any employment agreements that would triggers a severance payment or constitute "good reason" if an executive of the Corporation terminates his or her employment with the Corporation or any of its Subsidiaries if the Management Incentive Plan has not been established prior to such time.

Section 6.05. *Assignment*. Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by any Party pursuant to any Transfer or otherwise, except as expressly set forth herein.

Section 6.06. *Amendments*. No amendment or modification of this Agreement or any of the Organizational Documents shall be valid unless executed in writing by the Corporation and Stockholders (together with their Related Persons) holding at least a majority of the Fully Diluted Party Common Stock; *provided* that (i) any amendment or modification that by its terms materially and adversely affects a Stockholder (in its capacity as a holder of Common Stock) (a "**Disproportionately Affected Stockholder**") in a manner disproportionate to the manner in which it affects other Stockholders (in their capacities as holders of Common Stock) shall also require the prior written consent of such Disproportionately Affected Stockholder (except that if any amendment or modification materially and adversely affects a group of Disproportionately Affected Stockholders in a similar manner, such amendment or modification shall for purposes of this clause (i) require only the prior written consent of Disproportionately Affected Stockholders holding a majority of the Fully Diluted Party Common Stock held by such group of Disproportionately Affected Stockholders), (ii) any amendment or modification of Section 3.01 (Preemptive Rights), Section 3.04 (Certain Rights of Designating Stockholders Applicable to all Transfers), Section 3.05 (Conditions Applicable to All Transfers), Section 4.01 (Information Requirements), Section 5.05 (Waiver of Corporate Opportunities) or to any of the defined terms in Section 1.01 (Definitions) as used in such sections shall require the approval of the Corporation and Stockholders (together with their Related Persons) holding at least 66 2/3% of the Fully Diluted Party Common Stock, or (iii) any amendment or modification of any clause of this Section 6.06, or any other provision of this Agreement, that provides for the approval of a given Stockholder or group of Stockholders or approval by at least a specified percentage of Stockholders shall also require approval of that Stockholder or group of Stockholders or at least that specified percentage of Stockholders, as applicable.

Section 6.07. *Termination*. Other than the indemnification obligations set forth in Section 5.01, this Agreement shall terminate (i) with respect to a Stockholder as of the time at which such Stockholder ceases to own shares of Common Stock and (ii) upon the earlier to occur of (x) a Listing or (y) the consummation of an IPO.

Section 6.08. *Addresses and Notices*. Any notice, request, demand or instruction specified or permitted by this Agreement will be in writing and will be either personally delivered, or received by certified mail, return receipt requested, or sent by reputable overnight courier service (charges prepaid) to the applicable recipient or by facsimile, email or other electronic transaction at the address set forth below. Notices will be deemed to have been given hereunder when delivered personally or upon transmission in

the case of email, facsimile or other electronic transmission; three (3) days after deposit in the U.S. mail; and one (1) day after deposit with a reputable overnight courier service. Whenever any notice is required to be given by Law or this Agreement, a written waiver thereof signed by the Person entitled to such notice, whether before or after the time stated at which such notice is required to be given, shall be deemed equivalent to the giving of such notice.

Notices to the Corporation shall be sent to:

Party City Holdings Inc.
100 Tice Boulevard
Woodcliff Lake, NJ 07677
Attn: Ian Heller
CC: Legal Department
Email:

With a copy (which shall not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Attn: Kenneth S. Ziman, Esq.
Christopher Hopkins, Esq.
Email:

Notices to any Stockholder shall be sent to the address set forth in the Corporation records for such Stockholder, as may be updated from time to time. The Corporation and each Stockholder may update their notice information from time to time by providing written notice in compliance with this Section 6.08.

Section 6.09. *Governing Law; Jurisdiction; Forum; Waiver of Trial by Jury*.

(a) *Governing Law*. This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the conflicts of laws rules of such state.

(b) *Jurisdiction*. The Parties agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the Court of Chancery of the State of Delaware, or to the extent such court does not have subject matter jurisdiction, the United States District Court for the District of Delaware, or to the extent such court also does not have subject matter jurisdiction, another court of the State of Delaware, County of New Castle, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the

State of Delaware, and each of the Parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party at the address provided pursuant to Section 6.08 shall be deemed effective service of process on such Party.

(c) *WAIVER OF JURY TRIAL*. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 6.10. *Representations and Warranties.* Except with respect to Common Stock issued to such Stockholder pursuant to the Plan of Reorganization, each Stockholder represents and warrants to the Corporation and each other Stockholder, and each Transferee or recipient of Common Stock represents and warrants to the Corporation and each other Stockholder, upon the Transfer of Common Stock to, or receipt of Common Stock by, such Person, that:

(a) such Stockholder is acquiring the Common Stock being acquired by it for its own account or accounts or funds over which it holds voting discretion, not otherwise as a nominee or agent, and not otherwise with the view to, or for resale in connection with, any distribution thereof not in compliance with the Securities Act, any applicable securities or "Blue Sky" laws of any state of the United States or other applicable securities Laws, and Stockholder has no present intention of selling, granting any other participation in, or otherwise distributing the same, except in compliance with the Securities Act, any applicable securities or "Blue Sky" laws of any state of the United States and any applicable securities Laws;

(b) such Stockholder acknowledges that the Common Stock have not been registered under the Securities Act or any state securities Law, and the Corporation is under no obligation to file a registration statement with the SEC or any state securities commission with respect to the Common Stock and that the Common Stock cannot be sold unless in a transaction registered under the Securities Act or an exemption from registration is available;

(c) such Stockholder has such knowledge and experience in financial and business matters such that it is capable of evaluating the merits and risks of its investment in the Common Stock. Such Stockholder understands and accepts that its investment in the Common Stock involve risks. Such Stockholder is able to bear the complete loss of his, her or its investment in the Common Stock;

(d) such Stockholder or entity is an "accredited investor" (as defined in Rule 501(a) of Regulation D promulgated under the Securities Act) or a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act);

(e) such Stockholder understands that the exemption from registration afforded by Rule 144 (the provisions of which are known to such person or entity) promulgated by the SEC under the Securities Act depends upon the satisfaction of various conditions, that such exemption is currently not available and that, if applicable, Rule 144 may in many instances afford the basis for sales only in limited amounts;

(f) such Stockholder, in making his, her or its decision to invest in the Common Stock, (i) has relied upon an independent investigation made by such Stockholder and his, her or its representatives (including financial, tax and legal advisors) to the extent believed to be appropriate by such Stockholder and (ii) has been given the opportunity to examine all documents and to ask questions of, and receive answers from, the Corporation and its representatives concerning the business of the Corporation and the terms and conditions of such Stockholder's purchase of his, her or its Common Stock;

(g) such Stockholder is not purchasing the Common Stock as a result of any advertisement, article, notice or other communication regarding the Common Stock published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to such Stockholder's knowledge, any other general solicitation or general advertisement;

(h) such Stockholder is duly authorized to join in this Agreement and the Person executing a Joinder on its behalf is duly authorized to do so;

(i) the execution, delivery and performance of a Joinder have been duly authorized by such Stockholder and do not require such Stockholder to obtain any consent or approval that has not been obtained and do not contravene or result in a default under any provision of any Law or regulation applicable to such Stockholder or other governing documents or any agreement or instrument to which such Stockholder is a party or by which such Stockholder is bound; and

(j) this Agreement is valid, binding and enforceable against such Stockholder (including, in the case of a Stockholder that is a trust, the trust property) in accordance with its terms as limited by (A) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally or (B) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

Section 6.11. *No Inconsistent Agreements*. The Corporation shall not hereafter enter into any agreement with respect to its Common Stock which is inconsistent with or violates the rights granted to the Stockholders in this Agreement.

Section 6.12. *Entire Agreement*. This Agreement, the other Organizational Documents, the Plan of Reorganization and any other documents expressly referred to herein or in the Plan of Reorganization embody the complete agreement and

understanding among the Parties and supersede and preempt any prior understandings, agreements or representations by or among the Parties, written or oral, which may have related to the subject matter hereof in any way.

Section 6.13. *Incorporation by Reference*. Every exhibit, schedule and other appendix attached to this Agreement and referred to herein is hereby incorporated in this Agreement by reference.

Section 6.14. *Descriptive Headings; Interpretation*. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. References to any Person shall be deemed to mean and include the successors and permitted assigns of such Person (or, in the case of any governmental authority, Persons succeeding to the relevant functions of such Person). Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof. Without limiting the generality of the immediately preceding sentence, no amendment or other modification to any agreement, document or instrument that requires the consent of any Person pursuant to the terms of this Agreement or any other agreement will be given effect hereunder unless such Person has consented in writing to such amendment or modification. All references to statutes shall include all amendments of the same and any successor or replacement statutes and regulations promulgated thereunder, and all references to regulations shall include all amendments and any successor or replacement regulations. Wherever required by the context, references to a fiscal year shall refer to a portion thereof. The use of the word “include”, “includes” or “including” in this Agreement shall be by way of example rather than by limitation. References to “hereof,” “herein,” “hereby” and similar terms shall refer to this entire Agreement (including the schedules and exhibits hereto). The use of the words “or,” “either” and “any” shall not be exclusive. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 6.15. *Aggregation of Affiliates and Related Persons*. To the extent any action, consent or right under this Agreement requires a threshold level of ownership of Fully Diluted Party Common Stock by a given Stockholder, the ownership of Fully Diluted Party Common Stock by such Stockholder and its Related Persons shall be aggregated for the purposes of satisfying such threshold.

Section 6.16. *Independent Agreement by the Stockholders*. The Parties acknowledge that this Agreement does not constitute an agreement, arrangement, or understanding with respect to acting together for the purpose of acquiring, holding, voting, or disposing of any Common Stock and the Stockholders do not constitute a “group” within the meaning of Rule 13d-5 under the Exchange Act, as amended.

Nothing contained in this Agreement, any of the other Organizational Documents or the Plan of Reorganization and no action taken by any Stockholder pursuant to this Agreement shall be deemed to constitute or to create a presumption by any parties that the Stockholders are in any way acting in concert or as a "group" (or a joint venture, partnership or association), and each of the Corporation and the Stockholders agree to not assert any such claim with respect to such obligations or the transactions contemplated by this Agreement, the other Organizational Documents or the Plan of Reorganization.

Section 6.17. *Binding Effect; Intended Beneficiaries*. This Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, successors, legal representatives and permitted assigns. Unless expressly provided in this Agreement, no provision is intended to confer on any Person other than the Parties, and their respective heirs, successors, legal representatives and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 6.18. *Creditors*. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Corporation or any of its Affiliates, and no creditor who makes a loan to the Corporation or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Corporation in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Corporation's profits, losses, distributions, capital or property other than as a secured creditor.

Section 6.19. *Waiver*. Unless expressly set forth herein, the Parties may not waive any provision of this Agreement, except pursuant to a written instrument signed by the Party or Parties hereto against whom enforcement of such waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, constitutes a waiver by the Party taking such action of compliance with any provision of this Agreement. The waiver by any Party of any provision of this Agreement is effective only in the instance and only for the purpose that it is given and does not operate and is not to be construed as a further or continuing waiver of such provision or as a waiver of any other provision. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

Section 6.20. *Severability*. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 6.21. *Further Action*. The Parties shall execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 6.22. *Delivery by Electronic Transmission*. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of an electronic transmission, including by a facsimile machine or via email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party or to any such agreement or instrument shall raise the use of electronic transmission by a facsimile machine or via email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through such electronic transmission as a defense to the formation of a contract and each such Party forever waives any such defense.

Section 6.23. *Counterparts; Effectiveness*. This Agreement may be executed in separate counterparts (including PDFs), each of which will be an original and all of which together shall constitute one and the same agreement binding on all the Parties. This Agreement shall become effective on the date first set forth above.

[*Remainder of Page Intentionally Left Blank*]

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

Party City Holdco Inc.

By: /s/ Ian Heller
Name: Ian Heller
Title: General Counsel and Corporate Secretary

Schedule A

Stockholders

Each Holder of an Allowed Claim (as defined in the Plan of Reorganization) entitled to distribution of Common Stock under the Plan of Reorganization or, as applicable, pursuant to the Rights Offering (as defined in the Plan of Reorganization).

Exhibit A

JOINDER TO STOCKHOLDERS AGREEMENT OF
PARTY CITY HOLDCO INC.

ANY CAPITALIZED TERM THAT IS NOT OTHERWISE DEFINED IN THIS JOINDER SHALL HAVE THE MEANING GIVEN TO IT IN THE STOCKHOLDERS AGREEMENT OF PARTY CITY HOLDCO INC. DATED OCTOBER 12, 2023, AS AMENDED FROM TIME TO TIME (THE "**AGREEMENT**"). A COPY OF THE AGREEMENT IS ATTACHED TO AND INCORPORATED FOR ALL PURPOSES IN THIS JOINDER.

The undersigned has acquired shares of Common Stock of Party City Holdco Inc., a Delaware corporation (the "**Corporation**"), from one or more Stockholders and, by signing this Joinder, the undersigned agrees as follows:

1. THE UNDERSIGNED HAS RECEIVED, READ AND UNDERSTANDS THE AGREEMENT.

2. THE UNDERSIGNED ACKNOWLEDGES AND AGREES THAT BY SIGNING THIS JOINDER IT IS BECOMING A PARTY TO THE AGREEMENT AS A "STOCKHOLDER" JUST AS THOUGH IT HAD SIGNED THE AGREEMENT ITSELF. ACCORDINGLY, THE UNDERSIGNED AGREES TO BE BOUND BY ALL OF THE TERMS AND PROVISIONS OF THE AGREEMENT AND TO BE SUBJECT TO ALL OF THE OBLIGATIONS IMPOSED ON A STOCKHOLDER BY OR UNDER THE AGREEMENT AND APPLICABLE LAW. THE UNDERSIGNED RATIFIES AND CONFIRMS EACH AND EVERY ARTICLE, SECTION AND PROVISION OF THE AGREEMENT.

3. THE UNDERSIGNED REPRESENTS THAT IT HAS ACCESSED THE SECURED SITE AND HAD THE OPPORTUNITY TO REVIEW THE INFORMATION CONTAINED THEREIN.

4. FOR THE AVOIDANCE OF DOUBT, THE UNDERSIGNED REPRESENTS AND WARRANTS THAT THE AGREEMENT CONSTITUTES THE LEGAL, VALID, AND BINDING OBLIGATION OF THE UNDERSIGNED AND IT IS ENFORCEABLE AGAINST IT IN ACCORDANCE WITH ITS TERMS.

Natural Person:

_____
(Print Name)

_____
(Signature)

Entity:

_____
(Print Entity Name)

By: _____
(Signature)
Print
Name: _____
Title: _____

Address: _____

_____

_____

Telephone No. _____

Facsimile No. _____

Email address: _____

Date Signed: _____

Address: _____

_____

_____

Telephone No. _____

Facsimile No. _____

Email address: _____

Date Signed: _____

The Corporation has accepted this Joinder and admits _____ as a Party to the Agreement effective _____, _____.

Party City Holdco Inc.

By: _____
Name:
Title:

EXHIBIT 10.5

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made and entered into as of this _____ by and among Party City Holdco Inc. (the "Company"), a Delaware corporation, Party City Holdings Inc., a Delaware corporation ("Opco", and together with the Company, the "Party City Companies" and each a "Party City Company"), and [_____] ("Indemnitee").

WHEREAS, in light of the litigation costs and risks to directors and officers resulting from their service to companies, and the desire of the Party City Companies to attract and retain qualified individuals to serve as directors, it is reasonable, prudent and necessary for each of the Party City Companies to indemnify and advance expenses on behalf of its directors and/or officers to the extent permitted by applicable law so that they will serve or continue to serve the Party City Companies free from undue concern regarding such risks;

WHEREAS, the Party City Companies have requested that Indemnitee serve or continue to serve as a director and/or officer of one or more of the Party City Companies and may have requested or may in the future request that Indemnitee serve one or more Party City Entities (as hereinafter defined) as a director or officer or in other capacities;

WHEREAS, Indemnitee is willing to serve as a director and/or officer of one or more of the Party City Companies on the condition that Indemnitee be so indemnified; and

WHEREAS, Indemnitee may have certain rights to indemnification, advancement of expenses and/or insurance provided by the Designating Stockholders (as hereinafter defined) (or their affiliates), which Indemnitee, the Party City Companies and the Designating Stockholders (or their affiliates) intend to be secondary to the primary obligation of the Party City Companies to indemnify Indemnitee as provided herein, with the Party City Companies' acknowledgement of and agreement to the foregoing being a material condition to Indemnitee's willingness to serve as a director and/or officer of one or more of the Party City Companies.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Party City Companies and Indemnitee do hereby covenant and agree as follows:

1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of one or more of the Party City Companies. Indemnitee may at any time and for any reason resign from such position (subject to any contractual obligation under any other agreement or any obligation imposed by operation of law).

2. Indemnification - General. On the terms and subject to the conditions of this Agreement and the Stockholders Agreement, the Party City Companies shall, to the fullest extent permitted by law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, all losses, liabilities, judgments, fines, penalties, costs, amounts paid in settlement, Expenses (as hereinafter defined) and other amounts that Indemnitee reasonably incurs and that result from, arise in connection with or are by reason of Indemnitee's Corporate Status (as hereinafter defined) (collectively, the "Indemnified Losses") and shall advance Expenses to

Indemnitee, unless it is determined in a final, non-appealable judgment of a court of competent jurisdiction that the Indemnified Losses were the result of Cause with respect to such Indemnitee. The obligations of the Party City Companies under this Agreement (a) are joint and several obligations of each Party City Company, (b) shall continue after such time as Indemnitee ceases to serve as a director and/or officer of the Party City Companies or in any other Corporate Status, and (c) include, without limitation, claims for monetary damages against Indemnitee in respect of any actual or alleged liability or other loss of Indemnitee, to the fullest extent permitted under applicable law (including, if applicable, Section 145 of the Delaware General Corporation Law) as in existence on the date hereof and as amended from time to time.

3. Proceedings Other Than Proceedings by or in the Right of the Party City Companies. If in connection with or by reason of Indemnitee's Corporate Status Indemnitee was, is, or is threatened to be made, a party to or a participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of any of the Party City Companies to procure a judgment in its favor, the Party City Companies shall, to the fullest extent permitted by law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, all losses, liabilities, judgments, fines, penalties, costs amounts paid in settlement, Expenses and other amounts (including all interest, assessments and other charges paid or payable in connection with or in respect of such amounts paid in settlement) reasonably incurred by Indemnitee or on behalf of Indemnitee in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in, or not opposed to, the best interests of the applicable Party City Company and, with respect to any criminal Proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful.

4. Proceedings by or in the Right of the Party City Companies. If by reason of Indemnitee's Corporate Status Indemnitee was, is, or is threatened to be made a party to or a participant in any Proceeding by or in the right of any of the Party City Companies to procure a judgment in its favor, the Party City Companies shall, to the fullest extent permitted by law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, all Expenses reasonably incurred by Indemnitee or on behalf of Indemnitee in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in, or not opposed to, the best interests of the applicable Party City Company; provided, however, that indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged by a court of competent jurisdiction to be liable to the applicable Party City Company only if (and only to the extent that) the Court of Chancery of the State of Delaware or other court in which such Proceeding shall have been brought or is pending (the "Trial Court") shall determine that despite such adjudication of liability and in light of all circumstances such indemnification may be made.

5. Mandatory Indemnification in Case of Successful Defense. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding (including, without limitation, any Proceeding brought by or in the right of any Party City Company), the Party City Companies shall, to the fullest extent permitted by law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against,

all Expenses reasonably incurred by Indemnitee or on behalf of Indemnitee in connection therewith. If Indemnitee is not wholly successful in defense of such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Party City Companies shall, to the fullest extent permitted by law, indemnify Indemnitee against all Expenses reasonably incurred by Indemnitee or on behalf of Indemnitee in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, on substantive or procedural grounds, shall be deemed to be a successful result as to such claim, issue or matter.

6. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement or otherwise to indemnification by any of the Party City Companies for some or a portion of the Expenses, liabilities, judgments, penalties, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such liabilities, judgments, penalties, fines and amounts paid in settlement) incurred by Indemnitee or on behalf of Indemnitee in connection with a Proceeding or any claim, issue or matter therein, in whole or in part, the Party City Companies shall, to the fullest extent permitted by law, indemnify Indemnitee to the fullest extent to which Indemnitee is entitled to such indemnification.

7. Indemnification for Additional Expenses Incurred to Secure Recovery or as Witness.

(a) The Party City Companies shall, to the fullest extent permitted by law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, any and all Expenses and, if requested by Indemnitee, shall advance on an as-incurred basis (as provided in Section 8 of this Agreement) such Expenses to Indemnitee, which are reasonably incurred by Indemnitee in connection with any action or proceeding or part thereof brought by Indemnitee for (i) indemnification or advance payment of Expenses by the Party City Companies under this Agreement, any other agreement, the Certificate of Incorporation or By-laws of the applicable Party City Company as now or hereafter in effect; or (ii) recovery under any director and officer liability insurance policies maintained by any Party City Entity.

(b) To the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness (or is forced or asked to respond to discovery requests) in any Proceeding to which Indemnitee is not a party, the Party City Companies shall, to the fullest extent permitted by law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, and the Party City Companies will advance on an as-incurred basis (as provided in Section 8 of this Agreement), all Expenses reasonably incurred by Indemnitee or on behalf of Indemnitee in connection therewith.

8. Advancement of Expenses. The Party City Companies shall, to the fullest extent permitted by law, pay on a current and as-incurred basis all Expenses incurred by Indemnitee in connection with any Proceeding in any way connected with, resulting from or relating to Indemnitee's Corporate Status. Such Expenses shall be paid in advance of the final disposition of such Proceeding, without regard to whether Indemnitee will ultimately be entitled to be

indemnified for such Expenses and without regard to whether an Adverse Determination has been or may be made, except as contemplated by the last sentence of Section 9(f) of this Agreement. Upon submission of a request for advancement of Expenses pursuant to Section 9(c) of this Agreement, Indemnitee shall be entitled to advancement of Expenses as provided in this Section 8, and such advancement of Expenses shall continue until such time (if any) as there is a final non-appealable judicial determination that Indemnitee is not entitled to indemnification.

9. Indemnification Procedures.

(a) Notice of Proceeding. Indemnitee agrees to notify the Party City Companies promptly upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder. Any failure by Indemnitee to notify any Party City Company will relieve the Party City Companies of its advancement or indemnification obligations under this Agreement only to the extent the Party City Companies can establish that such omission to notify resulted in actual prejudice to it, and the omission to notify such Party City Companies will, in any event, not relieve any Party City Company from any liability which it may have to indemnify Indemnitee otherwise than under this Agreement. If, at the time of receipt of any such notice, the Party City Companies have director and officer insurance policies in effect, the Party City Companies will promptly notify the relevant insurers in accordance with the procedures and requirements of such policies.

(b) Defense; Settlement. Indemnitee shall have the sole right and obligation to control the defense or conduct of any claim or Proceeding with respect to Indemnitee. The Party City Companies shall not, without the prior written consent of Indemnitee, which may be provided or withheld in Indemnitee's sole discretion, effect any settlement of any Proceeding against Indemnitee or which could have been brought against Indemnitee or which potentially or actually imposes any cost, liability, exposure or burden on Indemnitee unless such settlement solely involves the payment of money or performance of any obligation by persons other than Indemnitee and includes an unconditional release of Indemnitee from all liability on any matters that are the subject of such Proceeding and an acknowledgment that Indemnitee denies all wrongdoing in connection with such matters. The Party City Companies shall not be obligated to indemnify Indemnitee against amounts paid in settlement of a Proceeding against Indemnitee if such settlement is effected by Indemnitee without the Party City Companies' prior written consent, which consent shall not be unreasonably withheld.

(c) Request for Advancement; Request for Indemnification.

(i) To obtain advancement of Expenses under this Agreement, Indemnitee shall submit to the Party City Companies a written request therefor, together with such invoices or other supporting information as may be reasonably requested by the Party City Companies and reasonably available to Indemnitee, and, only to the extent required by applicable law which cannot be waived, a written undertaking to repay amounts advanced. Any such repayment obligation shall be unsecured and shall not bear interest. Advancement shall be made without regard to Indemnitee's ability to repay amounts advanced. The Party City Companies shall make advance payment of Expenses to Indemnitee no later than twenty (20)

days after receipt of the written request for advancement (and each subsequent request for advancement) by Indemnitee. If, at the time of receipt of any such written request for advancement of Expenses, the Party City Companies have director and officer insurance policies in effect, the Party City Companies will promptly notify the relevant insurers in accordance with the procedures and requirements of such policies. The Party City Companies shall thereafter keep such director and officer insurers informed of the status of the Proceeding or other claim, as appropriate to secure coverage of Indemnitee for such claim.

(ii) To obtain indemnification under this Agreement, at any time after submission of a request for advancement pursuant to Section 9(c)(i) of this Agreement, Indemnitee may submit a written request for indemnification hereunder. The time at which Indemnitee submits a written request for indemnification shall be determined by the Indemnitee in the Indemnitee's sole discretion. Once Indemnitee submits such a written request for indemnification (and only at such time that Indemnitee submits such a written request for indemnification), a Determination shall thereafter be made, as provided in and only to the extent required by Section 9(d) of this Agreement. In no event shall a Determination be made, or be required to be made, as a condition to or otherwise in connection with any advancement of Expenses pursuant to Section 8 and Section 9(c)(i) of this Agreement. If, at the time of receipt of any such request for indemnification, the Party City Companies have director and officer insurance policies in effect, the Party City Companies will promptly notify the relevant insurers in accordance with the procedures and requirements of such policies.

(d) Determination. The Party City Companies agree that Indemnitee shall be indemnified to the fullest extent permitted by law and that no Determination shall be required in connection with such indemnification unless specifically required by applicable law which cannot be waived. In no event shall a Determination be required in connection with indemnification for Expenses incurred as a witness pursuant to Section 7 of this Agreement or incurred in connection with any Proceeding or portion thereof with respect to which Indemnitee has been successful on the merits or otherwise. Any decision that a Determination is required by law in connection with any other indemnification of Indemnitee, and any such Determination, shall be made within thirty (30) days after receipt of Indemnitee’s written request for indemnification pursuant to Section 9(d)(ii) and such Determination shall be made either (i) by the Disinterested Directors, even though less than a quorum, so long as Indemnitee does not request that such Determination be made by Independent Counsel, or (ii) if so requested by Indemnitee, in Indemnitee’s sole discretion, by Independent Counsel in a written opinion to the Party City Companies and Indemnitee. If a Determination is made that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within twenty (20) days after such Determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee’s entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such Determination. Any Expenses incurred by Indemnitee in so cooperating with the Disinterested Directors or Independent Counsel, as the case may be, making such determination shall be advanced and borne by the Party City Companies (irrespective of the Determination as to Indemnitee’s

entitlement to indemnification) and each Party City Company is liable to indemnify and hold Indemnitee harmless therefrom.

(e) Independent Counsel. In the event Indemnitee requests that the Determination be made by Independent Counsel pursuant to Section 9(d) of this Agreement, the Independent Counsel shall be selected as provided in this Section 9(e). The Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection by made by the Board of Directors, in which event the Board of Directors shall make such selection on behalf of the Party City Companies, subject to the remaining provisions of this Section 9(e)), and Indemnitee or the Party City Companies, as the case may be, shall give written notice to the other, advising the Party City Companies or Indemnitee of the identity of the Independent Counsel so selected. The Party City Companies or Indemnitee, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to Indemnitee or the Company, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 14 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 9(c)(ii) of this Agreement, no Independent Counsel shall have been selected and not objected to, either the Party City Companies or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Party City Companies or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 9(d) of this Agreement. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 9(f) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing). Any expenses incurred by Independent Counsel shall be borne by the Party City Companies (irrespective of the Determination of Indemnitee's entitlement to indemnification) and not by Indemnitee.

(f) Consequences of Determination; Remedies of Indemnitee. The Party City Companies shall be bound by and shall have no right to challenge a Favorable Determination. If an Adverse Determination is made, or if for any other reason the Party City Companies do not make timely indemnification payments or advances of Expenses, Indemnitee shall have the right to commence a Proceeding before a court of competent jurisdiction to challenge such Adverse Determination and/or to require the Party City Companies to make such payments or advances (and the Company shall have the right to defend its position in such Proceeding and to appeal any adverse judgment in such Proceeding). Indemnitee shall be entitled to be indemnified for all Expenses incurred in connection with such a Proceeding and to have such Expenses advanced by the Company in accordance with Section 8 of this Agreement. If Indemnitee fails to challenge

an Adverse Determination, or if Indemnitee challenges an Adverse Determination and such Adverse Determination has been upheld by a final judgment of a court of competent jurisdiction from which no appeal can be taken, then, to the extent and only to the extent required by such Adverse Determination or final judgment, the Party City Companies shall not be obligated to indemnify or advance Expenses to Indemnitee under this Agreement.

(g) Presumptions; Burden and Standard of Proof. The parties intend and agree that, to the extent permitted by law, in connection with any Determination with respect to Indemnitee's entitlement to indemnification hereunder by any person, including a court:

(i) it will be presumed that Indemnitee is entitled to indemnification under this Agreement, and the Party City Entities or any other person or entity challenging such right will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption;

(ii) the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the applicable Party City Entity, and, with respect to any criminal action or proceeding, had reasonable cause to believe that Indemnitee's conduct was unlawful;

(iii) Indemnitee will be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the applicable Party City Entity, including financial statements, or on information supplied to Indemnitee by the officers, employees, or committees of the board of directors of the applicable Party City Entity, or on the advice of legal counsel for the applicable Party City Entity or on information or records given in reports made to the applicable Party City Entity by an independent certified public accountant or by an appraiser or other expert or advisor selected by the applicable Party City Entity; and

(iv) the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of any of the Party City Entities or relevant enterprises will not be imputed to Indemnitee in a manner that limits or otherwise adversely affects Indemnitee's rights hereunder.

The provisions of this Section 9(g) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

10. Insurance; Subrogation; Other Rights of Recovery, etc.

(a) Each Party City Company shall use its reasonable best efforts to purchase and maintain a policy or policies of insurance with reputable insurance companies with A.M. Best ratings of "A" or better, providing Indemnitee with coverage for any liability asserted against, and incurred by, Indemnitee or on Indemnitee's behalf by reason of Indemnitee's Corporate Status, or arising out of Indemnitee's status as such, whether or not any such Party City Company would have the power to indemnify Indemnitee against such liability. Such insurance

policies shall have coverage terms and policy limits at least as favorable to Indemnitee as the insurance coverage provided to any other director or officer of the Party City Companies. If an Party City Company has such insurance in effect at the time it receives from Indemnitee any notice of the commencement of an action, suit, proceeding or other claim, such Party City Company shall give prompt notice of the commencement of such action, suit, proceeding or other claim to the insurers in accordance with the procedures set forth in the policy. The Party City Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such action, suit, proceeding or other claim in accordance with the terms of such policy. The Party City Company shall continue to provide such insurance coverage to Indemnitee for a period of at least six (6) years after Indemnitee ceases to serve as a director or officer or any other present Corporate Status.

(b) In the event of any payment by any Party City Company under this Agreement, such Party City Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee against any other Party City Entity, and Indemnitee hereby agrees, as a condition to obtaining any advancement or indemnification from the Party City Companies, to assign to such Party City Company all of Indemnitee's rights to obtain from such other Party City Entity such amounts to the extent that they have been paid by such Party City Company to or for the benefit of Indemnitee as advancement or indemnification under this Agreement and are adequate to indemnify Indemnitee with respect to the costs, Expenses or other items to the full extent that Indemnitee is entitled to indemnification or other payment hereunder; and Indemnitee will (upon request by the Party City Companies) execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable such Party City Company to bring suit or enforce such rights.

(c) Each of the Party City Companies hereby unconditionally and irrevocably waives, relinquishes and releases, and covenants and agrees not to exercise (and to cause each of the other Party City Entities not to exercise), any rights that such Party City Company may now have or hereafter acquire against any Designating Stockholder (or former Designating Stockholder) or Indemnitee that arise from or relate to the existence, payment, performance or enforcement of the Party City Companies' obligations under this Agreement or under any other indemnification agreement (whether pursuant to contract, by-laws or charter) with any person or entity, including, without limitation, any right of subrogation (whether pursuant to contract or common law), reimbursement, exoneration, contribution or indemnification, or to be held harmless, and any right to participate in any claim or remedy of Indemnitee against any Designating Stockholder (or former Designating Stockholder) or Indemnitee, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Designating Stockholder (or former Designating Stockholder) or Indemnitee, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right.

(d) The Party City Companies shall not be liable to pay or advance to Indemnitee any amounts otherwise indemnifiable under this Agreement or under any other indemnification agreement if and to the extent that Indemnitee has otherwise actually received payment under any insurance policy, contract, agreement or otherwise. Notwithstanding the foregoing, (i) the Party City Companies hereby agree that they are the indemnitors of first resort under this

Agreement and any obligations they have to provide advancement and/or indemnification to Indemnitee (under this Agreement or otherwise) are primary, and any obligation of any Designating Stockholder (or any affiliate thereof, other than an Party City Entity), or any obligation of any insurer providing insurance coverage under any policy purchased or maintained by any Designating Stockholder (or by any affiliate thereof, other than an Party City Entity) or of any insurer providing insurance coverage to Indemnitee under any personal umbrella liability insurance policy, to provide advancement, indemnification or insurance coverage for the same amounts incurred by Indemnitee are secondary, and (ii) if any Designating Stockholder (or any affiliate thereof other than a Party City Entity) pays or causes to be paid, for any reason, any amounts otherwise indemnifiable hereunder or under any other indemnification agreement (whether pursuant to contract, by-laws or charter) with Indemnitee, then (x) such Designating Stockholder (or such affiliate, as the case may be) shall be fully subrogated to all rights of Indemnitee with respect to such payment and (y) the Party City Companies shall fully indemnify, reimburse and hold harmless such Designating Stockholder (or such other affiliate) for all such payments actually made by such Designating Stockholder (or such other affiliate).

(e) The Party City Companies' obligation to indemnify or advance Expenses hereunder to Indemnitee in respect of or relating to Indemnitee's service at the request of any of the Party City Companies as a director, officer, employee, fiduciary, representative, partner or agent of any other Party City Entity shall be reduced by any amount Indemnitee has actually received as payment of indemnification or advancement of Expenses from such other Party City Entity, except to the extent that such indemnification payments and advance payment of Expenses when taken together with any such amount actually received from other Party City Entities or under director and officer insurance policies maintained by one or more Party City Entities are inadequate to fully pay all costs, Expenses or other items to the full extent that Indemnitee is otherwise entitled to indemnification or other payment hereunder.

(f) Except for the rights set forth in Sections 10(c), 10(d) and 10(e) of this Agreement, the rights to indemnification and advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time, whenever conferred or arising, be entitled under applicable law, under the Party City Entities' Certificates of Incorporation or By-Laws, or under any other agreement, vote of stockholders or resolution of directors of any Party City Entity, or otherwise. Indemnitee's rights under this Agreement are present contractual rights that fully vest upon Indemnitee's first service as a director or officer of any of the Party City Companies. The Parties hereby agree that Sections 10(c), 10(d) and 10(e) of this Agreement shall be deemed exclusive and shall be deemed to modify, amend and clarify any right to indemnification or advancement provided to Indemnitee under any other contract, agreement or document with any Party City Entity.

(g) No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the General Corporation Law of the State of Delaware (or other applicable law), whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Party City Entities' Certificates of Incorporation or By-Laws and this Agreement, it is the intent of the

parties hereto that Indemnitee enjoy by this Agreement the greater benefits so afforded by such change. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

11. Employment Rights; Successors; Third Party Beneficiaries.

(a) This Agreement shall not be deemed an employment contract between the Party City Companies and Indemnitee. This Agreement shall continue in force as provided above after Indemnitee has ceased to serve as a director and/or officer of the Party City Companies or any other Corporate Status.

(b) This Agreement shall be binding upon each of the Party City Companies and their successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors and administrators.

(c) The Designating Stockholders are express third party beneficiaries of this Agreement, are entitled to rely upon this Agreement, and may specifically enforce the Party City Companies' obligations hereunder (including but not limited to the obligations specified in Section 10 of this Agreement) as though a party hereunder.

12. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

13. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any other provision of this Agreement and except as provided in Section 7(a) of this Agreement or as may otherwise be agreed by any Party City Company, Indemnitee shall not be entitled to indemnification or advancement of Expenses under this Agreement with respect to any Proceeding brought by Indemnitee (other than a Proceeding by Indemnitee (i) by way of defense or counterclaim, (ii) to enforce Indemnitee's rights under this Agreement or (iii) to enforce any other rights of Indemnitee to indemnification, advancement or contribution from the Party City Companies under any other contract, by-laws or charter or under statute or other law, including any rights under Section 145 of the Delaware General Corporation Law), unless the bringing of such Proceeding or making of such claim shall have been approved by the Board of Directors of the applicable Party City Company.

14. Definitions. For purposes of this Agreement:

(a) "Board of Directors" means the board of directors of the Company.

(b) "Cause" means, with respect to any Indemnitee, (i) the commission of an act of fraud, embezzlement, misappropriation, willful misconduct or breach of fiduciary duty against any of the Party City Companies, (ii) conviction, plea of guilty or nolo contendere to (x) a felony or (y) any crime involving fraud, dishonesty or moral turpitude, (iii) causing material harm, financial or otherwise, to any of the Party City Companies, (iv) material breach of any Party City Company policy, or (v) gross negligence or willful misconduct in the performance of such Indemnitee's duties to the Party City Companies.

(c) "Certificate of Incorporation" means, with respect to any entity, (i) in the case of the Company, its certificate of incorporation, (ii) in the case of Opco, its certificate of incorporation, and (iii) in the case of any other entity, its certificate of incorporation, articles of incorporation or similar constituent document.

(d) "Corporate Status" describes the status of a person by reason of such person's past, present or future service as a director or officer of any of the Party City Companies (including, without limitation, one who serves at the request of any of the Party City Companies as a director, officer, employee, fiduciary or agent of any other Party City Entity).

(e) "Designating Stockholder" means any "Designating Stockholder" as defined in that certain Stockholders Agreement, dated as of October 12, 2023, by and among the Company and each of the stockholders party thereto (as amended or restated from time to time, the "Stockholders Agreement"), in each case so long as an individual designated (directly or indirectly) by the Designating Stockholder, or any of its affiliates serves as a director of any Party City Entity.

(f) "Determination" means a determination that either (x) there is a reasonable basis for the conclusion that indemnification of Indemnitee is proper in the circumstances because Indemnitee met a particular standard of conduct (a "Favorable Determination") or (y) there is no reasonable basis for the conclusion that indemnification of Indemnitee is proper in the circumstances because Indemnitee met a particular standard of conduct (an "Adverse Determination"). An Adverse Determination shall include the decision that a Determination was required in connection with indemnification and the decision as to the applicable standard of conduct.

(g) "Disinterested Director" means director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(h) "Expenses" shall mean all reasonable direct and indirect costs, fees and expenses of any type or nature whatsoever and shall specifically include, without limitation, all reasonable attorneys' fees, retainers, court costs, transcript costs, fees and costs of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness, in, or otherwise participating in, a Proceeding or an appeal resulting from a Proceeding, including, but not limited to, the premium for appeal bonds, attachment bonds or similar bonds and all interest, assessments and other charges paid or payable in

connection with or in respect of any such Expenses, and shall also specifically include, without limitation, all reasonable attorneys' fees and all other expenses incurred by or on behalf of Indemnitee in connection with preparing and submitting any requests or statements for indemnification, advancement, contribution or any other right provided by this Agreement. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amounts of judgments or fines against Indemnitee.

(i) "Independent Counsel" means, at any time, any law firm, or a partner (or, if applicable, member) of a law firm, that (a) is experienced in matters of Delaware corporation law and (b) is not, at such time, or has not been in the five years prior to such time, retained to represent: (i) any Party City Entity or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnities under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Party City Companies or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Party City Companies agree to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto and to be jointly and severally liable therefor.

(j) "Proceeding" includes any actual, threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened, pending or completed proceeding, whether brought by or in the right of any Party City Company or otherwise and whether civil, criminal, administrative or investigative in nature, in which Indemnitee was, is, may be or will be involved as a party, witness or otherwise, by reason of Indemnitee's Corporate Status or by reason of any action taken by Indemnitee or of any inaction on Indemnitee's part while acting as director or officer of any Party City Entity (in each case whether or not he is acting or serving in any such capacity or has such status at the time any liability or expense is incurred for which indemnification or advancement of Expenses can be provided under this Agreement).

(k) "Party City Entity" means any Party City Company, any of their respective subsidiaries and any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise with respect to which Indemnitee serves as a director, officer, employee, partner, representative, fiduciary or agent, or in any similar capacity, at the request of any Party City Company.

(l) Construction. Whenever required by the context, as used in this Agreement the singular number shall include the plural, the plural shall include the singular, and all words herein in any gender shall be deemed to include (as appropriate) the masculine, feminine and neuter genders.

15. Reliance; Integration.

(a) The Party City Companies expressly confirm and agree that they have entered into this Agreement and assumed the obligations imposed on each of them hereby in order to induce Indemnitee to serve as a director and/or officer of one or more of the Party City Companies, and the Party City Companies acknowledge that Indemnitee is relying upon this Agreement in serving as a director and/or officer of one or more of the Party City Companies.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation and By-laws of the Company, the Stockholders Agreement and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

16. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in a writing identified as such by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

17. Notice Mechanics. All notices, requests, demands or other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered by hand and receipted for by the party to whom said notice or other communication shall have been direct, or (ii) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed:

(a) If to Indemnitee to:

[*INDEMNITEE*]
At [his/her] most recent address
Shown in the Company's records

with a copy to: [_____]
[_____]
[_____]
Attn: [_____]

(b) If to any Party City Company, to:

Party City Holdco Inc.
100 Tice Boulevard
Woodcliff Lake, New Jersey 07677
Attn: General Counsel

with a copy to: Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attn: Kenneth S. Ziman; Christopher J. Hopkins

or to such other address as may have been furnished (in the manner prescribed above) as follows: (a) in the case of a change in address for notices to Indemnitee, furnished by Indemnitee to the Party City Companies and (b) in the case of a change in address for notices to any Party City Company, furnished by the Party City Companies to Indemnitee.

18. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Party City Companies, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for reasonably incurred Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Party City Companies and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Party City Companies (and their other directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

19. Governing Law; Submission to Jurisdiction; Appointment of Agent for Service of Process. This Agreement and the legal relations among the parties shall, to the fullest extent permitted by law, be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Party City Companies and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Trial Court, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Trial Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Trial Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Trial Court has been brought in an improper or otherwise inconvenient forum.

20. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Company: **Party City Holdco Inc**.

By: _____
Name: Ian Heller
Title: Senior Vice President, General Counsel, and Secretary

Opco: **Party City Holdings Inc.**.

By: _____
Name: Ian Heller
Title: General Counsel and Secretary

Indemnitee:

_____
Name:

[Signature Page to Indemnification Agreement]

EXHIBIT 99.2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
PARTY CITY HOLDCO INC., *et al.*,[1]	)	Case No. 23-90005 (DRJ)
Debtors.	)	(Jointly Administered)

NOTICE OF (I) ENTRY OF ORDER APPROVING THE DEBTORS' DISCLOSURE STATEMENT AND DISCLOSURE STATEMENT SUPPLEMENT AND CONFIRMING THE FOURTH AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF PARTY CITY HOLDCO INC. AND ITS DEBTOR AFFILIATES AND (II) OCCURRENCE OF EFFECTIVE DATE

PLEASE TAKE NOTICE that on September 6, 2023 the United States Bankruptcy Court for the Southern District of Texas (the "Court") entered the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Debtors' Disclosure Statement and Disclosure Statement Supplement and on a Final Basis and (II) Confirming the Fourth Amended Joint Chapter 11 Plan of Reorganization of Party City Holdco Inc. and Its Debtor Affiliates* [Docket No. 1711] (the "Confirmation Order") confirming the Plan[2] and approving, on a final basis, the Disclosure Statement [Docket No. 858] and Disclosure Statement Supplement [Docket No. 1462] of the above-captioned debtors (the "Debtors").

PLEASE TAKE FURTHER NOTICE that, pursuant to the Confirmation Order, the Debtors are required to file this *Notice of (I) Entry of Order Approving the Debtors' Disclosure Statement and Disclosure Statement Supplement and Confirming the Fourth Amended Joint Chapter 11 Plan of Reorganization of Party City Holdco Inc. and Its Debtor Affiliates and (II) Occurrence of Effective Date* no later than seven (7) business days after the Effective Date.

PLEASE TAKE FURTHER NOTICE that the Effective Date of the Plan occurred on October 12, 2023. All conditions in Article X.A of the Plan have been satisfied or waived pursuant to Article X.B of the Plan.

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1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Party City Holdco Inc. (9758); Amscan Custom Injection Molding, LLC (4238); Amscan Inc. (1359); Amscan Purple Sage, LLC (3514); Am-Source, LLC (8427); Anagram Eden Prairie Property Holdings LLC (8309); Party City Corporation (3692); Party City Holdings Inc. (3029); Party Horizon Inc. (5812); PC Intermediate Holdings, Inc. (1229); PC Nextco Finance, Inc. (2091); PC Nextco Holdings, LLC (7285); Print Appeal, Inc. (5932); and Trisar, Inc. (0659). The location of the Debtors' service address for purposes of these chapter 11 cases is: 100 Tice Boulevard, Woodcliff Lake, New Jersey 07677.

2 Capitalized terms used by not otherwise defined herein have the meanings given to them in the *Fourth Amended Joint Chapter 11 Plan of Reorganization of Party City Holdco Inc. and Its Debtor Affiliates* [Docket No. 1672] (as modified, amended, or supplemented from time to time, the "Plan").

PLEASE TAKE FURTHER NOTICE that the Court has approved certain discharge, release, exculpation, injunction, and related provisions in Article IX of the Plan.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Plan, the Confirmation Order, or any other order of the Court, all requests for payment of an Administrative Claim must be Filed and served on the Reorganized Debtors, (a) with respect to Administrative Claims other than Professional Fee Claims and Administrative Claims arising under Unexpired Leases that are rejected pursuant to the Plan, no later than thirty (30) days after the Effective Date, (b) with respect to Professional Fee Claims, no later than forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court, and (c) with respect to Administrative Claims arising under Unexpired Leases that are rejected pursuant to the Plan, no later than thirty (30) days after the later of entry of an Order approving the rejection and the effective date of the rejection (the "Administrative Claims Bar Date"). **Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by the Administrative Claim Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claim against the Debtors, the Reorganized Debtors, or their property and such Administrative Claims shall be deemed disallowed in full as of the Effective Date without the need for any objection from the Reorganized Debtors or any notice to or action, Order, or approval of the Bankruptcy Court or any other entity.**

PLEASE TAKE FURTHER NOTICE that pursuant to Article VI of the Plan, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, all Executory Contracts and Unexpired Leases shall be deemed assumed as of the Effective Date, without the need for any further notice to or action, Order, or approval of the Bankruptcy Court, except for any Executory Contract or Unexpired Lease that (a) was previously assumed or rejected by the Debtors, pursuant to an Order of the Bankruptcy Court; (b) previously expired or terminated pursuant to its terms; (c) is the subject of a motion to assume, assume and assign, or reject or notice of the same pursuant to procedures for assumption, assumption and assignment, or rejection established by the Bankruptcy Court filed by the Debtors that is pending on or before the date of entry of the Confirmation Order; or (d) is specifically designated as a contract or lease to be rejected on the Schedule of Rejected Executory Contracts and Unexpired Leases.

PLEASE TAKE FURTHER NOTICE that pursuant to Article VI of the Plan, the Debtors reserve the right to alter, amend, modify, or supplement the Schedule of Rejected Executory Contracts and Unexpired Leases, including to add or remove any Executory Contracts and Unexpired Leases, at any time up to and including 45 days after the Effective Date upon notice to the affected counterparty; *provided*, however, that after the Confirmation Date, the Debtors may not subsequently, without the consent of the applicable lessor and except as expressly set forth in the Plan, either (a) reject any Unexpired Lease that is not designated as rejected on the Schedule of Rejected Executory Contracts and Unexpired Leases or (b) assume or assume and assign any Unexpired Lease previously designated as rejected on the Schedule of Rejected Executory Contracts and Unexpired Leases.

PLEASE TAKE FURTHER NOTICE that the Plan, the Confirmation Order, the Definitive Documents, and their provisions are binding upon and inure to the benefit of the

Debtors, the Reorganized Debtors, all current and former Holders of Claims, all current and former Holders of Interests, and all other parties-in-interest and their respective heirs, successors and assigns, executors, administrators, Affiliates, officers, directors, managers, agents, representatives, attorneys, beneficiaries, or guardians, whether or not the Claim or Interest of such Holder is Impaired under the Plan, and whether or not such Holder voted to accept the Plan.

PLEASE TAKE FURTHER NOTICE that copies of the Confirmation Order, the Plan, and all documents filed in the Debtors' chapter 11 cases, are available: (a) upon request to Kroll Restructuring Administration LLC (the claims, noticing, and solicitation agent retained in these chapter 11 cases) by calling (888) 905-0493 (toll free) or, for international callers, (646) 440-4580; (b) by visiting the website maintained in these chapter 11 cases at **https://cases.ra.kroll.com/PCHI/**; or (c) for a fee via PACER by visiting http://www.txsb.uscourts.gov.

[*Reminder of page intentionally left blank*]

October 12, 2023

Respectfully submitted,
By: */s/ John F. Higgins*

PORTER HEDGES LLP
John F. Higgins (TX Bar No. 09597500)
M. Shane Johnson (TX Bar No. 24083263)
Megan Young-John (TX Bar No. 24088700)
1000 Main St., 36th Floor
Houston, Texas 77002
Telephone: (713) 226-6000
Facsimile: (713) 226-6248

- and -

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Paul M. Basta (admitted *pro hac vice*)
Kenneth S. Ziman (admitted *pro hac vice*)
Christopher J. Hopkins (admitted *pro hac vice*)
Grace C. Hotz (admitted *pro hac vice*)
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990

Counsel to the Debtors and
the Debtors in Possession

EXHIBIT 99.3

PCHI SUCCESSFULLY COMPLETES FINANCIAL RESTRUCTURING PROCESS

Global Leader in All Things Celebration Emerges from Chapter 11 with Strengthened Financial Position and Optimized Party City Store Portfolio

WOODCLIFF LAKE, N.J., October 12, 2023 – Party City Holdco Inc. ("PCHI" or the "Company"), a global leader in the celebrations industry, announced today that it has completed its restructuring process and emerged from Chapter 11 financially stronger and well positioned for the future.

Through its restructuring, PCHI has substantially strengthened its capital structure by eliminating nearly $1 billion in debt, enhanced its liquidity, and optimized its Party City store portfolio by having negotiated improved lease terms and exited less productive stores. The Company will move forward with nearly 800 Party City locations nationwide.

"We are thrilled to celebrate the successful conclusion of our restructuring and the bright future that lies ahead for PCHI," said Brad Weston, Chief Executive Officer of PCHI. "We have exited the process on stronger financial footing, and I am incredibly appreciative of the tremendous efforts made by our team to get us to where we are today. We also thank our retail and wholesale customers, suppliers, and landlords for their support, which was instrumental in achieving today's positive outcome. Our team looks forward to continuing to deliver on our promise of making joy easy and to advancing PCHI's extraordinary legacy as the go-to destination for all things celebration."

In connection with today's emergence, and having led the Company through its successful restructuring, Mr. Weston announced his intention to step down from his role as CEO, effective November 3, 2023, and transition leadership responsibility to Sean Thompson, currently the Company's President and Chief Commercial Officer, as Interim CEO.

Mr. Weston added, "Based on all that has been accomplished over the last several years – strategically, operationally, and financially – PCHI has emerged with an excellent foundation in place to drive long-term growth. At this juncture, with the restructuring now behind us, the timing is right to pass the baton to Sean, who I'm confident will build on the significant strides that have been made as PCHI continues to expand its market leadership and enhance the customer experience."

Under the Company's Plan of Reorganization, which was approved by the U.S. Bankruptcy Court for the Southern District of Texas on September 6, 2023, PCHI has emerged with a new exit ABL facility of $562 million and a $75 million new money investment to fund go-forward operations and distributions under the Plan. The Company's new shareholders include the members of the ad hoc group of holders (the "Ad Hoc Group") of the Company's prepetition senior secured first lien notes who supported the restructuring.

Additional Information

Court filings and other documents related to the Company's completed financial restructuring are available at https://cases.ra.kroll.com/PCHI, by calling (888) 905-0493 (toll-free) or +1 (646) 440-4580 (international), or by emailing PCHIInquiries@ra.kroll.com.

Paul, Weiss, Rifkind, Wharton & Garrison LLP served as legal counsel, Moelis & Company LLC served as investment banker, AlixPartners, LLP served as financial advisor, and A&G Realty Partners served as real estate advisor to the Company.

Davis Polk & Wardwell LLP served as legal counsel and Lazard Frères & Co. served as investment banker to the Ad Hoc Group.

About Party City Holdco Inc.

Party City Holdco Inc. (PCHI) is a global leader in the celebrations industry, with its offerings spanning more than 70 countries around the world. PCHI is also the largest vertically integrated designer, manufacturer, distributor, and retailer of party goods in North America.

PCHI operates across multiple businesses within its Retail Division and Consumer Products Division. On the retail side, Party City (partycity.com) is the leading omnichannel retailer in the celebrations category, operating more than 800 company-owned stores, franchise stores, and Halloween City (halloweencity.com) seasonal pop-up stores. The Consumer Products Division includes design and manufacturing entities Amscan, an industry leader in celebration décor, tableware, costumes, and accessories, and Anagram, the global market leader in foil balloons.

PCHI is headquartered in Woodcliff Lake, N.J. with additional locations throughout the Americas and Asia.

Forward-Looking Statements

This press release includes “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Some of the forward-looking statements in this press release can be identified by the use of forward-looking terms such as “believes,” “expects,” “projects,” “forecasts,” “may,” “will,” “estimates,” “should,” “would,” “anticipates,” “plans” or other comparable terms. Forward-looking statements speak only as of the date they are made and, except for the Company’s ongoing obligations under the U.S. federal securities laws, the Company does not undertake any obligation to publicly update any forward-looking statement, whether to reflect actual results of operations; changes in financial condition; changes in results of operations and liquidity, changes in general U.S. or international economic or industry conditions; changes in estimates, expectations or assumptions; or other circumstances, conditions, developments or events arising after the date of this press release. You should not rely on forward-looking statements as predictions of future events. The Company’s actual results may differ materially from those anticipated in these forward-looking statements as a result of certain risks and other factors, which could include the risk factors set forth in the Company’s Annual Report on Form 10-K and Quarterly Reports on Form 10-Q filed with the SEC. The Company therefore cautions readers against relying on these forward-looking statements. All forward-looking statements attributable to the Company or persons acting on the Company’s behalf are expressly qualified in their entirety by the foregoing cautionary statements.

Media Contact

Kekst CNC
Sherri L. Toub / Wendi Kopsick
PCHIMediaInquiries@kekstcnc.com