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

FORM 10-Q

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

For the Quarterly Period Ended October 3, 2015

Commission File Number: 0-25121



**SELECT COMFORT CORPORATION**

(Exact name of registrant as specified in its charter)

**Minnesota**

(State or other jurisdiction of incorporation or organization)

**41-1597886**

(I.R.S. Employer Identification No.)

**9800 59th Avenue North**

**Minneapolis, Minnesota**

(Address of principal executive offices)

**55442**

(Zip Code)

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

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

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). YES ☒ NO ☐

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☐

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

As of October 3, 2015, 50,646,000 shares of the Registrant's Common Stock were outstanding.

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**SELECT COMFORT CORPORATION  
AND SUBSIDIARIES  
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**PART I: FINANCIAL INFORMATION**

**ITEM 1. FINANCIAL STATEMENTS**

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

	October 3, 2015	January 3, 2015
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 72,678	\$ 51,995
Marketable debt securities – current	33,243	69,609
Accounts receivable, net of allowance for doubtful accounts of \$750 and \$739, respectively	26,286	19,693
Inventories	77,753	53,535
Prepaid expenses	14,815	17,792
Deferred income taxes	8,561	8,786
Other current assets	12,865	11,185
Total current assets	246,201	232,595
Non-current assets:		
Marketable debt securities – non-current	8,581	44,441
Property and equipment, net	197,886	165,453
Goodwill and intangible assets, net	85,093	15,986
Deferred income taxes	10,219	3,433
Other assets	17,913	12,279
Total assets	\$ 565,893	\$ 474,187
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 115,330	\$ 84,197
Customer prepayments	25,387	28,726
Accrued sales returns	19,313	15,262
Compensation and benefits	32,960	33,066
Taxes and withholding	25,236	10,207
Other current liabilities	25,100	15,594
Total current liabilities	243,326	187,052
Non-current liabilities:		
Warranty liabilities	5,143	2,722
Other long-term liabilities	45,501	27,506
Total liabilities	293,970	217,280
Shareholders' equity:		
Undesignated preferred stock; 5,000 shares authorized, no shares issued and outstanding	—	—
Common stock, \$0.01 par value; 142,500 shares authorized, 50,646 and 52,798 shares issued and outstanding, respectively	506	528
Additional paid-in capital	—	—
Retained earnings	271,410	256,413
Accumulated other comprehensive income (loss)	7	(34)
Total shareholders' equity	271,923	256,907
Total liabilities and shareholders' equity	\$ 565,893	\$ 474,187

See accompanying notes to condensed consolidated financial statements.

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

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 3, 2015</b>	<b>September 27, 2014</b>	<b>October 3, 2015</b>	<b>September 27, 2014</b>
Net sales	\$ 373,919	\$ 323,366	\$ 999,017	\$ 834,541
Cost of sales	140,283	124,782	379,009	322,177
Gross profit	233,636	198,584	620,008	512,364
Operating expenses:				
Sales and marketing	156,899	137,863	424,029	369,597
General and administrative	27,817	23,022	79,951	63,183
Research and development	3,521	2,353	10,275	5,725
Total operating expenses	188,237	163,238	514,255	438,505
Operating income	45,399	35,346	105,753	73,859
Other income, net	78	96	364	276
Income before income taxes	45,477	35,442	106,117	74,135
Income tax expense	13,623	11,888	34,426	25,108
Net income	\$ 31,854	\$ 23,554	\$ 71,691	\$ 49,027
Basic net income per share:				
Net income per share – basic	\$ 0.63	\$ 0.44	\$ 1.39	\$ 0.91
Weighted-average shares – basic	50,945	53,271	51,654	53,677
Diluted net income per share:				
Net income per share – diluted	\$ 0.62	\$ 0.44	\$ 1.36	\$ 0.90
Weighted-average shares – diluted	51,701	53,971	52,524	54,358

See accompanying notes to condensed consolidated financial statements.

**SELECT COMFORT CORPORATION  
AND SUBSIDIARIES**  
*Condensed Consolidated Statements of Comprehensive Income*  
(unaudited - in thousands)

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>October 3, 2015</b>	<b>September 27, 2014</b>	<b>October 3, 2015</b>	<b>September 27, 2014</b>
Net income	\$ 31,854	\$ 23,554	\$ 71,691	\$ 49,027
Other comprehensive (loss) income – unrealized (loss) gain on available-for-sale marketable debt securities, net of income tax	(11)	(35)	41	(5)
Comprehensive income	<u>\$ 31,843</u>	<u>\$ 23,519</u>	<u>\$ 71,732</u>	<u>\$ 49,022</u>

See accompanying notes to condensed consolidated financial statements.

**SELECT COMFORT CORPORATION  
AND SUBSIDIARIES**  
*Condensed Consolidated Statement of Shareholders' Equity*  
(unaudited - in thousands)

	<b>Common Stock</b>		<b>Additional Paid-in Capital</b>	<b>Retained Earnings</b>	<b>Accumulated Other Comprehensive Income/(Loss)</b>	<b>Total</b>
	<b>Shares</b>	<b>Amount</b>				
Balance at January 3, 2015	52,798	\$ 528	\$ —	\$ 256,413	\$ (34)	\$ 256,907
Net income	—	—	—	71,691	—	71,691
Other comprehensive income:						
Unrealized gain on available-for-sale marketable debt securities, net of tax	—	—	—	—	41	41
Exercise of common stock options	212	2	2,656	—	—	2,658
Tax effect from stock-based compensation	—	—	1,974	—	—	1,974
Stock-based compensation	(6)	—	8,952	—	—	8,952
Repurchases of common stock	(2,358)	(24)	(13,582)	(56,694)	—	(70,300)
Balance at October 3, 2015	50,646	\$ 506	\$ —	\$ 271,410	\$ 7	\$ 271,923

See accompanying notes to condensed consolidated financial statements.

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

	Nine Months Ended	
	October 3, 2015	September 27, 2014
Cash flows from operating activities:		
Net income	\$ 71,691	\$ 49,027
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	33,694	29,579
Stock-based compensation	8,952	4,294
Net loss on disposals and impairments of assets	202	115
Excess tax benefits from stock-based compensation	(1,991)	(754)
Deferred income taxes	(5,633)	(4,306)
Gain on non-marketable equity securities	(6,891)	—
Changes in operating assets and liabilities, net of effect of acquisition:		
Accounts receivable	(6,543)	(14,195)
Inventories	(24,120)	(8,552)
Income taxes	13,433	9,883
Prepaid expenses and other assets	4,756	(4,146)
Accounts payable	24,623	27,359
Customer prepayments	(3,351)	13,847
Accrued compensation and benefits	(97)	17,318
Other taxes and withholding	3,569	4,484
Warranty liabilities	3,945	953
Other accruals and liabilities	15,348	10,929
Net cash provided by operating activities	131,587	135,835
Cash flows from investing activities:		
Proceeds from marketable debt securities	101,087	38,237
Acquisition of business	(70,018)	—
Purchases of property and equipment	(61,435)	(58,377)
Investments in marketable debt securities	(29,299)	(58,403)
Proceeds from non-marketable equity securities	12,891	—
Proceeds from sales of property and equipment	41	5
Increase in restricted cash	—	(500)
Net cash used in investing activities	(46,733)	(79,038)
Cash flows from financing activities:		
Repurchases of common stock	(70,300)	(31,480)
Proceeds from issuance of common stock	2,658	1,631
Net increase (decrease) in short-term borrowings	2,119	(7,499)
Excess tax benefits from stock-based compensation	1,991	754
Debt issuance costs	(639)	—
Net cash used in financing activities	(64,171)	(36,594)
Net increase in cash and cash equivalents	20,683	20,203
Cash and cash equivalents, at beginning of period	51,995	58,223
Cash and cash equivalents, at end of period	\$ 72,678	\$ 78,426

See accompanying notes to condensed consolidated financial statements.

**SELECT COMFORT CORPORATION  
AND SUBSIDIARIES**  
*Notes to Condensed Consolidated Financial Statements*  
**(unaudited)**

**1. Basis of Presentation**

We prepared the condensed consolidated financial statements as of and for the three and nine months ended October 3, 2015 of Select Comfort Corporation and 100%-owned subsidiaries (Select Comfort or the Company), without audit, pursuant to the rules and regulations of the Securities and Exchange Commission (SEC) and they reflect, in the opinion of management, all normal recurring adjustments necessary to present fairly our financial position as of October 3, 2015, and January 3, 2015, and the consolidated results of operations and cash flows for the periods presented. Our historical and quarterly consolidated results of operations may not be indicative of the results that may be achieved for the full year or any future period.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. generally accepted accounting principles (GAAP) have been condensed or omitted pursuant to such rules and regulations. These condensed consolidated financial statements should be read in conjunction with our most recent audited consolidated financial statements and related notes included in our Annual Report on Form 10-K for the fiscal year ended January 3, 2015 and other recent filings with the SEC.

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

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

*New Accounting Pronouncements*

In May 2014, the Financial Accounting Standards Board (FASB) issued a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. This new guidance was originally effective for fiscal years beginning after December 15, 2016 and early adoption was not permitted. In July 2015, the FASB deferred the effective date from fiscal years beginning after December 15, 2016 to fiscal years beginning after December 15, 2017 (including interim reporting periods within those fiscal years). Early adoption is permitted to the original effective date of fiscal years beginning after December 15, 2016 (including interim reporting periods within those fiscal years). Companies may use either a full retrospective or a modified retrospective approach to adopt this new guidance. We are evaluating the effect of the new standard on our consolidated financial statements and related disclosures, and have not yet selected a transition method.

In 2015, the FASB issued new guidance related to business combinations. The new guidance requires that adjustments made to provisional amounts recognized in a business combination be recorded in the period such adjustments are determined, rather than retrospectively adjusting previously reported amounts. The new guidance is effective for fiscal years, and interim reporting periods within those fiscal years, beginning after December 15, 2015. Early adoption is permitted. We are evaluating the impact, if any, of adopting this new accounting guidance on our consolidated financial statements and related disclosures. We will adopt the new guidance in the first quarter of 2016.



**SELECT COMFORT CORPORATION  
AND SUBSIDIARIES**  
*Notes to Condensed Consolidated Financial Statements*  
(unaudited)

**2. Acquisition of BAM Labs, Inc.**

In September 2015, we completed the acquisition of BAM Labs, Inc. (BAM Labs), the leading provider of biometric sensor and sleep monitoring for data-driven health and wellness. The addition of BAM Labs strengthens Sleep Number's leadership in sleep innovation, adjustability and individualization. The acquisition broadens and deepens electrical, biomedical, software and backend capabilities - API (application program interface) and bio-signal analysis. Our ownership and control of biometric data advances smart, connected products that empower our customers to 'know better sleep.'

We previously held a \$6.0 million minority equity investment in BAM Labs based on the cost method (see Note 4, *Investments*, for further details). In connection with the acquisition, our equity investment was remeasured to a fair value of \$12.9 million. We acquired the remaining capital stock of BAM Labs for \$57.1 million for a total enterprise value of \$70.0 million. The acquisition of BAM Labs did not have a significant impact on our consolidated results of operations, operating cash flows or financial position.

The following table summarizes the preliminary fair value of the net assets acquired as of October 3, 2015 (in thousands):

Accounts receivable	\$ 104
Inventories	98
Prepaid expenses	98
Property and equipment	91
Deferred income taxes	954
Goodwill	56,201
Intangible assets	13,619
Total assets acquired	71,165
Accounts payable	267
Compensation and benefits	322
Other liabilities	558
Total liabilities acquired	1,147
Net assets acquired	\$ 70,018

Purchased intangible assets of \$13.6 million consisted of developed technologies with an estimated useful life of eight years. The definite-lived intangible assets will be deductible for income tax purposes over 15 years on a straight-line basis. The goodwill will not be deductible for income tax purposes. Purchase accounting is considered preliminary, subject to revision, mainly with respect to certain working capital accounts, income taxes and goodwill, as final information was not available as of October 3, 2015.

**SELECT COMFORT CORPORATION  
AND SUBSIDIARIES**  
*Notes to Condensed Consolidated Financial Statements*  
(unaudited)

**3. Fair Value Measurements**

The following tables set forth by level within the fair value hierarchy, our financial assets that were accounted for at fair value on a recurring basis, according to the valuation techniques we used to determine their fair value (in thousands):

<b>October 3, 2015</b>				
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total</b>
<b>Marketable debt securities – current</b>				
Corporate bonds	\$ —	\$ 12,597	\$ —	\$ 12,597
Commercial paper	—	9,993	—	9,993
Municipal bonds	—	8,140	—	8,140
U.S. Agency bonds	—	2,513	—	2,513
	—	33,243	—	33,243
<b>Marketable debt securities – non-current</b>				
Corporate bonds	—	5,013	—	5,013
U.S. Agency bonds	—	2,498	—	2,498
Municipal bonds	—	1,070	—	1,070
	—	8,581	—	8,581
	<u>\$ —</u>	<u>\$ 41,824</u>	<u>\$ —</u>	<u>\$ 41,824</u>
<b>January 3, 2015</b>				
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total</b>
<b>Marketable debt securities – current</b>				
U.S. Treasury securities	\$ 17,506	\$ —	\$ —	\$ 17,506
Corporate bonds	—	20,139	—	20,139
U.S. Agency bonds	—	12,525	—	12,525
Commercial paper	—	12,486	—	12,486
Municipal bonds	—	6,953	—	6,953
	17,506	52,103	—	69,609
<b>Marketable debt securities – non-current</b>				
U.S. Treasury securities	14,990	—	—	14,990
Corporate bonds	—	15,236	—	15,236
U.S. Agency bonds	—	10,014	—	10,014
Municipal bonds	—	4,201	—	4,201
	14,990	29,451	—	44,441
	<u>\$ 32,496</u>	<u>\$ 81,554</u>	<u>\$ —</u>	<u>\$ 114,050</u>

At October 3, 2015 and January 3, 2015, we had \$1.5 million and \$1.0 million, respectively, of debt and equity securities that fund our deferred compensation plan and are classified in other assets in our condensed consolidated balance sheets. We also had corresponding deferred compensation plan liabilities of \$1.5 million and \$1.0 million at October 3, 2015 and January 3, 2015, respectively, which are included in other long-term liabilities in our condensed consolidated balance sheets. The majority of the debt and equity securities are Level 1 as they trade with sufficient frequency and volume to enable us to obtain pricing information on an ongoing basis. Unrealized gains/(losses) on the debt and equity securities offset those associated with the corresponding deferred compensation plan liabilities.

**SELECT COMFORT CORPORATION  
AND SUBSIDIARIES**  
*Notes to Condensed Consolidated Financial Statements*  
(unaudited)

**4. Investments**

*Marketable Debt Securities*

Investments in marketable debt securities were comprised of the following (in thousands):

	October 3, 2015			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
Corporate bonds	\$ 17,612	\$ 4	\$ (6)	\$ 17,610
U.S. Agency bonds	4,998	13	—	5,011
Commercial paper	9,993	—	—	9,993
Municipal bonds	9,209	2	(1)	9,210
	<u>\$ 41,812</u>	<u>\$ 19</u>	<u>\$ (7)</u>	<u>\$ 41,824</u>

	January 3, 2015			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
Corporate bonds	\$ 35,409	\$ 2	\$ (36)	\$ 35,375
U.S. Treasury securities	32,507	12	(23)	32,496
U.S. Agency bonds	22,545	4	(10)	22,539
Commercial paper	12,487	—	(1)	12,486
Municipal bonds	11,157	2	(5)	11,154
	<u>\$ 114,105</u>	<u>\$ 20</u>	<u>\$ (75)</u>	<u>\$ 114,050</u>

Maturities of marketable debt securities were as follows (in thousands):

	October 3, 2015		January 3, 2015	
	Amortized Cost	Fair Value	Amortized Cost	Fair Value
Marketable debt securities – current (due in less than one year)	\$ 33,231	\$ 33,243	\$ 69,607	\$ 69,609
Marketable debt securities – non-current (due in one to two years)	8,581	8,581	44,498	44,441
	<u>\$ 41,812</u>	<u>\$ 41,824</u>	<u>\$ 114,105</u>	<u>\$ 114,050</u>

During the three months ended October 3, 2015 and September 27, 2014, we received proceeds of \$59.2 million and \$14.6 million, respectively, from marketable debt securities. During the nine months ended October 3, 2015 and September 27, 2014, we received proceeds of \$101.0 million and \$38.1 million, respectively, from marketable debt securities.

*Other Investments*

We previously held a minority equity investment in one of our strategic product-development partners, BAM Labs. In September 2015, we completed the acquisition of the remaining outstanding capital stock of BAM Labs. The carrying value of our equity investment in BAM Labs prior to the acquisition was \$6.0 million based on the cost method. In connection with the acquisition, our equity investment was remeasured to a fair value of \$12.9 million, resulting in a \$3.0 million gain net of: (i) \$3.4 million of acquisition related expenses; and (ii) \$0.5 million of incremental BAM Labs research and development expenses. The remeasured fair value of our equity investment was based on the fair value of BAM Labs at the acquisition date. The net gain of \$3.5 million is included in general and administrative expenses and the incremental BAM Labs expenses of \$0.5 million are included in research and development expenses on our condensed consolidated statements of operations for the three and nine months ended October 3, 2015. See Note 2, *Acquisition of BAM Labs, Inc.*, for details regarding this acquisition.

**SELECT COMFORT CORPORATION  
AND SUBSIDIARIES**  
*Notes to Condensed Consolidated Financial Statements*  
(unaudited)

**5. Inventories**

Inventories consisted of the following (in thousands):

	October 3, 2015	January 3, 2015
Raw materials	\$ 13,558	\$ 10,220
Work in progress	830	411
Finished goods	63,365	42,904
	<u>\$ 77,753</u>	<u>\$ 53,535</u>

**6. Goodwill and Intangible Assets**

*Goodwill and Indefinite-Lived Intangible Assets*

The following is a roll forward of goodwill and indefinite-lived trade name/trademarks (in thousands):

	Nine Months Ended October 3, 2015		Nine Months Ended September 27, 2014	
	Goodwill	Indefinite-Lived Trade Name/ Trademarks	Goodwill	Indefinite-Lived Trade Name/ Trademarks
Beginning balance	\$ 8,963	\$ 1,396	\$ 8,963	\$ 1,396
BAM Labs acquisition	56,201	—	—	—
Ending balance	<u>\$ 65,164</u>	<u>\$ 1,396</u>	<u>\$ 8,963</u>	<u>\$ 1,396</u>

*Definite-Lived Intangible Assets*

The following table provides the gross carrying amount and related accumulated amortization of our definite-lived intangible assets (in thousands):

	October 3, 2015		January 3, 2015	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
Developed technologies <sup>(1)</sup>	\$ 18,850	\$ 1,796	\$ 5,231	\$ 1,342
Customer relationships	2,413	934	2,413	675
Trade names/trademarks	101	101	101	101
	<u>\$ 21,364</u>	<u>\$ 2,831</u>	<u>\$ 7,745</u>	<u>\$ 2,118</u>

<sup>(1)</sup> In September 2015, in connection with the acquisition of BAM Labs, Inc., we acquired \$13.6 million of definite-lived intangible assets consisting of developed technologies.

Amortization expense for definite-lived intangible assets was \$0.3 million and \$0.7 million for the three and nine months ended October 3, 2015, respectively, and \$0.2 million and \$0.6 million for the three and nine months ended September 27, 2014, respectively. Annual amortization for definite-lived intangible assets is expected to be approximately \$2.5 million for each of the next five years.

See Note 2, *Acquisition of BAM Labs, Inc.*, for additional details.

**SELECT COMFORT CORPORATION  
AND SUBSIDIARIES**  
*Notes to Condensed Consolidated Financial Statements*  
(unaudited)

## 7. Credit Agreement

In September 2015, we entered into a new revolving credit facility (Credit Agreement) with a syndicate of banks (Lenders). The Credit Agreement provides a revolving credit facility for general corporate purposes with net aggregate availability of \$100 million. The Credit Agreement contains an accordion feature that allows us to increase the amount of the credit facility from \$100 million up to \$150 million in total availability, subject to Lenders' approval. The Credit Agreement matures in September 2020. The Credit Agreement replaced our \$20 million credit facility that was set to expire in August 2016.

The Credit Agreement provides the Lenders with a collateral security interest in substantially all of our assets and those of our subsidiaries and requires us to comply with, among other things, a maximum leverage ratio and a minimum interest coverage ratio. Under the terms of the Credit Agreement, we pay a variable rate of interest and a commitment fee based on our leverage ratio. As of October 3, 2015, we had no outstanding borrowings or letters of credit and we were in compliance with all financial covenants.

## 8. Repurchase of Common Stock

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

	Three Months Ended		Nine Months Ended	
	October 3, 2015	September 27, 2014	October 3, 2015	September 27, 2014
Amount repurchased under Board-approved share repurchase program	\$ 18,530	\$ 10,010	\$ 68,557	\$ 30,032
Amount repurchased in connection with the vesting of employee restricted stock grants	140	—	1,743	1,448
Total amount repurchased	<u>\$ 18,670</u>	<u>\$ 10,010</u>	<u>\$ 70,300</u>	<u>\$ 31,480</u>

As of October 3, 2015, the remaining share repurchase authorization under our Board-approved share repurchase plan was \$166 million. There is no expiration date governing the period over which we can repurchase shares. Any repurchased shares are constructively retired and returned to an unissued status. The cost of share repurchases is first charged to additional paid-in capital. Once additional paid-in capital is reduced to zero, any additional amounts are charged to retained earnings.

## 9. Stock-Based Compensation

Stock-based compensation expense consisted of the following (in thousands):

	Three Months Ended		Nine Months Ended	
	October 3, 2015	September 27, 2014	October 3, 2015	September 27, 2014
Options	\$ 668	\$ 574	\$ 1,984	\$ 1,503
Restricted shares	2,456	1,685	6,968	2,791
Total stock-based compensation expense <sup>(1)</sup>	3,124	2,259	8,952	4,294
Income tax benefit	904	768	2,909	1,464
Total stock-based compensation expense, net of tax	<u>\$ 2,220</u>	<u>\$ 1,491</u>	<u>\$ 6,043</u>	<u>\$ 2,830</u>

<sup>(1)</sup> The nine months ended September 27, 2014 includes a \$1.2 million benefit related to a change in estimated forfeitures due to employee turnover during the three months ended March 29, 2014.

## 10. Employee Benefits

Under our profit sharing and 401(k) plan, eligible employees may defer up to 50% of their compensation on a pre-tax basis, subject to Internal Revenue Service limitations. Each calendar quarter, we may make a discretionary contribution equal to a percentage of the employee's contribution. During the three months ended October 3, 2015 and September 27, 2014, our contributions, net of forfeitures, were \$1.3 million and \$0.9 million, respectively. During the nine months ended October 3, 2015 and September 27, 2014, our contributions, net of forfeitures, were \$3.3 million and \$2.7 million, respectively.

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

**11. Other Income, Net**

Other income, net, consisted of the following (in thousands):

	Three Months Ended		Nine Months Ended	
	October 3, 2015	September 27, 2014	October 3, 2015	September 27, 2014
Interest income	\$ 122	\$ 106	\$ 428	\$ 306
Interest expense	(44)	(10)	(64)	(30)
Other income, net	\$ 78	\$ 96	\$ 364	\$ 276

**12. Net Income per Common Share**

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

	Three Months Ended		Nine Months Ended	
	October 3, 2015	September 27, 2014	October 3, 2015	September 27, 2014
Net income	\$ 31,854	\$ 23,554	\$ 71,691	\$ 49,027

**Reconciliation of weighted-average shares outstanding:**

Basic weighted-average shares outstanding	50,945	53,271	51,654	53,677
Dilutive effect of stock-based awards	756	700	870	681
Diluted weighted-average shares outstanding	51,701	53,971	52,524	54,358
Net income per share – basic	\$ 0.63	\$ 0.44	\$ 1.39	\$ 0.91
Net income per share – diluted	\$ 0.62	\$ 0.44	\$ 1.36	\$ 0.90

Anti-dilutive stock-based awards excluded from the calculations of diluted net income per share calculations were immaterial for the periods presented.

**13. Commitments and Contingencies**

*Sales Returns*

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

	Nine Months Ended	
	October 3, 2015	September 27, 2014
Balance at beginning of year	\$ 15,262	\$ 9,433
Additions that reduce net sales	67,944	55,047
Deductions from reserves	(63,893)	(50,074)
Balance at end of period	\$ 19,313	\$ 14,406

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*Notes to Condensed Consolidated Financial Statements*  
(unaudited)

*Warranty Liabilities*

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

	Nine Months Ended	
	October 3, 2015	September 27, 2014
Balance at beginning of year	\$ 5,824	\$ 4,153
Additions charged to costs and expenses for current-year sales	7,514	6,119
Deductions from reserves	(4,995)	(5,434)
Changes in liability for pre-existing warranties during the current year, including expirations	1,426	268
Balance at end of period	<u>\$ 9,769</u>	<u>\$ 5,106</u>

*Legal Proceedings*

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

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

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

- Risk Factors
- Overview
- Results of Operations
- Liquidity and Capital Resources
- Non-GAAP Data
- Off-Balance-Sheet Arrangements and Contractual Obligations
- Critical Accounting Policies

### **Risk Factors**

*The following discussion and analysis should be read in conjunction with the Condensed Consolidated Financial Statements and the Notes thereto included herein. This quarterly report on Form 10-Q contains certain forward-looking statements that relate to future plans, events, financial results or performance. You can identify forward-looking statements by those that are not historical in nature, particularly those that use terminology such as “may,” “will,” “should,” “could,” “expect,” “anticipate,” “believe,” “estimate,” “plan,” “project,” “predict,” “intend,” “potential,” “continue” or the negative of these or similar terms. These statements are subject to certain risks and uncertainties that could cause actual results to differ materially from our historical experience and our present expectations or projections.*

*These risks and uncertainties include, among others:*

- Current and future general and industry economic trends and consumer confidence;
- The effectiveness of our marketing messages;
- The efficiency of our advertising and promotional efforts;
- Our ability to execute our Company-Controlled distribution strategy;
- Our ability to achieve and maintain acceptable levels of product and service quality, and acceptable product return and warranty claims rates;
- Our ability to continue to improve and expand our product line, and consumer acceptance of our products, product quality, innovation and brand image;
- Industry competition, the emergence of additional competitive products, and the adequacy of our intellectual property rights to protect our products and brand from competitive or infringing activities;
- Availability of attractive and cost-effective consumer credit options;
- Pending and unforeseen litigation and the potential for adverse publicity associated with litigation;
- Our “just-in-time” manufacturing processes with minimal levels of inventory, which may leave us vulnerable to shortages in supply;
- Our dependence on significant suppliers and our ability to maintain relationships with key suppliers, including several sole-source suppliers;
- Rising commodity costs and other inflationary pressures;
- Risks inherent in global sourcing activities;
- Risks of disruption in the operation of either of our two primary manufacturing facilities;
- Increasing government regulation;
- The adequacy of our management information systems to meet the evolving needs of our business and to protect sensitive data from potential cyber threats;
- The costs and potential disruptions to our business related to upgrading our management information systems;
- Our ability to attract, retain and motivate qualified management, executive and other key employees, including qualified retail sales professionals and managers; and
- Uncertainties arising from global events, such as terrorist attacks or a pandemic outbreak, or the threat of such events.

*Additional information concerning these and other risks and uncertainties is contained under the caption “Risk Factors” in our Annual Report on Form 10-K.*

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



## **Overview**

### **Business Overview**

We offer consumers high-quality, innovative and individualized sleep solutions and services, which include a complete line of SLEEP NUMBER® beds and bedding accessories. Our vertically integrated business model has three significant competitive advantages: proprietary sleep innovations, ongoing customer relationships and exclusive distribution.

We are the exclusive designer, manufacturer, marketer, retailer and servicer of a complete line of Sleep Number® beds. Only the Sleep Number bed offers SleepIQ® technology - proprietary sensor technology that works directly with the bed's DualAir™ system to track and monitor each individual's sleep. SleepIQ technology communicates how you slept and what adjustments you can make to optimize your sleep and improve your daily life. Sleep Number also offers a full line of exclusive sleep products, including FlexFit™ adjustable bases and Sleep Number® pillows, sheets and other bedding products.

We are committed to delivering superior shareholder value through three primary EPS drivers: increasing demand, leveraging our business model and deploying our capital efficiently. We are the sleep innovation leader and drive growth through effective brand marketing and a differentiated retail experience.

Our mission is to Improve Lives by Individualizing Sleep Experiences.

Our vision is *To Become One of the World's Most Beloved Brands By Delivering An Unparalleled Sleep Experience*. We plan to achieve this through our consumer-driven innovation strategy with technology as our differentiator.

## **Results of Operations**

### **Quarterly and Annual Results**

Quarterly and annual operating results may fluctuate significantly as a result of a variety of factors, including increases or decreases in sales, the timing, amount and effectiveness of advertising expenditures, changes in sales return rates or warranty experience, timing of investments in growth initiatives and infrastructure, timing of store openings/closings and related expenses, changes in net sales resulting from changes in our store base, the timing of new product introductions, the timing of promotional offerings, competitive factors, changes in commodity costs, any disruptions in supplies or third-party service providers, seasonality of retail and bedding industry sales, consumer confidence and general economic conditions. Therefore, our historical results of operations may not be indicative of the results that may be achieved for any future period.

### **Highlights**

Financial highlights for the period ended October 3, 2015 were as follows:

- Net sales for the quarter increased 16% to \$374 million, compared with \$323 million for the same period one year ago. The sales increase was driven by an 11% comparable sales increase in our Company-Controlled channel and 4 percentage points of growth from sales generated by 15 net new stores opened in the past 12 months.
- Sales per store (for stores open at least one year), on a trailing twelve-month basis, increased 16% to \$2.6 million, compared with \$2.2 million for the prior-year trailing twelve-month period.
- Operating income for the quarter increased 28% to \$45 million, or 12.1% of net sales, compared with \$35 million, or 10.9% of net sales, for the same period one year ago. The increase in operating income was primarily generated by the 16% increase in net sales and the 110 basis point improvement in the gross profit rate.
- Net income for the quarter increased 35% to \$32 million, or \$0.62 per diluted share, compared with net income of \$24 million, or \$0.44 per diluted share, for the same period one year ago.
- We achieved a return on invested capital (ROIC) of 17.2% during the trailing-twelve month period ended October 3, 2015, well above our 10% cost of capital.
- Cash provided by operating activities totaled \$132 million for the nine months ended October 3, 2015, compared with \$136 million for the same period one year ago.
- At October 3, 2015, cash, cash equivalents and marketable debt securities, less customer prepayments, totaled \$89 million and there were no borrowings under our revolving credit facility.
- During the quarter we increased our inventories and accelerated customer shipments to Q3 from Q4 in preparation for the October 2015 launch of our new enterprise resource planning (ERP) system.

- In the third quarter of 2015, we repurchased 717,382 shares of our common stock under our Board-approved share repurchase program at a cost of \$18.5 million (an average of \$25.83 per share). As of October 3, 2015, the remaining authorization under our Board-approved share repurchase program was \$166 million.
- In September 2015, we completed the acquisition of BAM Labs, Inc. (BAM Labs), the leading provider of biometric sensor and sleep monitoring for data-driven health and wellness. In connection with the acquisition, our previously held equity investment was remeasured to a fair value of \$12.9 million, resulting in a \$3.0 million gain net of: (i) \$3.4 million of acquisition related expenses; and (ii) \$0.5 million of incremental BAM Labs research and development expenses. See Note 2, *Acquisition of BAM Labs, Inc.*, and Note 4, *Investments*, of the Notes to Condensed Consolidated Financial Statements for additional details.

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

	Three Months Ended				Nine Months Ended			
	October 3, 2015		September 27, 2014		October 3, 2015		September 27, 2014	
Net sales	\$ 373.9	100.0%	\$ 323.4	100.0%	\$ 999.0	100.0%	\$ 834.5	100.0%
Cost of sales	140.3	37.5%	124.8	38.6%	379.0	37.9%	322.2	38.6%
Gross profit	233.6	62.5%	198.6	61.4%	620.0	62.1%	512.4	61.4%
Operating expenses:								
Sales and marketing	156.9	42.0%	137.9	42.6%	424.0	42.4%	369.6	44.3%
General and administrative	27.8	7.4%	23.0	7.1%	80.0	8.0%	63.2	7.6%
Research and development	3.5	0.9%	2.4	0.7%	10.3	1.0%	5.7	0.7%
Total operating expenses	188.2	50.3%	163.2	50.5%	514.3	51.5%	438.5	52.5%
Operating income	45.4	12.1%	35.3	10.9%	105.8	10.6%	73.9	8.9%
Other income, net	0.1	0.0%	0.1	0.0%	0.4	0.0%	0.3	0.0%
Income before income taxes	45.5	12.2%	35.4	11.0%	106.1	10.6%	74.1	8.9%
Income tax expense	13.6	3.6%	11.9	3.7%	34.4	3.4%	25.1	3.0%
Net income	\$ 31.9	8.5%	\$ 23.6	7.3%	\$ 71.7	7.2%	\$ 49.0	5.9%
Net income per share:								
Basic	\$ 0.63		\$ 0.44		\$ 1.39		\$ 0.91	
Diluted	\$ 0.62		\$ 0.44		\$ 1.36		\$ 0.90	
Weighted-average number of common shares:								
Basic	50.9		53.3		51.7		53.7	
Diluted	51.7		54.0		52.5		54.4	

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

	Three Months Ended		Nine Months Ended	
	October 3, 2015	September 27, 2014	October 3, 2015	September 27, 2014
Company-Controlled channel	97.4%	98.0%	97.4%	96.9%
Wholesale/Other channel	2.6%	2.0%	2.6%	3.1%
Total	100.0%	100.0%	100.0%	100.0%

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

	Three Months Ended		Nine Months Ended	
	October 3, 2015	September 27, 2014	October 3, 2015	September 27, 2014
<b>Sales change rates:</b>				
Retail comparable-store sales <sup>(1)</sup>	12%	16%	15%	9%
E-Commerce and Direct	3%	18%	11%	5%
Company-Controlled comparable sales change	11%	16%	15%	9%
Net store openings/closings	4%	8%	5%	7%
Total Company-Controlled channel	15%	24%	20%	16%
Wholesale/Other channel	51%	(23%)	2%	(14%)
Total net sales change	16%	23%	20%	14%

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

Other sales metrics were as follows:

	Three Months Ended		Nine Months Ended	
	October 3, 2015	September 27, 2014	October 3, 2015	September 27, 2014
Average sales per store (\$ in thousands) <sup>(1) (3)</sup>	\$ 2,559	\$ 2,216		
Average sales per square foot <sup>(1) (3)</sup>	\$ 1,063	\$ 1,007		
Stores > \$1 million in net sales <sup>(1) (3)</sup>	100%	98%		
Stores > \$2 million in net sales <sup>(1) (3)</sup>	69%	50%		
Average revenue per mattress unit – Company-Controlled channel <sup>(2)</sup>	\$ 3,992	\$ 3,733	\$ 3,991	\$ 3,600

<sup>(1)</sup> Trailing twelve months for stores included in our comparable store sales calculation.

<sup>(2)</sup> Represents Company-Controlled channel total net sales divided by Company-Controlled channel mattress units.

<sup>(3)</sup> Fiscal 2014 included 53 weeks, as compared to 52 weeks in fiscal 2015 and 2013. The additional week in 2014 was in the fiscal fourth quarter. Company-Controlled comparable sales metrics have been adjusted to remove the estimated impact of the additional week on those metrics.

The number of retail stores operating was as follows:

	Three Months Ended		Nine Months Ended	
	October 3, 2015	September 27, 2014	October 3, 2015	September 27, 2014
Beginning of period	467	451	463	440
Opened	11	13	24	46
Closed	(3)	(4)	(12)	(26)
End of period	475	460	475	460

#### **Comparison of Three Months Ended October 3, 2015 with Three Months Ended September 27, 2014**

##### **Net sales**

Net sales increased 16% to \$374 million for the three months ended October 3, 2015, compared with \$323 million for the same period one year ago. Demand for our product innovations, effective marketing and our differentiated retail experience all contributed to the strong sales increase. The sales increase was driven by an 11% comparable sales increase in our Company-Controlled channel and 4 percentage points of growth from sales generated by 15 net new stores opened in the past 12 months.

The \$51 million net sales increase compared with the same period one year ago was comprised of the following: (i) a \$34 million increase in sales from our Company-Controlled comparable retail stores; (ii) a \$13 million increase resulting from net store openings; (iii) a \$3 million increase in Wholesale/Other channel sales; and (iv) a \$1 million increase in E-Commerce and Direct sales. Company-Controlled mattress unit sales increased 7% compared to the prior-year period. Average revenue per mattress unit in our Company-Controlled channel increased by 7% to \$3,992 driven by sales of product innovations, including our new FlexFit™ adjustable bases.

**Gross profit**

Gross profit of \$234 million increased by \$35 million, or 18%, compared with the same period one year ago. The gross profit rate was 62.5% of net sales for the three months ended October 3, 2015, compared with 61.4% for the prior-year period. The 110 basis point increase in the gross profit rate was primarily due to: (i) reductions in promotional discounts; (ii) volume benefits; (iii) favorable product mix changes resulting from advancements in our selling process and product innovations over the last 12 months; and (iv) manufacturing efficiencies. In addition, our gross profit rate can fluctuate from quarter to quarter due to a variety of other factors, including raw material price fluctuations, return and exchange costs, warranty expenses and performance-based incentive compensation.

**Sales and marketing expenses**

Sales and marketing expenses for the three months ended October 3, 2015 increased to \$157 million, or 42.0% of net sales, compared with \$138 million, or 42.6% of net sales, for the same period one year ago. The 60 basis point decrease in the sales and marketing expense rate in the current period was mainly due to the leveraging impact of the 16% net sales increase, partially offset by increased media costs, including costs to support the launch of our new SleepIQ Kids™ bed and the expansion into our tenth aggressive growth market.

**General and administrative expenses**

General and administrative (G&A) expenses increased \$5 million to \$28 million for the three months ended October 3, 2015, compared with \$23 million in the same period one year ago, and increased to 7.4% of net sales, compared with 7.1% of net sales last year. The increase in G&A expenses was due to: (i) \$7.0 million of data conversion and training expenses incurred to support the October 2015 launch of our new ERP system; and (ii) a \$1.3 million increase in miscellaneous other expenses; partially offset by (iii) a \$3.5 million gain (net of acquisition related expenses) related to our previously held minority equity investment in BAM Labs. We completed the acquisition of BAM Labs in September 2015. See Note 2, *Acquisition of BAM Labs, Inc.*, and Note 4, *Investments*, of the Notes to Condensed Consolidated Financial Statements for additional details. The G&A expense rate increased by 30 basis points in the current period compared with the same period one year ago due to the items discussed above, partially offset by the leveraging impact of the 16% net sales increase.

**Research and development expenses**

Research and development expenses for the three months ended October 3, 2015 were \$3.5 million, or 0.9% of net sales, compared with \$2.4 million, or 0.7% of net sales, for the same period one year ago. The \$1.2 million increase in R&D expenses was due to increased investments to support product innovations, including \$0.5 million of expenses related to BAM Labs operations (post acquisition). The \$1.2 million increase is consistent with our long-term consumer innovation strategy.

**Income tax expense**

Income tax expense was \$14 million for the three months ended October 3, 2015, compared with \$12 million for the same period one year ago. The effective tax rate for the three months ended October 3, 2015 was 30.0% compared with 33.5% for the prior-year period. The decrease in the effective tax rate primarily resulted from the tax planning benefits associated with the BAM Labs acquisition gain.

**Comparison of Nine Months Ended October 3, 2015 with Nine Months Ended September 27, 2014****Net sales**

Net sales in 2015 increased 20% to \$999 million, compared with \$835 million for the same period one year ago. Demand for our product innovations, effective marketing and our differentiated retail experience all contributed to the strong sales increase. The sales increase was driven by a 15% comparable sales increase in our Company-Controlled channel and 5 percentage points of growth from sales generated by 15 net new retail stores opened in the past 12 months.

The \$164 million net sales increase compared with the same period one year ago was comprised of the following: (i) a \$111 million increase from our Company-Controlled comparable retail stores; (ii) a \$47 million increase resulting from net store openings; and (iii) a \$6 million increase in E-Commerce and Direct sales. Company-Controlled mattress units increased 9% compared to the prior-year period. Average revenue per mattress unit in our Company-Controlled channel increased by 11%.

**Gross profit**

Gross profit of \$620 million increased by \$108 million, or 21%, compared with the same period one year ago. The gross profit rate increased to 62.1% of net sales for the first nine months of 2015, compared with 61.4% for the prior-year period. The 70 basis point increase in the gross profit rate was primarily due to: (i) reductions in promotional discounts; (ii) volume benefits; (iii) favorable product mix changes resulting from advancements in our selling process and product innovations over the last 12 months; and (iv) manufacturing efficiencies. In addition, our gross profit rate can fluctuate from quarter to quarter due to a variety of other factors,

including raw material price fluctuations, return and exchange costs, warranty expenses and performance-based incentive compensation.

### Sales and marketing expenses

Sales and marketing expenses in 2015 increased to \$424 million compared with \$370 million for the same period one year ago, but decreased to 42.4% of net sales compared with 44.3% of net sales last year. The 190 basis point decrease in the sales and marketing expense rate in the current period was mainly due to the leveraging impact of the 20% net sales increase, which more than offset higher marketing, selling and occupancy costs as we continue to invest in our exclusive distribution strategy.

### General and administrative expenses

General and administrative (G&A) expenses increased to \$80 million in 2015, compared with \$63 million in the prior year and increased to 8.0% of net sales, compared with 7.6% of net sales one year ago. The increase in G&A expenses was comprised of the following: (i) \$9.0 million of data conversion and training expenses incurred to support the October 2015 launch of our new ERP system; (ii) a \$6.6 million increase in employee compensation, including increased stock-based compensation (the nine months ended September 27, 2014 included a \$1.2 million benefit related to a change in estimated forfeitures due to employee turnover during the three months ended March 29, 2014) and incremental compensation costs to enhance our IT infrastructure; (iii) \$2.0 million of additional depreciation expense resulting from the increase in capital expenditures to support the growth of the business, including our new digital website which was launched in the second quarter of 2014; and (iv) a \$2.7 million increase in miscellaneous other expenses; partially offset by (v) a \$3.5 million gain (net of acquisition related expenses) related to our previously held equity investment in BAM Labs. We completed the acquisition of BAM Labs in September 2015. See Note 2, *Acquisition of BAM Labs, Inc.*, and Note 4, *Investments*, of the Notes to Condensed Consolidated Financial Statements for additional details. The G&A expense rate increased by 40 basis points in the current period compared with the same period one year ago due to the items discussed above, partially offset by the leveraging impact of the 20% net sales increase.

### Research and development expenses

Research and development expenses for the nine months ended October 3, 2015 were \$10.3 million, or 1.0% of net sales, compared with \$5.7 million, or 0.7% of net sales, for the same period one year ago. The \$4.6 million increase in R&D expenses was due to increased investments to support product innovations, including \$0.5 million of expenses related to BAM Labs operations (post acquisition). The \$4.6 million increase is consistent with our long-term consumer innovation strategy.

### Income tax expense

Income tax expense was \$34 million for the nine months ended October 3, 2015, compared with \$25 million for the same period one year ago. The effective tax rate for the nine months ended October 3, 2015 was 32.4% compared with 33.9% for the prior-year period. The decrease in the effective tax rate primarily resulted from the tax planning benefits associated with the BAM Labs acquisition gain.

### Liquidity and Capital Resources

As of October 3, 2015, cash, cash equivalents and marketable debt securities totaled \$115 million compared with \$166 million as of January 3, 2015. The \$52 million decrease was primarily due to \$132 million of cash provided by operating activities, which was more than offset by \$61 million of cash used to purchase property and equipment, \$70 million of cash used to repurchase our common stock (\$68.6 million under our Board-approved share repurchase program and \$1.7 million in connection with the vesting of employee restricted stock grants) and \$57 million to acquire the remaining capital stock of BAM Labs. Our \$42 million of marketable debt securities held as of October 3, 2015 are all highly liquid and include U.S. government and agency securities, corporate debt securities, municipal bonds and commercial paper.

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

	Nine Months Ended	
	October 3, 2015	September 27, 2014
<b>Total cash provided by (used in):</b>		
Operating activities	\$ 131.6	\$ 135.8
Investing activities	(46.7)	(79.0)
Financing activities	(64.2)	(36.6)
Net increase in cash and cash equivalents	\$ 20.7	\$ 20.2

Cash provided by operating activities for the nine months ended October 3, 2015 was \$132 million compared with \$136 million for the nine months ended September 27, 2014. Significant components of the year-over-year change in cash provided by operating

activities included: (i) a \$23 million increase in net income for the nine month ended October 3, 2015 compared with the same period one year ago, including a \$3 million net pre-tax gain associated with our acquisition of BAM Labs; (ii) a \$17 million fluctuation in accrued compensation and benefits which primarily resulted from year-over-year changes in company-wide performance-based incentive compensation that was earned in 2014 and paid in the first quarter of 2015, but was not earned in 2013; and (iii) we increased our inventories and accelerated customer shipments in preparation for the October 2015 launch of our new ERP system. This resulted in higher inventory levels, increased accounts receivable, increased accounts payable and decreased customer prepayments.

Net cash used in investing activities was \$47 million for the nine months ended October 3, 2015, compared with \$79 million for the same period one year ago. Investing activities for the current-year period included \$61 million of property and equipment purchases, compared with \$58 million for the same period one year ago. On a net basis, we decreased our investments in marketable debt securities by \$72 million during the nine months ended October 3, 2015, compared with a net increase of \$20 million during the comparable period one year ago. In September 2015, we completed the acquisition of BAM Labs. We previously held a \$6.0 million minority equity investment in BAM Labs based on the cost method. In connection with the acquisition, our equity investment was remeasured to a fair value of \$12.9 million and we acquired the remaining capital stock in BAM Labs for \$57.1 million for a total enterprise value of \$70.0 million. See Note 2, *Acquisition of BAM Labs, Inc.*, and Note 4, *Investments*, of the Notes to Condensed Consolidated Financial Statements for additional details.

Net cash used in financing activities was \$64 million for the nine months ended October 3, 2015, compared with \$37 million for the same period one year ago. During the nine months ended October 3, 2015, we repurchased \$70.3 million of our stock (\$68.6 million under our Board-approved share repurchase program and \$1.7 million in connection with the vesting of employee restricted stock grants) compared with \$31.5 million (\$30.0 million under our Board-approved share repurchase program and \$1.4 million in connection with the vesting of employee restricted stock grants) during the same period one year ago. Changes in book overdrafts are included in the net change in short-term borrowings. Financing activities for both periods reflect the vesting of employee restricted stock awards and exercise of employee stock options along with the associated excess tax benefits.

Under the Board-approved share repurchase program, we repurchased 2,301,779 shares at a cost of \$69 million (an average of \$29.78 per share) during the nine months ended October 3, 2015. During the nine months ended September 27, 2014, we repurchased 1,572,708 shares at a cost of \$30 million (an average of \$19.10 per share). As of October 3, 2015, the remaining share repurchase authorization under our Board-approved share repurchase plan was \$166 million. There is no expiration date governing the period over which we can repurchase shares.

In September 2015, we entered into a new revolving credit facility (Credit Agreement) with a syndicate of banks (Lenders). The Credit Agreement provides a revolving credit facility for general corporate purposes with net aggregate availability of \$100 million. The Credit Agreement contains an accordion feature that allows us to increase the amount of the credit facility from \$100 million up to \$150 million in total availability, subject to Lenders' approval. The Credit Agreement matures in September 2020. The Credit Agreement replaced our \$20 million credit facility that was set to expire in August 2016.

The Credit Agreement provides the Lenders with a collateral security interest in substantially all of our assets and those of our subsidiaries and requires us to comply with, among other things, a maximum leverage ratio and a minimum interest coverage ratio. Under the terms of the Credit Agreement, we pay a variable rate of interest and a commitment fee based on our leverage ratio. As of October 3, 2015, we had no outstanding borrowings or letters of credit and we were in compliance with all financial covenants.

Our business model, which can operate with minimal working capital, does not require additional capital from external sources to fund operations or organic growth. The \$115 million of cash, cash equivalents and marketable debt securities, cash generated from ongoing operations, and cash available under our revolving credit facility are expected to be adequate to maintain operations and fund anticipated expansion and strategic initiatives for the foreseeable future.

We have an agreement with Synchrony Bank to offer qualified customers revolving credit arrangements to finance purchases from us (Synchrony Agreement). The Synchrony Agreement contains certain financial covenants, including a maximum leverage ratio and a minimum interest coverage ratio. As of October 3, 2015 we were in compliance with all financial covenants.

Under the terms of the Synchrony Agreement, Synchrony Bank sets the minimum acceptable credit ratings, the interest rates, fees and all other terms and conditions of the customer accounts, including collection policies and procedures, and is the owner of the accounts.

## Non-GAAP Data

### Return on Invested Capital (ROIC)

(dollars in thousands)

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

	Trailing-Twelve Months Ended	
	October 3, 2015	September 27, 2014
Net operating profit after taxes (NOPAT)		
Operating income	\$ 133,640	\$ 83,514
Add: Rent expense <sup>(1)</sup>	63,078	54,983
Add: Interest income	537	398
Less: Depreciation on capitalized operating leases <sup>(2)</sup>	(15,809)	(13,830)
Less: Income taxes <sup>(3)</sup>	(58,896)	(42,501)
NOPAT	\$ 122,550	\$ 82,564
Average invested capital		
Total equity	\$ 271,923	\$ 249,032
Less: Cash greater than target <sup>(4)</sup>	—	(47,881)
Add: Long-term debt <sup>(5)</sup>	—	—
Add: Capitalized operating lease obligations <sup>(6)</sup>	504,624	439,864
Total invested capital at end of period	\$ 776,547	\$ 641,015
Average invested capital <sup>(7)</sup>	\$ 710,701	\$ 617,599
Return on invested capital (ROIC) <sup>(8)</sup>	17.2%	13.4%

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

<sup>(2)</sup> Depreciation is based on the average of the last five fiscal quarters' ending capitalized operating lease obligations (see note 6) for the respective reporting periods with an assumed thirty-year useful life. This is subtracted from operating income to illustrate the impact of owning versus leasing the related assets.

<sup>(3)</sup> Reflects annual effective income tax rates, before discrete adjustments, of 32.5% and 34.0% for 2015 and 2014, respectively.

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

<sup>(5)</sup> Long-term debt includes existing capital lease obligations.

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

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

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

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

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



## **Non-GAAP Data (continued)**

### **Earnings before Interest, Taxes, Depreciation and Amortization (Adjusted EBITDA)**

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

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

	<b>Three Months Ended</b>		<b>Trailing-Twelve Months Ended</b>	
	<b>October 3, 2015</b>	<b>September 27, 2014</b>	<b>October 3, 2015</b>	<b>September 27, 2014</b>
Net income	\$ 31,854	\$ 23,554	\$ 90,638	\$ 55,452
Income tax expense	13,623	11,888	43,452	28,418
Interest expense	44	10	87	40
Depreciation and amortization	11,643	10,125	43,100	37,095
Stock-based compensation	3,125	2,259	11,457	5,467
Asset impairments	17	28	619	153
Adjusted EBITDA	<u>\$ 60,306</u>	<u>\$ 47,864</u>	<u>\$ 189,353</u>	<u>\$ 126,625</u>

### **Free Cash Flow**

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

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

	<b>Nine Months Ended</b>		<b>Trailing-Twelve Months Ended</b>	
	<b>October 3, 2015</b>	<b>September 27, 2014</b>	<b>October 3, 2015</b>	<b>September 27, 2014</b>
Net cash provided by operating activities	\$ 131,587	\$ 135,835	\$ 140,220	\$ 133,858
Subtract: Purchases of property and equipment	61,435	58,377	79,652	77,368
Free cash flow	<u>\$ 70,152</u>	<u>\$ 77,458</u>	<u>\$ 60,568</u>	<u>\$ 56,490</u>

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

As of October 3, 2015, we were not involved in any unconsolidated special purpose entity transactions. Other than our operating leases, we do not have any off-balance-sheet financing. There were no outstanding letters of credit at October 3, 2015.

There has been no material change in our contractual obligations since the end of fiscal 2014. See Note 7, *Credit Agreement*, of the Notes to our Condensed Consolidated Financial Statements for information regarding our credit agreement. See our Annual Report on Form 10-K for the fiscal year ended January 3, 2015 for additional information regarding our other contractual obligations.

### **Critical Accounting Policies**

We discuss our critical accounting policies and estimates in *Management’s Discussion and Analysis of Financial Condition and Results of Operations* in our Annual Report on Form 10-K for the fiscal year ended January 3, 2015. There were no significant changes in our critical accounting policies since the end of fiscal 2014.



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

Changes in the overall level of interest rates affect interest income generated from our short-term and long-term investments in marketable debt securities. If overall interest rates were one percentage point lower than current rates, our annual interest income would not change by a significant amount based on our investments in marketable debt securities as of October 3, 2015 and the current low interest-rate environment. We do not manage our investment interest-rate volatility risk through the use of derivative instruments.

As of October 3, 2015, we had no borrowings under our revolving credit facility.

### ITEM 4. CONTROLS AND PROCEDURES

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

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

#### Changes in Internal Controls

There were no changes in our internal control over financial reporting during the fiscal quarter ended October 3, 2015, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II: OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

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

**ITEM 1A. RISK FACTORS**

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

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

- (a) – (b) Not applicable.
- (c) Issuer Purchases of Equity Securities

<b>Fiscal Period</b>	<b>Total Number of Shares Purchased<sup>(1)(2)</sup></b>	<b>Average Price Paid per Share</b>	<b>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs<sup>(1)</sup></b>	<b>Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs<sup>(3)</sup></b>
July 5, 2015 through August 1, 2015	286,334	\$ 28.77	285,412	\$ 176,750,000
August 2, 2015 through August 29, 2015	185,729	25.24	185,729	172,062,000
August 30, 2015 through October 3, 2015	251,216	22.87	246,241	166,431,000
Total	<u>723,279</u>	<u>\$ 25.81</u>	<u>717,382</u>	<u>\$ 166,431,000</u>

<sup>(1)</sup> Under the current Board-approved \$250 million share repurchase program, we repurchased 717,382 shares of our common stock at a cost of \$18.5 million (based on trade dates) during the three months ended October 3, 2015.

<sup>(2)</sup> In connection with the vesting of employee restricted stock grants, we also repurchased 5,897 shares of our common stock at a cost of \$0.1 million during the three months ended October 3, 2015.

<sup>(3)</sup> There is no expiration date governing the period over which we can repurchase shares under our Board-approved share repurchase program. Any repurchased shares are constructively retired and returned to an unissued status.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

Not applicable.

## ITEM 6. EXHIBITS

Exhibit Number	Description	Method of Filing
10.1	Agreement and Plan of Merger dated September 9, 2015 by and among Select Comfort Corporation, SCC Subsidiary Corp., BAM Labs, Inc. and Shareholder Representative Services LLC	Filed herewith
10.2	Credit and Security Agreement dated September 9, 2015 among Select Comfort Corporation, KeyBank National Association and BMO Harris Bank, N.A.	Filed herewith
10.3	Lease Agreement dated September 17, 2015 between Select Comfort Corporation and Truluck Industries, Inc.	Filed herewith
10.4	Second Amendment to Lease Agreement dated June 15, 2015 between Select Comfort Corporation and CLPF - SLIC 8, L.P.	Filed herewith
10.5	Second Amendment to Retailer Program Agreement dated November 4, 2015 between Select Comfort Corporation and Synchrony Bank <sup>(1)</sup>	Filed herewith
31.1	Certification of CEO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith
31.2	Certification of CFO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith
32.1	Certification of CEO pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350	Furnished herewith
32.2	Certification of CFO pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350	Furnished herewith
101	The following financial information from the Company's Quarterly Report on Form 10-Q for the period ended October 3, 2015, filed with the SEC on November 12, 2015, formatted in eXtensible Business Reporting Language: (i) Condensed Consolidated Balance Sheets as of October 3, 2015 and January 3, 2015; (ii) Condensed Consolidated Statements of Operations for the three and nine months ended October 3, 2015 and September 27, 2014; (iii) Condensed Consolidated Statements of Comprehensive Income for the three and nine months ended October 3, 2015 and September 27, 2014; (iv) Condensed Consolidated Statement of Shareholders' Equity for the nine months ended October 3, 2015; (v) Condensed Consolidated Statements of Cash Flows for the nine months ended October 3, 2015 and September 27, 2014; and (vi) Notes to Condensed Consolidated Financial Statements.	Filed herewith

<sup>(1)</sup> Confidential treatment has been requested by the issuer with respect to designated portions contained within this document. Such portions have been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

## SIGNATURES

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

### SELECT COMFORT CORPORATION

(Registrant)

Dated: November 12, 2015

By: /s/ Shelly R. Ibach  
Shelly R. Ibach  
Chief Executive Officer  
(principal executive officer)

By: /s/ Robert J. Poirier  
Robert J. Poirier  
Chief Accounting Officer  
(principal accounting officer)

## EXHIBIT INDEX

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Published Transaction CUSIP Number: 81617FAA9

Published Revolver CUSIP Number: 81617FAB7

**CREDIT AND SECURITY AGREEMENT**

**among**

**SELECT COMFORT CORPORATION**

*as Borrower*

**THE LENDERS NAMED HEREIN**

*as Lenders*

**and**

**KEYBANK NATIONAL ASSOCIATION**

*as Administrative Agent, Swing Line Lender and Issuing Lender*

**KEYBANC CAPITAL MARKETS INC.**

*as Joint Lead Arranger and Joint Book Runner*

**BMO HARRIS BANK, N.A.**

*as Joint Lead Arranger, Joint Book Runner and Syndication Agent*

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**dated as of  
September 9, 2015**

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Insurance  
Pledged Notes

This CREDIT AND SECURITY AGREEMENT (as the same may from time to time be amended, restated or otherwise modified, this “Agreement”) is made effective as of the 9<sup>th</sup> day of September, 2015 among:

(a) SELECT COMFORT CORPORATION, a Minnesota corporation (the “Borrower”);

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

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

WITNESSETH:

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

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE I. DEFINITIONS

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

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

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

“Acquisition” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of any Person (other than a Company), or any business or division of any Person (other than a Company), (b) the acquisition of in excess of fifty percent (50%) of the outstanding capital stock (or other equity interest) of any Person (other than a Company), or (c) the acquisition of another Person (other than a Company) by a merger, amalgamation or consolidation or any other combination with such Person.

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

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

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

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

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

“Administrative Agent Fee Letter” means that certain Administrative Agent Fee Letter, dated as of August 17, 2015, between the Borrower and the Administrative Agent, as the same may from time to time be amended, restated or otherwise modified.

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

“Affected Lender” means a Defaulting Lender, an Insolvent Lender or a Downgraded Lender.

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

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

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

“Applicable Commitment Fee Rate” means:

(a) for the period from the Closing Date through November 30, 2015, twenty-five (25.00) basis points; and

(b) commencing with the delivery of the Consolidated financial statements of the Borrower for the Quarterly Reporting Period ending October 3, 2015, the number of basis points set forth in the following matrix, based upon the result of the computation of

the Leverage Ratio as set forth in the Compliance Certificate for such fiscal period and, thereafter, as set forth in each successive Compliance Certificate, as provided below:

Leverage Ratio	Applicable Commitment Fee Rate
Greater than or equal to 4.00 to 1.00	45.00 basis points
Greater than or equal to 3.50 to 1.00 but less than 4.00 to 1.00	40.00 basis points
Greater than or equal to 3.00 to 1.00 but less than 3.50 to 1.00	35.00 basis points
Greater than or equal to 2.50 to 1.00 but less than 3.00 to 1.00	30.00 basis points
Greater than or equal to 2.00 to 1.00 but less than 2.50 to 1.00	25.00 basis points
Less than 2.00 to 1.00	20.00 basis points

The first date on which the Applicable Commitment Fee Rate is subject to change is December 1, 2015. After December 1, 2015, changes to the Applicable Commitment Fee Rate shall be effective on the first day of each calendar month following the date upon which the Administrative Agent should have received, pursuant to Section 5.3(c) hereof, the Compliance Certificate. The above pricing matrix does not modify or waive, in any respect, the requirements of Section 5.7 hereof, the rights of the Administrative Agent and the Lenders to charge the Default Rate, or the rights and remedies of the Administrative Agent and the Lenders pursuant to Articles VIII and IX hereof. Notwithstanding anything herein to the contrary, (i) during any period when the Borrower shall have failed to timely deliver the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or the Compliance Certificate pursuant to Section 5.3(c) hereof, until such time as the appropriate Consolidated financial statements and Compliance Certificate are delivered, the Applicable Commitment Fee Rate shall, at the election of the Administrative Agent (which may be retroactively effective to the first day of the calendar month following the date upon which the Administrative Agent should have received the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or pursuant to Section 5.3(c) hereof, the Compliance Certificate), be the highest rate per annum indicated in the above pricing grid regardless of the Leverage Ratio at such time, and (ii) in the event that any financial information or certification provided to the Administrative Agent in the Compliance Certificate is shown to be inaccurate (if this Agreement or the Commitment is in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Commitment Fee Rate for any period (an “Applicable Commitment Fee Period”) than the Applicable Commitment Fee Rate applied for such Applicable Commitment Fee Period, then (A) the Borrower shall promptly deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Commitment Fee Period, (B) the Applicable Commitment Fee Rate shall be determined based on such corrected Compliance Certificate, and (C) the Borrower shall promptly pay to the Administrative Agent the accrued additional fees owing as a result of such increased Applicable Commitment Fee Rate for such Applicable Commitment Fee Period.

“Applicable Margin” means:

(a) for the period from the Closing Date through November 30, 2015, one hundred fifty (150.00) basis points for Eurodollar Loans and fifty (50.00) basis points for Base Rate Loans; and

(b) commencing with the delivery of the Consolidated financial statements of the Borrower for the Quarterly Reporting Period ending October 3, 2015, the number of basis points (depending upon whether Loans are Eurodollar Loans or Base Rate Loans) set forth in the following matrix, based upon the result of the computation of the Leverage Ratio as set forth in the Compliance Certificate for such fiscal period and, thereafter, as set forth in each successive Compliance Certificate, as provided below:

Leverage Ratio	Applicable Basis Points for Eurodollar Loans	Applicable Basis Points or Base Rate Loans
Greater than or equal to 4.00 to 1.00	250.00	150.00
Greater than or equal to 3.50 to 1.00 but less than 4.00 to 1.00	225.00	125.00
Greater than or equal to 3.00 to 1.00 but less than 3.50 to 1.00	200.00	100.00
Greater than or equal to 2.50 to 1.00 but less than 3.00 to 1.00	175.00	75.00
Greater than or equal to 2.00 to 1.00 but less than 2.50 to 1.00	150.00	50.00
Less than 2.00 to 1.00	125.00	25.00

The first date on which the Applicable Margin is subject to change is December 1, 2015. After December 1, 2015, changes to the Applicable Margin shall be effective on the first day of each calendar month following the date upon which the Administrative Agent should have received, pursuant to Section 5.3(c) hereof, the Compliance Certificate. The above pricing matrix does not modify or waive, in any respect, the requirements of Section 5.7 hereof, the rights of the Administrative Agent and the Lenders to charge the Default Rate, or the rights and remedies of the Administrative Agent and the Lenders pursuant to Articles VIII and IX hereof. Notwithstanding anything herein to the contrary, (i) during any period when the Borrower shall have failed to timely deliver the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or the Compliance Certificate pursuant to Section 5.3(c) hereof, until such time as the appropriate Consolidated financial statements and Compliance Certificate are delivered, the Applicable Margin shall, at the election of the Administrative Agent (which may be retroactively effective to the first day of the calendar month following the date upon which the Administrative Agent should have received the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or pursuant to Section 5.3(c) hereof, the Compliance Certificate), be the highest rate per annum indicated in the above pricing grid for Loans of that type, regardless of the Leverage Ratio at such time, and (ii) in the event that any financial information or certification provided to the Administrative Agent in the Compliance Certificate is shown to be inaccurate (if this Agreement or the Commitment is in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Margin Period") than the Applicable Margin applied for such Applicable

Margin Period, then (A) the Borrower shall promptly deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Margin Period, (B) the Applicable Margin shall be determined based on such corrected Compliance Certificate, and (C) the Borrower shall promptly pay to the Administrative Agent the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Margin Period.

“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 business and that is administered or managed by (a) a Lender, (b) an affiliate of a Lender, or (c) an entity or an affiliate of an entity that administers or manages a Lender.

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

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

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

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

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

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

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

“Base Rate” means, for any day, a rate per annum equal to the highest of (a) the Prime Rate, (b) one-half of one percent (.50%) in excess of the Federal Funds Effective Rate, and (c) one percent (1.00%) in excess of the London interbank offered rate for loans in Eurodollars for a period of one month (or, if such day is not a Business Day, such rate as calculated on the most recent Business Day). Any change in the Base Rate shall be effective immediately from and after such change in the Base Rate.



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

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

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

“Business Day” means a day that is not a Saturday, a Sunday or another day of the year on which national banks are authorized or required to close in Cleveland, Ohio, and, in addition, if the applicable Business Day relates to a Eurodollar Loan, is a day of the year on which dealings in Dollar deposits are carried on in the London interbank Eurodollar market.

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

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

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

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

“Cash Security” means all cash, instruments, Deposit Accounts, Securities Accounts and cash equivalents, in each case whether matured or unmatured, whether collected or in the process of collection, upon which a Credit Party presently has or may hereafter have any claim or interest, wherever located, including but not limited to any of the foregoing that are presently or may hereafter be existing or maintained with, issued by, drawn upon, or in the possession of the Administrative Agent or any Lender.

“Change in Control” means:

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

(b) if, at any time during any period of twenty-four (24) consecutive months, a majority of the members of the board of directors of the Borrower cease to be composed of individuals (i) who were members of that board of directors on the first day of such period, (ii) whose election or nomination to that board of directors was approved by individuals referred to in subpart (i) hereof that constituted, at the time of such election or nomination, at least a majority of that board of directors, or (iii) whose election or nomination to that board of directors was approved by individuals referred to in subparts (i) and (ii) hereof that constituted, at the time of such election or nomination, at least a majority of that board of directors; or

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

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

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

“Collateral” means (a) all of the Borrower’s existing and future (i) personal property, (ii) Accounts, Investment Property, instruments, contract rights, chattel paper, documents, supporting obligations, letter-of-credit rights, Pledged Securities, Pledged Notes (if any), Commercial Tort Claims, General Intangibles, Inventory and Equipment, (iii) funds now or hereafter on deposit in the Cash Collateral Account, if any, and (iv) Cash Security; (b) the Mortgaged Real Property; and (c) Proceeds and products of any of the foregoing; provided that Collateral shall not include Excluded Collateral.

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

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

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

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

“Commitment Period” means the period from the Closing Date to September 9, 2020, or such earlier date on which the Commitment shall have been terminated pursuant to Article IX hereof.

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

“Companies” means the Borrower and all Subsidiaries.

“Company” means the Borrower or a Subsidiary.

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

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

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

“Consolidated” means the resultant consolidation of the financial statements of the Borrower and its Subsidiaries in accordance with GAAP, including principles of consolidation consistent with those applied in preparation of the consolidated financial statements referred to in Section 6.14 hereof.

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

“Consolidated EBITDA” means, for any period, as determined on a Consolidated basis, (a) Consolidated Net Earnings for such period plus, without duplication, the aggregate amounts deducted in determining such Consolidated Net Earnings in respect of (i) Consolidated Interest Expense, (ii) Consolidated Income Tax Expense, (iii) Consolidated Depreciation and Amortization Charges, (iv) reasonable non-recurring non-cash losses not incurred in the ordinary

course of business, (v) non-cash expenses incurred in connection with stock-based compensation, (vi) non-cash impairment expenses relating to store closures or remodeling during such period, and (vii) amortization of fees payable in connection with the incurrence of Indebtedness during such period; minus (b) to the extent included in Consolidated Net Earnings for such period, non-recurring non-cash gains not incurred in the ordinary course of business.

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

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

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

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

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

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

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

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

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

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

“Customary Setoffs” means, as to any Securities Intermediary or depository institution, as applicable, with respect to any Securities Account or Deposit Account, as applicable,

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

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

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

“Defaulting Lender” means a Lender, as reasonably determined by the Administrative Agent, that (a) has failed (which failure has not been cured) to fund any Loan or any participation interest in Letters of Credit required to be made hereunder in accordance with the terms hereof (unless such Lender shall have notified the Administrative Agent and the Borrower in writing of its good faith determination that a condition under Section 4.1 hereof to its obligation to fund any Loan shall not have been satisfied); (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit; (c) has failed, within three Business Days after receipt of a written request from the Administrative Agent or the Borrower to confirm that it will comply with the terms of this Agreement relating to its obligation to fund prospective Loans or participations in Letters of Credit, and such request states that the requesting party has reason to believe that the Lender receiving such request may fail to comply with such obligation, and states such reason; or (d) has failed to pay to the Administrative Agent or any other Lender when due an amount owed by such Lender to the Administrative Agent or any other Lender pursuant to the terms of this Agreement, unless such amount is subject to a good faith dispute or such failure has been cured. Any Defaulting Lender shall cease to be a Defaulting Lender when the Administrative Agent determines, in its reasonable discretion, that such Defaulting Lender is no longer a Defaulting Lender based upon the characteristics set forth in this definition.

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

“Deposit Account Control Agreement” means each Deposit Account Control Agreement among a Credit Party, the Administrative Agent and a depository institution, dated on or after the

Closing Date, to be in form and substance satisfactory to the Administrative Agent, as the same may from time to time be amended, restated or otherwise modified.

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

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

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

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

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

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

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

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

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

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

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

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

“ERISA Event” means (a) the existence of a condition or event with respect to an ERISA Plan that would reasonably be expected to result in the imposition of a material excise tax under Chapter 43 of the Code or any other material liability under ERISA on a Company or of the imposition of a Lien on the assets of a Company pursuant to Section 430(k) of the Code or Section 4068 of ERISA; (b) the engagement by a Company in a non-exempt “prohibited transaction” (as defined under ERISA Section 406 or Code Section 4975) or a breach of a fiduciary duty under ERISA with respect to an ERISA Plan that, in each case could reasonably be expected to result in material liability to a Company; (c) the application by a Controlled Group member for a waiver from the minimum funding requirements of Code Section 412 or ERISA Section 302 or a Controlled Group member is required to provide security under Code Section 401(a)(29) with respect to a Pension Plan; (d) the occurrence of a Reportable Event with respect to any Pension Plan as to which notice is required to be provided to the PBGC; (e) the withdrawal by a Controlled Group member from a Multiemployer Plan in a “complete withdrawal” or a “partial withdrawal” (as such terms are defined in ERISA Sections 4203 and 4205, respectively) that could reasonably be expected to result in material liability to a Company; (f) the failure of an ERISA Plan (and any related trust) that is intended to be qualified under Code Sections 401 and 501 to be so qualified or the failure of any “cash or deferred arrangement” under any such ERISA Plan to meet the requirements of Code Section 401(k) that, in each case, could reasonably be expected to result in material liability to a Company; (g) the taking by the PBGC of any steps to terminate a Pension Plan or appoint a trustee to administer a Pension Plan, or the taking by a Controlled Group member of any steps to terminate a Pension Plan that would reasonably be expected to result in material liability to a Company; (h) the failure by a Controlled Group member or an ERISA Plan to satisfy any requirements of law applicable to an ERISA Plan that would reasonably be expected to result in material liability to a Company; (i) the commencement, existence or, to the knowledge of a Company, threatening of a claim, action, suit, audit or investigation with respect to an ERISA Plan, other than a routine claim for benefits that would reasonably be expected to result in material liability to a Company; or (j) any incurrence by or any expectation of the incurrence by a Controlled Group member of any liability for post-retirement benefits under any Welfare Plan, other than as required by ERISA Section 601, et. seq. or Code Section 4980B or other applicable law that would reasonably be expected to result in material liability to a Company. As used in this definition of “ERISA Event”, “material” means the measure of a matter of significance that shall be determined as being an amount equal to Twelve Million Five Hundred Thousand Dollars (\$12,500,000).

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

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

“Eurodollar” means a Dollar denominated deposit in a bank or branch outside of the United States.

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

“Eurodollar Rate” means, with respect to a Eurodollar Loan, for any Interest Period, a rate per annum equal to the quotient obtained (rounded upwards, if necessary, to the nearest 1/16<sup>th</sup> of 1%) by dividing (a) the rate of interest, determined by the Administrative Agent in accordance with its usual procedures (which determination shall be conclusive absent manifest error) as of approximately 11:00 A.M. (London time) two Business Days prior to the beginning of such Interest Period pertaining to such Eurodollar Loan, as listed as the London interbank offered rate, as published by Thomson Reuters or Bloomberg (or, if for any reason such rate is unavailable from Thomson Reuters or Bloomberg, from any other similar company or service that provides rate quotations comparable to those currently provided by Thomson Reuters or Bloomberg) for Dollar deposits in immediately available funds with a maturity comparable to such Interest Period, provided that, in the event that such rate quotation is not available for any reason, then the Eurodollar Rate shall be the average (rounded upward to the nearest 1/16<sup>th</sup> of 1%) of the per annum rates at which deposits in immediately available funds in Dollars for the relevant Interest Period and in the amount of the Eurodollar Loan to be disbursed or to remain outstanding during such Interest Period, as the case may be, are offered to the Administrative Agent (or an affiliate of the Administrative Agent, in the Administrative Agent’s discretion) by prime banks in any Eurodollar market reasonably selected by the Administrative Agent, determined as of 11:00 A.M. (London time) (or as soon thereafter as practicable), two Business Days prior to the beginning of the relevant Interest Period pertaining to such Eurodollar Loan; by (b) 1.00 minus the Reserve Percentage. Notwithstanding the foregoing, if at any time the Eurodollar Rate as determined above is less than zero, it shall be deemed to be zero for purposes of this Agreement.

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

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

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



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

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

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

“FATCA” means Section 1471 through 1474 of the Code as in effect on the Closing Date (or any amended or successor version that is substantively comparable to and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Effective Rate” means, for any day, the rate per annum (rounded upward to the nearest one one-hundredth of one percent (1/100 of 1%)) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous

trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the “Federal Funds Effective Rate” as of the Closing Date.

“Fee Letter” means that certain Fee Letter, dated as of August 17, 2015, among the Borrower, the Administrative Agent and BMO Harris Bank, N.A., as the same may from time to time be amended, restated or otherwise modified.

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

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

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

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

“Governmental Authority” means any nation or government, any state, province or territory or other political subdivision thereof, any governmental agency, department, authority, instrumentality, regulatory body, court, central bank or other governmental entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, any securities exchange and any self-regulatory organization exercising such functions.

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

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

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

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

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

“Indebtedness” means, for any Company, without duplication, (a) all obligations to repay borrowed money, direct or indirect, incurred, assumed, or guaranteed, (b) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (c) all obligations under conditional sales or other title retention agreements, (d) all obligations (contingent or otherwise) under any letter of credit or banker’s acceptance, (e) all net obligations under any currency swap agreement, interest rate or commodity swap, cap, collar or floor agreement or other interest rate, commodity or foreign exchange management device or any Hedge Agreement, (f) all synthetic leases, (g) all Capitalized Lease Obligations, (h) all obligations of such Company with respect to asset securitization financing programs, (i) all obligations to advance funds to, or to purchase assets, property or services from, any other Person in order to maintain the financial condition of such Person, (j) all indebtedness of the types referred to in subparts (a) through (i) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Company is a general partner or joint venturer, unless such indebtedness is expressly made non-recourse to such Company, (k) any other transaction (including forward sale or purchase agreements) having the commercial effect of a borrowing of money entered into by such Company to finance its operations or capital requirements, and (l) any guaranty of any obligation described in subparts (a) through (k) above (for purposes of this subpart (l), the amount of any guaranty shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligations, or portion thereof, in respect of which such guaranty is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guarantor in good faith).

“Insolvent Lender” means a Lender, as reasonably determined by the Administrative Agent, that (a) has become or is not Solvent or is the subsidiary of a Person that has become or is not Solvent; or (b) has become the subject of a proceeding under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or has had a receiver, conservator, trustee 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 is a subsidiary of a Person that has become the subject of a proceeding under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or

hereafter in effect, or has had a receiver, conservator, trustee 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; provided that a Lender shall not be an Insolvent Lender solely by virtue of the ownership or acquisition or control of an equity interest in such Lender or a parent company thereof by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any Insolvent Lender shall cease to be an Insolvent Lender when the Administrative Agent determines, in its reasonable discretion, that such Insolvent Lender is no longer an Insolvent Lender based upon the characteristics set forth in this definition.

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

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

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

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

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

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

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

“KeyBank” means KeyBank National Association, and its successors and assigns.

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

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

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

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

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

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

“Letter of Credit Fee” means, with respect to any Letter of Credit, for any day, an amount equal to (a) the undrawn amount of such Letter of Credit, multiplied by (b) the Applicable Margin for Revolving Loans that are Eurodollar Loans in effect on such day divided by three hundred sixty (360).

“Leverage Ratio” means, as determined on a Consolidated basis, the ratio of (a) the sum of (i) Consolidated Funded Indebtedness (as of the end of the most recently completed Quarterly Reporting Period), plus (ii) eight multiplied by Consolidated Rent Expense (for the most recently

completed four Quarterly Reporting Periods), minus (iii) the aggregate amount of unrestricted cash-on-hand and Cash Equivalents of the Borrower located in the United States in excess of Forty Million Dollars (\$40,000,000); to (b) Consolidated EBITDAR (for the most recently completed four Quarterly Reporting Periods).

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

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

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

“Mandate Letter” means that certain Mandate Letter, dated as of August 17, 2015, among the Borrower, the Administrative Agent and BMO Harris Bank, N.A., as the same may from time to time be amended, restated or otherwise modified.

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

“Material Indebtedness Agreement” means any debt instrument, lease (capital, operating or otherwise), guaranty, contract, commitment, agreement or other arrangement evidencing or entered into in connection with any Indebtedness of any Company or the Companies equal to or in excess of the principal amount of Five Million Dollars (\$5,000,000).

“Maximum Amount” means, for each Lender, the amount set forth opposite such Lender’s name under the column headed “Maximum Amount” as set forth on Schedule 1 hereto, subject to (a) decreases pursuant to Section 2.9 (a) hereof, (b) increases pursuant to Section 2.9(b) hereof, and (c) assignments of interests pursuant to Section 11.10 hereof; provided that the Maximum Amount for the Swing Line Lender shall exclude the Swing Line Commitment (other than its pro rata share), and the Maximum Amount of the Issuing Lender shall exclude the Letter of Credit Commitment (other than its pro rata share thereof).

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

“Maximum Revolving Amount” means One Hundred Million Dollars (\$100,000,000), as such amount may be increased pursuant to Section 2.9(b) hereof, or decreased pursuant to Section 2.9(a) hereof.

“Moody’s” means Moody’s Investors Service, Inc., and any successor to such company.

“Mortgage” means each Open-End Mortgage, Assignment of Leases and Rents and Security Agreement (or deed of trust or comparable document), relating to the Mortgaged Real Property, executed and delivered by a Credit Party, to further secure the Secured Obligations, as the same may from time to time be amended, restated or otherwise modified.

“Mortgaged Real Property” means each parcel of real estate owned by a Credit Party, as set forth on Schedule 4 hereto, together with all improvements and buildings thereon and all appurtenances, easements or other rights thereto belonging, and being defined collectively as the “Property” in each of the Mortgages.

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

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

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

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

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

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

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

“Organizational Documents” means, with respect to any Person (other than an individual), such Person’s Articles (Certificate) of Incorporation, operating agreement or

equivalent formation documents, and Regulations (Bylaws), or equivalent governing documents, and any amendments to any of the foregoing.

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

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

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

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

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

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

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

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

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

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



in excess of sixty-five percent (65%) of the total outstanding shares of voting capital stock or other voting equity interest of such first-tier Foreign Subsidiary. (Schedule 3 hereto lists, as of the Closing Date, all of the Pledged Securities.)

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

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

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

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

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

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

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

or (b) incidental or related to subpart (a) above, including, without limitation, interest thereupon from the date incurred, imposed or asserted until paid at the Default Rate.

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

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

“Required Lenders” means the holders of more than fifty percent (50%), based upon each Lender’s Commitment Percentage, of an amount (the “Total Amount”) equal to (a) during the Commitment Period, the Total Commitment Amount, or (b) after the Commitment Period, the Revolving Credit Exposure; provided that (i) the portion of the Total Amount held or deemed to be held by any Defaulting Lender or Insolvent Lender shall be excluded for purposes of making a determination of Required Lenders, and (ii) if there shall be two or more Lenders (that are not Defaulting Lenders or Insolvent Lenders), Required Lenders shall constitute at least two Lenders.

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

“Reserve Percentage” means, for any day, that percentage (expressed as a decimal) that is in effect on such day, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, all basic, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) for a member bank of the Federal Reserve System in Cleveland, Ohio, in respect of Eurocurrency Liabilities. The Eurodollar Rate shall be adjusted automatically on and as of the effective date of any change in the Reserve Percentage.

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

“Revolving Credit Commitment” means the obligation hereunder, during the Commitment Period, of (a) the Lenders (and each Lender) to make Revolving Loans, (b) the Issuing Lender to issue, and each Lender to participate in, Letters of Credit pursuant to the Letter of Credit Commitment, and (c) the Swing Line Lender to make, and each Lender to participate

in, Swing Loans pursuant to the Swing Line Commitment; up to an aggregate principal amount outstanding at any time equal to the Maximum Revolving Amount.

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

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

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

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

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

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

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

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

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

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

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

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

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

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

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

“Standard & Poor’s” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor to such company.

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

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

“Swap Obligations” means, with respect to any Company, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swing Line Commitment” means the commitment of the Swing Line Lender to make Swing Loans to the Borrower, on a discretionary basis, up to the aggregate amount at any time outstanding of Ten Million Dollars (\$10,000,000).

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

“Swing Line Lender” means KeyBank, as holder of the Swing Line Commitment.

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

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

“Swing Loan Maturity Date” means, with respect to any Swing Loan, the earlier of (a) ten (10) days after the date such Swing Loan is made, or (b) the last day of the Commitment Period.

“Target Company” means that certain business entity disclosed by the Borrower to the Administrative Agent and the Lenders prior to the Closing Date in connection with the “Project Pebbles” acquisition.

“Target Company Acquisition” means the Acquisition by a Credit Party of the Target Company pursuant to the Target Company Acquisition Agreements.

“Target Company Acquisition Agreements” means those certain contracts and agreements entered into in connection with, and delivered pursuant to, the Target Company Acquisition.

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

“Total Commitment Amount” means the principal amount of One Hundred Million Dollars (\$100,000,000), as such amount may be increased pursuant to Section 2.9(b) hereof, or decreased pursuant to Section 2.9(a) hereof.

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

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

“United States” means the United States of America.

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

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

#### Section 1.2. Accounting Terms.

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

(b) If any change in the rules, regulations, pronouncements, opinions or other requirements of the Financial Accounting Standards Board (or any successor thereto or agency with similar function) with respect to GAAP, or if the Borrower adopts the International Financial Reporting Standards, and such change or adoption results in a change in the calculation of any component (or components in the aggregate) of the financial covenants set forth in Section 5.7 hereof or the related financial definitions, at the option of the Administrative Agent, the Required Lenders or the Borrower, the parties hereto will enter into good faith negotiations to

amend such financial covenants and financial definitions in such manner as the parties shall agree, each acting reasonably, in order to reflect fairly such change or adoption so that the criteria for evaluating the financial condition of the Borrower shall be the same in commercial effect after, as well as before, such change or adoption is made (in which case the method and calculating such financial covenants and definitions hereunder shall be determined in the manner so agreed); provided that, until so amended, such calculations shall continue to be computed in accordance with GAAP as in effect prior to such change or adoption.

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

## ARTICLE II. AMOUNT AND TERMS OF CREDIT

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

(a) Subject to the terms and conditions of this Agreement, the Lenders, during the Commitment Period and to the extent hereinafter provided, shall make Loans to the Borrower, participate in Swing Loans made by the Swing Line Lender to the Borrower, and issue or participate in Letters of Credit at the request of the Borrower, in such aggregate amount as the Borrower shall request pursuant to the Commitment; provided that in no event shall the aggregate principal amount of all Loans and Letters of Credit outstanding under this Agreement be in excess of the Total Commitment Amount.

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

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

(ii) the aggregate outstanding principal amount of Loans (other than Swing Loans) made by such Lender shall represent that percentage of the aggregate principal amount then outstanding on all Loans (other than Swing Loans) that shall be such Lender's Commitment Percentage.

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

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

Section 2.2. Revolving Credit Commitment.

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

(b) Letters of Credit.

(i) Generally. Subject to the terms and conditions of this Agreement, during the Commitment Period, the Issuing Lender shall, in its own name, on behalf of the Lenders, issue such Letters of Credit for the account of the Borrower or a Guarantor of Payment, as the Borrower may from time to time request. The Borrower shall not request any Letter of Credit (and the Issuing Lender shall not be obligated to issue any Letter of Credit) if, after giving effect thereto, (A) the Letter of Credit Exposure would exceed the Letter of Credit Commitment, or (B) the Revolving Credit Exposure would exceed the Revolving Credit Commitment. The issuance of each Letter of Credit shall confer upon each Lender the benefits and liabilities of a participation consisting of an undivided pro rata interest in the Letter of Credit to the extent of such Lender's Commitment Percentage.

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



to the Issuing Lender an appropriate application and agreement, being in the standard form of the Issuing Lender for such letters of credit, as amended to conform to the provisions of this Agreement if required by the Administrative Agent. The Administrative Agent shall give the Issuing Lender and each Lender notice of each such request for a Letter of Credit.

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

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

(v) Refunding of Letters of Credit with Revolving Loans. Whenever a Letter of Credit shall be drawn, the Borrower shall promptly reimburse the Issuing Lender for the amount drawn. In the event that the amount drawn shall not have been reimbursed by the Borrower within one Business Day of the drawing of such Letter of Credit, at the sole option of the Administrative Agent (and the Issuing Lender, if the Issuing Lender is a Lender other than the Administrative Agent), the Borrower shall be deemed to have

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

(vi) Participation in Letters of Credit. If, for any reason, the Administrative Agent (and the Issuing Lender if the Issuing Lender is a Lender other than the Administrative Agent) shall be unable to or, in the opinion of the Administrative Agent, it shall be impracticable to, convert any amount drawn under a Letter of Credit to a Revolving Loan pursuant to the preceding subsection, the Administrative Agent (and the Issuing Lender if the Issuing Lender is a Lender other than the Administrative Agent) shall have the right to request that each Lender fund a participation in the amount due with respect to such Letter of Credit, and the Administrative Agent shall promptly notify each Lender thereof (by facsimile or email (confirmed by telephone) or telephone (confirmed in writing)). Upon such notice, but without further action, the Issuing Lender hereby agrees to grant to each Lender, and each Lender hereby agrees to acquire from the Issuing Lender, an undivided participation interest in the amount due with respect to such Letter of Credit in an amount equal to such Lender's Commitment Percentage of the principal amount due with respect to such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Issuing Lender, such Lender's ratable share of the amount due with respect to such Letter of Credit (determined in accordance with such Lender's Commitment Percentage). Each Lender acknowledges and agrees that its obligation to acquire participations in the amount due under any Letter of Credit that is drawn but not reimbursed by the Borrower pursuant to this Section 2.2(b)(vi) shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including,

without limitation, the occurrence and continuance of a Default or Event of Default, and that each such payment shall be made without any offset, abatement, recoupment, counterclaim, withholding or reduction whatsoever and whether or not the Revolving Credit Commitment shall have been reduced or terminated. Each Lender shall comply with its obligation under this Section 2.2(b)(vi) by wire transfer of immediately available funds, in the same manner as provided in Section 2.5 hereof with respect to Revolving Loans. Each Lender is hereby authorized to record on its records such Lender's pro rata share of the amounts paid and not reimbursed on the Letters of Credit.

(c) Swing Loans.

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

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

relating to Revolving Loans) such Lender's pro rata share of the amounts paid to refund such Swing Loan.

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

### Section 2.3. Interest.

#### (a) Revolving Loans.

(i) Base Rate Loan. The Borrower shall pay interest on the unpaid principal amount of a Revolving Loan that is a Base Rate Loan outstanding from time to time from the date thereof until paid at the Derived Base Rate from time to time in effect. Interest on such Base Rate Loan shall be payable, commencing September 30, 2015, and continuing on each Regularly Scheduled Payment Date thereafter and at the maturity thereof.

(ii) Eurodollar Loans. The Borrower shall pay interest on the unpaid principal amount of each Revolving Loan that is a Eurodollar Loan outstanding from time to time, with the interest rate to be fixed in advance on the first day of the Interest Period applicable thereto through the last day of the Interest Period applicable thereto (but subject to changes in the Applicable Margin for Eurodollar Loans), at the Derived

Eurodollar Rate. Interest on such Eurodollar Loan shall be payable on each Interest Adjustment Date with respect to an Interest Period (provided that, if an Interest Period shall exceed three months, the interest must also be paid every three months, commencing three months from the beginning of such Interest Period).

(b) Swing Loans. The Borrower shall pay interest to the Administrative Agent, for the sole benefit of the Swing Line Lender (and any Lender that shall have funded a participation in such Swing Loan), on the unpaid principal amount of each Swing Loan outstanding from time to time from the date thereof until paid at the Derived Base Rate from time to time in effect. Interest on each Swing Loan shall be payable on the Swing Loan Maturity Date applicable thereto. Each Swing Loan shall bear interest for a minimum of one day.

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

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

#### Section 2.4. Evidence of Indebtedness.

(a) Revolving Loans. Upon the request of a Lender, to evidence the obligation of the Borrower to repay the portion of the Revolving Loans made by such Lender and to pay interest thereon, the Borrower shall execute a Revolving Credit Note, payable to the order of such Lender in the principal amount equal to its Commitment Percentage of the Maximum Revolving Amount, or, if less, the aggregate unpaid principal amount of Revolving Loans made by such

Lender; provided that the failure of a Lender to request a Revolving Credit Note shall in no way detract from the Borrower's obligations to such Lender hereunder.

(b) Swing Loans. Upon the request of the Swing Line Lender, to evidence the obligation of the Borrower to repay the Swing Loans and to pay interest thereon, the Borrower shall execute a Swing Line Note, payable to the order of the Swing Line Lender in the principal amount of the Swing Line Commitment, or, if less, the aggregate unpaid principal amount of Swing Loans made by the Swing Line Lender; provided that the failure of the Swing Line Lender to request a Swing Line Note shall in no way detract from the Borrower's obligations to the Swing Line Lender hereunder.

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

(a) Notice of Loans and Credit Events. The Borrower, through an Authorized Officer, shall provide to the Administrative Agent a Notice of Loan prior to (i) 12:00 P.M. (Eastern time) on the proposed date of borrowing of, or conversion of a Loan to, a Base Rate Loan, (ii) 12:00 P.M. (Eastern time) three Business Days prior to the proposed date of borrowing of, continuation of, or conversion of a Loan to, a Eurodollar Loan, and (iii) 3:00 P.M. (Eastern time) on the proposed date of borrowing of a Swing Loan (or such later time as agreed to from time to time by the Swing Line Lender). An Authorized Officer of the Borrower may verbally request a Loan, so long as a Notice of Loan is received by the end of the same Business Day, and, if the Administrative Agent or any Lender provides funds or initiates funding based upon such verbal request, the Borrower shall bear the risk with respect to any information regarding such funding that is later determined to have been incorrect. The Borrower shall comply with the notice provisions set forth in Section 2.2(b) hereof with respect to Letters of Credit.

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

(c) Conversion and Continuation of Loans.

(i) At the request of the Borrower to the Administrative Agent, subject to the notice and other provisions of this Agreement, the Lenders shall convert a Base Rate

Loan to one or more Eurodollar Loans at any time and shall convert a Eurodollar Loan to a Base Rate Loan on any Interest Adjustment Date applicable thereto. Swing Loans may be converted by the Swing Line Lender to Revolving Loans in accordance with Section 2.2(c)(ii) hereof.

(ii) At the request of the Borrower to the Administrative Agent, subject to the notice and other provisions of this Agreement, the Lenders shall continue one or more Eurodollar Loans as of the end of the applicable Interest Period as a new Eurodollar Loan with a new Interest Period.

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

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

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

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

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

(f) Additional Provisions with Respect to Affected Lenders.

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

(ii) Reallocation of Participations; Cash Collateralization and Repayment. Notwithstanding anything in this Agreement to the contrary, if any Lender becomes an Affected Lender, then, until such time as such Lender is no longer an Affected Lender, to the extent permitted by applicable law, (A) all or any part of such Affected Lender's participation interest in Letters of Credit (pursuant to Section 2.2(b)(vi) hereof) and Swing Loans (pursuant to Section 2.2(c)(iii) hereof) shall be reallocated among the non-Affected Lenders in accordance with their respective Commitment Percentages

(calculated as if such Affected Lender did not have a Commitment Percentage of the Commitment) but only to the extent that such reallocation does not cause the aggregate Lender Credit Exposure of any non-Affected Lender to exceed the Maximum Amount of such non-Defaulting Lender; provided that no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against an Affected Lender arising from that Lender having become an Affected Lender, including any claim of a non-Affected Lender as a result of such non-Affected Lender's increased exposure following such reallocation, and (B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, the Borrower shall, within one Business Day following the written request of the Administrative Agent (or the Swing Line Lender or Issuing Lender), and without prejudice to any right or remedy available to it hereunder or under law, (1) first, prepay Swing Loans in an amount equal to the Swing Line Lender's exposure with respect to such Affected Lender's Commitment Percentage of outstanding Swing Loans (other than Swing Loans as to which such Affected Lender's participation obligation has been reallocated to other Lenders) and (2) second, cash collateralize the Issuing Lender's exposure with respect to issued Letters of Credit (other than those Letter of Credit obligations as to which such Affected Lender's participation obligation has been reallocated to other Lenders or cash collateralized in accordance with the terms hereof).

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

Section 2.6. Payment on Loans and Other Obligations.

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

(b) Payments from Borrower. All payments (including prepayments) to the Administrative Agent of the principal of or interest on each Loan or other payment, including but not limited to principal, interest, fees or any other amount owed by the Borrower under this Agreement, shall be made in Dollars. All payments described in this subsection (b) shall be remitted to the Administrative Agent, at the address of the Administrative Agent for notices referred to in Section 11.4 hereof for the account of the Lenders (or the Issuing Lender or the Swing Line Lender, as appropriate) not later than 3:00 P.M. (Eastern time) on the due date thereof in immediately available funds. Any such payments received by the Administrative



Agent (or the Issuing Lender or the Swing Line Lender) after 3:00 P.M. (Eastern time) shall be deemed to have been made and received on the next Business Day.

(c) Payments to Lenders. Upon the Administrative Agent's receipt of payments hereunder, the Administrative Agent shall immediately distribute to the Lenders (except with respect to Swing Loans, which shall be paid to the Swing Line Lender and any Lender that has funded a participation in the Swing Loans, or, with respect to Letters of Credit, certain of which payments shall be paid to the Issuing Lender) their respective ratable shares, if any, of the amount of principal, interest, and commitment and other fees received by the Administrative Agent for the account of such Lender. Payments received by the Administrative Agent shall be delivered to the Lenders in immediately available funds. Each Lender shall record any principal, interest or other payment, the principal amounts of Base Rate Loans, Eurodollar Loans, Swing Loans and Letters of Credit, all prepayments and the applicable dates, including Interest Periods, with respect to the Loans made, and payments received by such Lender, by such method as such Lender may generally employ; provided that failure to make any such entry shall in no way detract from the obligations of the Borrower under this Agreement or any Note. The aggregate unpaid amount of Loans, types of Loans, Interest Periods and similar information with respect to the Loans and Letters of Credit set forth on the records of the Administrative Agent shall be rebuttably presumptive evidence with respect to such information, including the amounts of principal, interest and fees owing to each Lender.

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

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

(f) Payment of Non Pro-Rata Loans and Letters of Credit. Notwithstanding anything in this Agreement to the contrary, at the sole discretion of the Administrative Agent, any payment of principal, interest, fees or other amounts hereunder may first be applied to such

Loans, Letters of Credit and other obligations that were not advanced or participated pro rata hereunder.

Section 2.7. Prepayment.

(a) Right to Prepay.

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

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

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

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

(c) Minimum Amount for Eurodollar Loans. Each prepayment of a Eurodollar Loan shall be in the principal amount of not less than the lesser of Five Hundred Thousand Dollars (\$500,000), or the principal amount of such Loan, or, with respect to a Swing Loan, the principal balance of such Swing Loan, except in the case of a mandatory payment pursuant to Section 2.11 or Article III hereof.

Section 2.8. Commitment and Other Fees.

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent, for the ratable account of the Lenders, as a consideration for the Revolving Credit Commitment, a commitment fee, for each day from the Closing Date through the last day of the Commitment Period, in an amount equal to (i) (A) the Maximum Revolving Amount at the end of such day,

minus (B) the Revolving Credit Exposure (exclusive of the Swing Line Exposure) at the end of such day, multiplied by (ii) the Applicable Commitment Fee Rate in effect on such day divided by three hundred sixty (360). The commitment fee shall be payable quarterly in arrears, commencing on September 30, 2015 and continuing on each Regularly Scheduled Payment Date thereafter, and on the last day of the Commitment Period.

(b) Administrative Agent Fee. The Borrower shall pay to the Administrative Agent, for its sole benefit, the fees set forth in the Administrative Agent Fee Letter.

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

#### Section 2.9. Modifications to Commitment.

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

#### (b) Increase in Commitment.

(i) At any time during the Commitment Increase Period, the Borrower may request that the Administrative Agent increase the Total Commitment Amount by increasing the Maximum Revolving Amount; provided that the aggregate amount of all such increases made pursuant to this Section 2.9(b) shall not exceed Fifty Million Dollars (\$50,000,000). Each such request for an increase shall be in an amount of at least Ten Million Dollars (\$10,000,000), and may be made by either (A) increasing, for one or

more Lenders, with their prior written consent, their respective Revolving Credit Commitments, or (B) including one or more Additional Lenders, each with a new commitment under the Revolving Credit Commitment, as a party to this Agreement (each an “Additional Commitment” and, collectively, the “Additional Commitments”).

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

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

Section 2.10. Computation of Interest and Fees. With the exception of Base Rate Loans, interest on Loans, Letter of Credit fees, Related Expenses and commitment and other fees and charges hereunder shall be computed on the basis of a year having three hundred sixty (360) days and calculated for the actual number of days elapsed. With respect to Base Rate Loans, interest shall be computed on the basis of a year having three hundred sixty-five (365) days or three

hundred sixty-six (366) days, as the case may be, and calculated for the actual number of days elapsed.

Section 2.11. Mandatory Payments.

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

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

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

Section 2.12. Swap Obligations Make-Well Provision. The Borrower, to the extent that it is an “eligible contract participant” as defined in the Commodity Exchange Act, hereby absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party in order for such Credit Party to honor its obligations under the Loan Documents in respect of the Swap Obligations. The obligations of the Borrower under this Section 2.12 shall remain in full force and effect until all Obligations are paid in full. The Borrower intends that this Section 2.12 constitute, and this Section 2.12 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

ARTICLE III. ADDITIONAL PROVISIONS RELATING TO  
EURODOLLAR LOANS; INCREASED CAPITAL; TAXES

Section 3.1. Requirements of Law.

(a) If, after the Closing Date, (i) the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by a Governmental Authority, or (ii) the

compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority:

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

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

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

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

(b) If any Lender shall have determined that, after the Closing Date, the adoption of or any change in any Requirement of Law regarding capital adequacy or liquidity, or liquidity requirements, or in the interpretation or application thereof by a Governmental Authority or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) from any Governmental Authority shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder, or under or in respect of any Letter of Credit, to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration the policies of such Lender or such corporation with respect to capital adequacy and liquidity), then from time to time, upon submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor (which shall include the method for calculating such amount and reasonable detail with respect to such calculation), the Borrower shall promptly pay or cause to be paid to such Lender such additional amount or amounts as will compensate such Lender or such corporation for such reduction.

(c) For purposes of this Section 3.1 and Section 3.5(a) hereof, the Dodd-Frank Act, any requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) under Basel III, and any rules, regulations, orders, requests, guidelines and directives adopted, promulgated or implemented in

connection with any of the foregoing, regardless of the date adopted, issued, promulgated or implemented, are deemed to have been introduced and adopted after the Closing Date.

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

### Section 3.2. Taxes.

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

(b) Whenever any Taxes or Other Taxes are required to be withheld and paid by a Credit Party, such Credit Party shall timely withhold and pay such taxes to the relevant Governmental Authorities. As promptly as possible thereafter, the Borrower shall send to the Administrative Agent for its own account or for the account of the relevant Lender, as the case may be, a certified copy of an original official receipt received by such Credit Party showing payment thereof or other evidence of payment reasonably acceptable to the Administrative Agent or such Lender. If such Credit Party shall fail to pay any Taxes or Other Taxes when due to the appropriate Governmental Authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, such Credit Party and the Borrower shall indemnify the Administrative Agent and the appropriate Lenders on demand for any incremental Taxes or Other Taxes paid or payable by the Administrative Agent or such Lender as a result of any such failure.

(c) If any Lender shall be so indemnified by a Credit Party, such Lender shall use reasonable efforts to obtain the benefits of any refund, deduction or credit for any taxes or other amounts with respect to the amount paid by such Credit Party and shall reimburse such Credit Party to the extent, but only to the extent, that such Lender shall receive a refund with respect to the amount paid by such Credit Party or an effective net reduction in taxes or other governmental

charges (including any taxes imposed on or measured by the total net income of such Lender) of the United States or any state or subdivision or any other Governmental Authority thereof by virtue of any such deduction or credit, after first giving effect to all other deductions and credits otherwise available to such Lender. If, at the time any audit of such Lender's income tax return is completed, such Lender determines, based on such audit, that it shall not have been entitled to the full amount of any refund reimbursed to such Credit Party as aforesaid or that its net income taxes shall not have been reduced by a credit or deduction for the full amount reimbursed to such Credit Party as aforesaid, such Credit Party, upon request of such Lender, shall promptly pay to such Lender the amount so refunded to which such Lender shall not have been so entitled, or the amount by which the net income taxes of such Lender shall not have been so reduced, as the case may be.

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

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

(f) A Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under any Loan Document shall use reasonable efforts to deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate; provided that (i) such



Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's judgment such completion, execution or submission would not materially prejudice the legal position of such Lender, and (ii) to the extent that such Lender fails to comply with the requirements of this subpart (f), such Lender shall not be entitled to additional compensation otherwise payable under this Section 3.2 if such additional compensation would not have been required had such Lender so complied.

(g) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

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

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

Section 3.3. Funding Losses. The Borrower agrees to indemnify each Lender, promptly after receipt of a written request therefor, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice (including a written or verbal notice that is subsequently revoked) requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of or conversion from Eurodollar Loans after the Borrower has given a notice (including a written or verbal notice that is subsequently revoked) thereof in accordance with the provisions of this Agreement, (c) the making of a prepayment of a Eurodollar Loan on a day that is not the last day of an Interest Period applicable thereto, (d) any conversion of a Eurodollar Loan to a Base Rate Loan on a day that is not the last day of an Interest Period applicable thereto, or (e) any compulsory assignment of such Lender's interests, rights and obligations under this Agreement pursuant to Section 11.3(c) or 11.12 hereof. Such indemnification shall be in an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amounts so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the

applicable rate of interest for such Loans provided for herein over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the appropriate London interbank market, along with any administration fee charged by such Lender. A certificate as to any amounts payable pursuant to this Section 3.3 submitted to the Borrower (with a copy to the Administrative Agent) by any Lender together with a reasonably detailed calculation and description of such amounts, shall be conclusive absent manifest error. The obligations of the Borrower pursuant to this Section 3.3 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

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

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

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

(b) If the Administrative Agent or the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan, or that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain such Eurodollar Loan shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of

such Eurodollar Loan or, failing that, will be deemed to have converted such request into a request for a borrowing of a Base Rate Loan in the amount specified therein.

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

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

#### ARTICLE IV. CONDITIONS PRECEDENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Pro-Forma Projections. The Borrower shall have delivered to the Administrative Agent annual pro-forma projections of financial statements (which report shall include balance sheets and statements of income (loss) and cash-flow) of the Borrower for the fiscal year ending January 2, 2016, prepared on a Consolidated basis, in form and substance satisfactory to the Administrative Agent.

(l) Fees. The Borrower shall have (i) paid all fees required to be paid to the Administrative Agent on the Closing Date, including as set forth in the Administrative Agent Fee

Letter, (ii) paid to the Administrative Agent, for the benefit of the Lenders, the fees required to be paid on the Closing Date as set forth in the Fee Letter, and (iii) paid all legal fees and expenses of the Administrative Agent in connection with the preparation and negotiation of the Loan Documents.

(m) Existing Credit Agreement. The Borrower shall have delivered to the Administrative Agent an executed payoff letter with respect to the Credit Agreement between the Borrower and Wells Fargo Bank, National Association, as agent, dated as of March 26, 2010, as amended, and shall have terminated such agreement, which termination shall be deemed to have occurred upon payment in full of all of the Indebtedness outstanding thereunder and termination of the commitments established therein.

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

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

(p) No Material Adverse Change. No material adverse change, in the opinion of the Administrative Agent, shall have occurred in the financial condition, operations or prospects of the Companies since January 3, 2015.

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

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

(a) Insurance Endorsements. No later than forty-five (45) days after the Closing Date, the Borrower shall deliver to the Administrative Agent proof of insurance endorsements satisfactory to the Administrative Agent, evidencing, with respect to the real property, personal property and liability insurance for each Company, the inclusion of the Administrative Agent, as mortgagee, lender's loss payee and additional insured, as appropriate.

(b) Control Agreements. No later than forty-five (45) days after the Closing Date, the Borrower shall use commercially reasonable efforts to deliver to the Administrative Agent an

executed Control Agreement, in form and substance satisfactory to the Administrative Agent, for each Deposit Account and each Securities Account maintained by a Credit Party; provided that the Borrower shall not be required to deliver a Control Agreement with respect to any Deposit Account or Securities Account if it would not be required to deliver a Control Agreement pursuant to Section 5.21(d) hereof.

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

(d) Real Estate Matters. No later than sixty (60) days after the Closing Date, with respect to each parcel of the Mortgaged Real Property, the Borrower shall deliver to the Administrative Agent (i) the results of title and lien searches in the county wherein such Mortgaged Real Property is located, (ii) evidence to the Administrative Agent's satisfaction in its sole discretion indicating whether such Mortgaged Real Property is located in a Special Flood Hazard Area or is otherwise classified as Class A or Class BX on the Flood Maps maintained by the Federal Emergency Management Agency and, if so, evidence of reasonable satisfactory flood insurance, (iii) an opinion of counsel with respect to such Mortgaged Real Property, in form and substance satisfactory to the Administrative Agent, and (iv) an executed original of the Mortgage with respect to such Mortgaged Real Property.

## ARTICLE V. COVENANTS

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

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

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

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

Section 5.3. Financial Statements and Information.

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



(b) Annual Audit Report. The Borrower shall deliver to the Administrative Agent and the Lenders, within ninety (90) days after the end of each fiscal year of the Borrower (or, if earlier, within five days after the date which Borrower shall be required to submit its Form 10-K), an annual audit report of the Companies for that year prepared on a Consolidated (in accordance with GAAP) basis, in form and detail satisfactory to the Administrative Agent and the Lenders and certified by an unqualified opinion of an independent public accountant satisfactory to the Administrative Agent, which report shall include balance sheets and statements of income (loss), stockholders' equity and cash-flow for that period; provided that delivery pursuant to subsection (f) below of copies of the Form 10-K annual report of the Borrower for such period filed with the SEC shall be deemed to satisfy the requirements of this subsection (b).

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

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

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

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

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

(h) Financial Information of the Companies. The Borrower shall deliver to the Administrative Agent and the Lenders, within ten days of the written request of the Administrative Agent or any Lender, such other information about the financial condition, properties and operations of any Company as the Administrative Agent or such Lender may from time to time reasonably request, which information shall be submitted in form and detail

satisfactory to the Administrative Agent or such Lender and certified by a Financial Officer of the Company or Companies in question.

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

Section 5.5. Franchises; Change in Business.

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

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

Section 5.6. ERISA Pension and Benefit Plan Compliance. No Company shall incur any material accumulated funding deficiency within the meaning of ERISA, or any material liability to the PBGC (other than premiums payable in the ordinary course), established thereunder in connection with any Pension Plan. The Borrower shall furnish to the Administrative Agent and the Lenders as soon as possible and in any event within thirty (30) days after any Company knows or has reason to know that any Reportable Event with respect to any Pension Plan has occurred, a statement of a Financial Officer of such Company, setting forth details as to such Reportable Event and the action that such Company proposes to take with respect thereto, together with a copy of the notice of such Reportable Event given to the PBGC if a copy of such notice is available to such Company. The Borrower shall promptly notify the Administrative Agent of any material taxes assessed, proposed to be assessed or that the Borrower has reason to believe are likely to be assessed against a Company by the Internal Revenue Service with respect to any ERISA Plan. As used in this Section 5.6, "material" means the measure of a matter of significance that shall be determined as being an amount equal to Twelve Million Five Hundred Thousand Dollars (\$12,500,000). As soon as practicable, and in any event within twenty (20) days, after any Company shall become aware that an ERISA Event shall have occurred that could reasonably be expected to result in material liability to a Company, such Company shall provide the Administrative Agent with notice of such ERISA Event with a certificate by a Financial Officer of such Company setting forth the details of the event and the action such Company or another Controlled Group member proposes to take with respect thereto. The Borrower shall, at the reasonable request of the Administrative Agent, deliver or cause to be delivered to the Administrative Agent true and correct copies of any documents relating to the ERISA Plan of any Company.

Section 5.7. Financial Covenants.

(a) Leverage Ratio. The Borrower shall not suffer or permit at any time the Leverage Ratio, as of the end of any Quarterly Reporting Period, to exceed 4.75 to 1.00.

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

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

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

(b) any loans or other credit granted to, or Capitalized Lease Obligations entered into by, any Company for the purchase or lease of fixed assets (and refinancings of such loans, credit or Capitalized Lease Obligations), which loans, credit and Capitalized Lease Obligations shall only be secured by the fixed assets being purchased or leased, so long as the aggregate principal amount of all such loans and Capitalized Lease Obligations for all Companies shall not exceed Ten Million Dollars (\$10,000,000) at any time outstanding;

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

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

(e) loans to, and guaranties of Indebtedness of, a Foreign Subsidiary by a Credit Party in an aggregate amount not to exceed Ten Million Dollars (\$10,000,000) at any time outstanding;

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

(g) unsecured Subordinated Indebtedness on terms reasonably acceptable to the Administrative Agent and in an aggregate amount not to exceed Five Million Dollars (\$5,000,000), so long as such Subordinated Indebtedness is subject to a subordination agreement prepared by and in form and substance satisfactory to the Administrative Agent; and

(h) other unsecured Indebtedness, in addition to the Indebtedness listed above, in an aggregate principal amount for all Companies not to exceed Five Million Dollars (\$5,000,000) at any time outstanding.

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

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

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

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

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

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

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

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

(h) other Liens, in addition to the Liens listed above, not incurred in connection with the incurring of Indebtedness securing amounts, in the aggregate for all Companies, not to exceed One Million Dollars (\$1,000,000) at any time.

No Company shall enter into any contract or agreement (other than a contract or agreement entered into in connection with the purchase or lease of fixed assets that prohibits Liens on such fixed assets) that would prohibit the Administrative Agent or the Lenders from acquiring a security interest, mortgage or other Lien on, or a collateral assignment of, any of the property or assets of such Company.

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

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

- (i) any endorsement of a check or other medium of payment for deposit or collection through normal banking channels or similar transaction in the normal course of business;
- (ii) any investment in direct obligations of the United States or in certificates of deposit issued by a member bank (having capital resources in excess of Five Hundred Million Dollars (\$500,000,000)) of the Federal Reserve System;
- (iii) any investment in (A) commercial paper or securities that at the time of such investment is assigned the highest quality rating in accordance with the rating systems employed by either Moody's or Standard & Poor's, (B) other Cash Equivalents, or (C) any other investment made in accordance with the Borrower Investment Policy;
- (iv) the holding of each of the Subsidiaries listed on Schedule 6.1 hereto, and the creation, acquisition and holding of and any investment in any new Subsidiary after the Closing Date so long as such new Subsidiary shall have been created, acquired or held, and investments made, in accordance with the terms and conditions of this Agreement;
- (v) loans to, investments in and guaranties of the Indebtedness (permitted under Section 5.8(d) hereof) of, a Company from or by a Company so long as each such Company is a Credit Party;
- (vi) loans to, investments in and guaranties of the Indebtedness (permitted under Section 5.8(e) hereof) of, a Foreign Subsidiary from or by a Credit Party;
- (vii) investments by the Borrower in the capital stock of a Foreign Subsidiary in an aggregate amount not to exceed Three Million Dollars (\$3,000,000) at any time outstanding;
- (viii) any advance or loan to an officer or employee of a Company made in the ordinary course of such Company's business, so long as all such advances and loans from all Companies aggregate not more than the maximum principal sum of Five Hundred Thousand Dollars (\$500,000) at any time outstanding;
- (ix) advances in the form of progress payments, prepaid rent or security deposits;

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

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

(xii) other investments in an aggregate amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) during the term of this Agreement.

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

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

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

(b) a Company may sell, lease, transfer or otherwise dispose of any of its assets to (i) the Borrower or (ii) any Guarantor of Payment;

(c) a Company (other than a Credit Party) may merge with or sell, lease, transfer or otherwise dispose of any of its assets to any other Company;

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

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

(f) other transfers or dispositions in an aggregate amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) during any twelve month consecutive period.

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

(a) such Acquisition is the Target Company Acquisition, so long as (i) no Default or Event of Default shall exist prior to or, after giving pro forma effect to such Acquisition, thereafter shall begin to exist, and (ii) the aggregate Consideration paid or to be payable for such Acquisition does not exceed Seventy-Five Million Dollars (\$75,000,000); or

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

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

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

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

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

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

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

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

(viii) the aggregate Consideration paid by the Companies, when added to all other Acquisitions (other than the Target Company Acquisition) for all Companies would not exceed the aggregate amount of (A) Fifty Million Dollars (\$50,000,000) for the twelve month period immediately prior to such Acquisition, and (B) One Hundred Million Dollars (\$100,000,000) during the Commitment Period.

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

(a) a Default or Event of Default has occurred hereunder or any representation or warranty made in Article VI hereof or elsewhere in this Agreement or in any Related Writing is

determined for any reason to have not been true and complete cease in any material respect when made;

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

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

Section 5.15. Restricted Payments. No Company shall make or commit itself to make any Restricted Payment at any time, except that so long as no Default or Event of Default shall then exist or, after giving pro forma effect to such payment, thereafter shall begin to exist, the Companies may make Capital Distributions.

Section 5.16. Environmental Compliance. Each Company shall comply in all material respects with any and all Environmental Laws and Environmental Permits including, without limitation, all Environmental Laws in jurisdictions in which such Company owns or operates a facility or site, arranges for disposal or treatment of hazardous substances, solid waste or other wastes, accepts for transport any hazardous substances, solid waste or other wastes or holds any interest in real property or otherwise, except where the failure to comply would not result in a material expenditure or loss to such Company. The Borrower shall furnish to the Administrative Agent and the Lenders, promptly after receipt thereof, a copy of any material notice any Company may receive from any Governmental Authority or private Person, or otherwise, that any material litigation or proceeding pertaining to any environmental, health or safety matter has been filed or is threatened against such Company, any real property in which such Company holds any interest or any past or present operation of such Company. No Company shall allow the release or disposal of hazardous waste, solid waste or other wastes on, under or to any real property in which any Company holds any ownership interest or performs any of its operations, in violation of any Environmental Law, except where the release or disposal or the failure to comply would not result in a material expenditure or loss to such Company. As used in this Section 5.16, "litigation or proceeding" means any demand, claim, notice, suit, suit in equity action, administrative action, investigation or inquiry whether brought by any Governmental Authority or private Person, or otherwise. The Borrower shall defend, indemnify and hold the Administrative Agent and the Lenders harmless against all costs, expenses, claims, damages, penalties and liabilities of every kind or nature whatsoever (including attorneys' fees) arising out of or resulting from the noncompliance of any Company with any Environmental Law. Such indemnification shall survive any termination of this Agreement.

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



of customary and reasonable employment and severance arrangements with its employees and directors' fees to directors who are not employees of a Company or an Affiliate.

Section 5.18. Use of Proceeds. The Borrower's use of the proceeds of the Loans shall be for working capital and other general corporate purposes of the Companies and for the refinancing of existing Indebtedness and for Acquisitions permitted hereunder. The Borrower will not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, to fund activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions.

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

(i) provide written notice to the Administrative Agent within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower and within ninety (90) days after the end of each fiscal year of the Borrower, of any interest (including but not limited to any fee simple or leasehold interest) in any real property (including the name of any landlord (other than a retail store landlord) and the address of any such real property and whether such location will have or could reasonably be expected to have at any time Inventory and Equipment (excluding leasehold improvements) of the Credit Parties having an aggregate value in excess of Two Hundred Fifty Thousand Dollars (\$250,000)) not previously disclosed on Schedule 6.9 hereto or previously disclosed in writing by the Borrower to the Administrative Agent pursuant to this Section 5.19, and upon the Administrative Agent's receipt of such written notice from the Borrower, such interest in real property so disclosed in such written notice shall be deemed to be included on Schedule 6.9 hereto;

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

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

In the event of any of the foregoing or if otherwise deemed appropriate by the Administrative Agent, the Administrative Agent is hereby authorized to file new U.C.C. Financing Statements describing the Collateral and otherwise in form and substance sufficient for recordation wherever necessary or appropriate, as determined in the Administrative Agent's sole discretion, to perfect or continue perfected the security interest of the Administrative Agent, for the benefit of the Lenders, in the Collateral. The Borrower shall pay all filing and recording fees and taxes in connection with the filing or recordation of such U.C.C. Financing Statements and security interests and shall promptly reimburse the Administrative Agent therefor if the Administrative

Agent pays the same. Such amounts not so paid or reimbursed shall be Related Expenses hereunder.

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

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

(b) Pledge of Stock or Other Ownership Interest. With respect to the creation or acquisition of a Domestic Subsidiary or first-tier Foreign Subsidiary of the Borrower or a Domestic Subsidiary, the Borrower shall deliver to the Administrative Agent, for the benefit of the Lenders, all of the share certificates (or other evidence of equity) owned by a Credit Party pursuant to the terms of a Pledge Agreement prepared by the Administrative Agent and in form and substance satisfactory to the Administrative Agent, and executed by the appropriate Credit Party; provided that no such pledge shall include (i) shares of capital stock or other equity interests of any Foreign Subsidiary that is not a first-tier Foreign Subsidiary, and (ii) shares of voting capital stock or other voting equity interests in any first-tier Foreign Subsidiary in excess of sixty-five percent (65%) of the total outstanding shares of voting capital stock or other voting equity interest of such first-tier Foreign Subsidiary.

(c) Perfection or Registration of Interest in Foreign Shares. With respect to any foreign shares pledged to the Administrative Agent, for the benefit of the Lenders, on or after the Closing Date, the Administrative Agent shall at all times, in the discretion of the Administrative Agent or the Required Lenders, have the right to perfect, at the Borrower's cost, payable upon request therefor (including, without limitation, any foreign counsel, or foreign notary, filing, registration or similar, fees, costs or expenses), its security interest in such shares in the respective foreign jurisdiction. Such perfection may include the requirement that the applicable Company promptly execute and deliver to the Administrative Agent a separate pledge document (prepared by the Administrative Agent and in form and substance satisfactory to the Administrative Agent), covering such equity interests, that conforms to the requirements of the applicable foreign jurisdiction, together with an opinion of local counsel as to the perfection of the security interest provided for therein, and all other documentation necessary or desirable to effect the foregoing and to permit the Administrative Agent to exercise any of its rights and remedies in respect thereof. Notwithstanding the foregoing, if the Administrative Agent, in its

reasonable discretion, after consultation with the Borrower, determines that the cost of perfecting in a foreign jurisdiction, the security interest of the Administrative Agent, for the benefit of the Lenders, in the Pledged Securities relating to any Foreign Subsidiary, (i) is impractical or cost-prohibitive or (ii) the benefits obtained by such action are outweighed by the burdens of obtaining the same, then the Administrative Agent may agree to forego (until such time as the Administrative Agent determines it is practical to so perfect such interest) the foreign perfection of such security interest.

Section 5.21. Collateral. Each Credit Party shall:

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

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

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

(d) promptly notify the Administrative Agent in writing upon the acquisition or creation by any Credit Party of a Deposit Account or Securities Account not listed on the notice provided to the Administrative Agent pursuant to Section 6.19 hereof, and, prior to or simultaneously with the creation of such Deposit Account or Securities Account, provide for the execution of a Deposit Account Control Agreement or Securities Account Control Agreement with respect thereto, if required by the Administrative Agent or the Required Lenders; provided that a Control Agreement shall not be required for a Deposit Account or Securities Account (i) that constitutes Excluded Collateral, (ii) so long as no Event of Default has occurred and is continuing, that is a retail store Deposit Account provided that the aggregate amount maintained in all such retail store Deposit Accounts does not exceed Three Million Dollars (\$3,000,000) for any two consecutive Business Days during the ninety (90) day period immediately preceding such time of determination, or (iii) that is a disbursement account that automatically has a zero balance at the end of each day.

(e) with respect to any Equipment or Inventory of a Credit Party located at a location of a third party (other than another Credit Party), use commercially reasonable efforts to cause to be executed any Landlord's Waiver, Bailee's Waiver, Processor's Waiver, Consignee's Waiver or similar document or notice that may be required by the Administrative Agent or the Required Lenders; provided that a Credit Party shall not be required to deliver a Landlord's Waiver, Bailee's Waiver, Processor's Waiver, Consignee's Waiver or similar document for any Equipment or Inventory located at such location to the extent that the aggregate value of all Equipment (excluding leasehold improvements) and Inventory of all Companies maintained at such location does not exceed Two Hundred Fifty Thousand Dollars (\$250,000).

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

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

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

(i) provide to the Administrative Agent, on a quarterly basis (as necessary), a list of any patents, trademarks or copyrights that have been federally registered by such Credit Party during such quarter, and provide for the execution of an appropriate Intellectual Property Security Agreement; and

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

Each Credit Party hereby authorizes the Administrative Agent, on behalf of the Lenders, to file U.C.C. Financing Statements or other appropriate notices with respect to the Collateral. If certificates of title or applications for title are issued or outstanding with respect to any of the

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

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

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

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

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

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

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

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

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

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

## ARTICLE VI. REPRESENTATIONS AND WARRANTIES

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

Section 6.2. Corporate Authority. Each Credit Party has the right and power and is duly authorized and empowered to enter into, execute and deliver the Loan Documents to which it is a party and to perform and observe the provisions of the Loan Documents. The Loan Documents to which each Credit Party is a party have been duly authorized and approved by such Credit Party's board of directors or other governing body, as applicable, and are the legal, valid and binding obligations of such Credit Party, enforceable against such Credit Party in accordance with their respective terms, except to the extent that enforcement thereof may be limited by an applicable bankruptcy, insolvency or similar laws now or hereafter in effect affecting creditors' rights generally and by general principles of equity. The execution, delivery and performance of the Loan Documents do not conflict with, result in a breach in any of the provisions of, constitute a default under, or result in the creation of a Lien (other than Liens permitted under Section 5.9 hereof) upon any assets or property of any Company under the provisions of, such Company's Organizational Documents or any material agreement to which such Company is a party.

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

- (a) holds permits, certificates, licenses, orders, registrations, franchises, authorizations, and other approvals from any Governmental Authority necessary for the conduct of its business and is in compliance with all applicable laws relating thereto, except where the failure to do so would not have a Material Adverse Effect;
- (b) is in compliance with all federal, state, local, or foreign applicable statutes, rules, regulations, and orders including, without limitation, those relating to environmental protection, occupational safety and health, and equal employment practices, except where the failure to be in compliance would not have a Material Adverse Effect;
- (c) is not in violation of or in default under any agreement to which it is a party or by which its assets are subject or bound, except with respect to any violation or default that would not have a Material Adverse Effect;
- (d) has ensured that no Company, or to the knowledge of any Company, any director or officer of a Company, is a Person that is, or is owned or controlled by Persons that are (i) the subject of any Sanctions, or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions;
- (e) is in material compliance with all applicable Bank Secrecy Act (“BSA”) and anti-money laundering laws and regulations;
- (f) is in compliance with Anti-Corruption Laws; and
- (g) is in compliance, in all material respects, with the Patriot Act.

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

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



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

Section 6.6. Liens and Security Interests. On and after the Closing Date, except for Liens permitted pursuant to Section 5.9 hereof, (a) there is and will be no U.C.C. Financing Statement or similar notice of Lien outstanding covering any personal property of any Company, except for any such U.C.C. Financing Statement as to which the referenced secured party has provided written authorization to be terminated; (b) there is and will be no mortgage or charge outstanding covering any real property of any Company; and (c) no real or personal property of any Company is subject to any Lien of any kind. The Administrative Agent, for the benefit of the Lenders, upon the filing of the U.C.C. Financing Statements and taking such other actions necessary to perfect its Lien against collateral of the corresponding type as authorized hereunder will have a valid and enforceable first Lien on the collateral securing the Obligations (other than with respect to Commercial Tort Claims and as otherwise specifically provided pursuant to Section 5.9 hereof). No Company has entered into any contract or agreement (other than a contract or agreement entered into in connection with the purchase or lease of fixed assets that prohibits Liens on such fixed assets) that exists on or after the Closing Date that would prohibit the Administrative Agent or the Lenders from acquiring a Lien on, or a collateral assignment of, any of the property or assets of any Company.

Section 6.7. Tax Returns. All federal, state, provincial and local tax returns and other reports required by law to be filed in respect of the income, business, properties and employees of each Company have been filed and all taxes, assessments, fees and other governmental charges that are due and payable have been paid, except as otherwise permitted herein. The provision for taxes on the books of each Company is adequate for all years not closed by applicable statutes and for the current fiscal year.

Section 6.8. Environmental Laws. Each Company is in compliance with all Environmental Laws, including, without limitation, all Environmental Laws in all jurisdictions in which any Company owns or operates, or has owned or operated, a facility or site, arranges or has arranged for disposal or treatment of hazardous substances, solid waste or other wastes, accepts or has accepted for transport any hazardous substances, solid waste or other wastes or holds or has held any interest in real property or otherwise, except where the release or disposal or the failure to comply would not result in a material expenditure or loss to such Company. No material litigation or proceeding arising under, relating to or in connection with any Environmental Law or Environmental Permit is pending or, to the best knowledge of each Company, threatened, against any Company, any real property in which any Company holds or has held an interest or any past or present operation of any Company. No release, threatened release or disposal of hazardous waste, solid waste or other wastes is occurring, or has occurred (other than those that are currently being remediated in accordance with Environmental Laws), on, under or to any real property in which any Company holds any interest or performs any of its operations, in violation of any Environmental Law, except where the release or disposal or the failure to comply would not result in a material expenditure or loss to such Company. As used in this Section 6.8, "litigation or proceeding" means any demand, claim, notice, suit, suit in equity, action, administrative action, investigation or inquiry whether brought by any Governmental Authority or private Person, or otherwise.

Section 6.9. Locations. As of the Closing Date, the Companies have places of business or maintain their Accounts, Inventory and Equipment at the locations (including third party locations) set forth on Schedule 6.9 hereto, and each Company's chief executive office is set forth on Schedule 6.9 hereto. Schedule 6.9 hereto further specifies whether each location, as of the Closing Date, (a) is owned by the Companies, or (b) is leased by a Company from a third party, and, if leased by a Company from a third party, if a Landlord's Waiver has been requested. As of the Closing Date, Schedule 6.9 hereto correctly identifies the name and address of each third party location where assets of the Companies are located.

Section 6.10. Continued Business. There exists no actual, pending, or, to the Borrower's knowledge, any threatened termination, cancellation or limitation of, or any modification or change in the business relationship of any Company and any customer or supplier, or any group of customers or suppliers, whose purchases or supplies, individually or in the aggregate, are material to the business of any Company, and there exists no present condition or state of facts or circumstances that would have a Material Adverse Effect or prevent a Company from conducting such business or the transactions contemplated by this Agreement in substantially the same manner in which it was previously conducted.

Section 6.11. Employee Benefits Plans. Schedule 6.11 hereto identifies each ERISA Plan as of the Closing Date. No ERISA Event has occurred with respect to an ERISA Plan that could reasonably be expected to have a Material Adverse Effect. Except as could not reasonably be expected to have a Material Adverse Effect, (a) full payment has been made of all amounts that a Controlled Group member is required, under applicable law or under the governing documents, to have paid as a contribution to or a benefit under each ERISA Plan; (b) the liability of each Controlled Group member with respect to each ERISA Plan has been fully funded based upon reasonable and proper actuarial assumptions, has been fully insured, or has been fully reserved for on its financial statements, and (c) no changes have occurred or are expected to occur that would cause a material increase in the cost of providing benefits under the ERISA Plan. With respect to each ERISA Plan that is intended to be qualified under Code Section 401(a), except as could not reasonably be expected to have a Material Adverse Effect, (i) the ERISA Plan and any associated trust operationally comply with the applicable requirements of Code Section 401(a); (ii) the ERISA Plan and any associated trust have been amended to comply with all such requirements as currently in effect, other than those requirements for which a retroactive amendment can be made within the "remedial amendment period" available under Code Section 401(b) (as extended under Treasury Regulations and other Treasury pronouncements upon which taxpayers may rely); (iii) the ERISA Plan and any associated trust have received a favorable determination letter from the Internal Revenue Service or is in the form of a prototype or volume submitter plan that is the subject of a favorable opinion letter from the Internal Revenue Service, unless the ERISA Plan was first adopted at a time for which the above-described "remedial amendment period" has not yet expired and subject to changes the Internal Revenue Service makes to the determination letter process; (iv) the ERISA Plan currently satisfies the requirements of Code Section 410(b); and (v) no contribution made to the ERISA Plan is subject to an excise tax under Code Section 4972. With respect to any Pension Plan, the "accumulated benefit obligation" of Controlled Group members with respect to the Pension Plan (as determined in accordance with Statement of Accounting Standards No. 87,

“Employers’ Accounting for Pensions”) does not exceed the fair market value of Pension Plan assets by an amount that would reasonably be expected to have a Material Adverse Effect.

Section 6.12. Consents or Approvals. No consent, approval or authorization of, or filing (other than any filing or recording necessary to perfect any Lien granted to the Lenders hereunder) registration or qualification with, any Governmental Authority or any other Person is required to be obtained or completed by any Company in connection with the execution, delivery or performance of any of the Loan Documents, that has not already been obtained or completed.

Section 6.13. Solvency. The Borrower has received consideration that is the reasonably equivalent value of the obligations and liabilities that the Borrower has incurred to the Administrative Agent and the Lenders. The Borrower is not insolvent as defined in any applicable state, federal or relevant foreign statute, nor will the Borrower be rendered insolvent by the execution and delivery of the Loan Documents to the Administrative Agent and the Lenders. The Borrower is not engaged or about to engage in any business or transaction for which the assets retained by it are or will be an unreasonably small amount of capital, taking into consideration the obligations to the Administrative Agent and the Lenders incurred hereunder. The Borrower does not intend to, nor does it believe that it will, incur debts beyond its ability to pay such debts as they mature.

Section 6.14. Financial Statements. The audited Consolidated financial statements of the Borrower for the fiscal year ended January 3, 2015, and the unaudited Consolidated financial statements of the Borrower for the Quarterly Reporting Period ended July 4, 2015, furnished to the Administrative Agent and the Lenders, are true and complete, have been prepared in accordance with GAAP, and fairly present the financial condition of the Companies as of the dates of such financial statements and the results of their operations for the periods then ending. Since the dates of such statements, there has been no material adverse change in any Company’s financial condition, properties or business or, except as required by GAAP, any change in any Company’s accounting procedures.

Section 6.15. Regulations. No Company is engaged principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any “margin stock” (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States). Neither the granting of any Loan (or any conversion thereof) or Letter of Credit nor the use of the proceeds of any Loan or Letter of Credit will violate, or be inconsistent with, the provisions of Regulation T, U or X or any other Regulation of such Board of Governors.

Section 6.16. Material Agreements. Except as disclosed on Schedule 6.16 hereto, as of the Closing Date, no Company is a party to any (a) debt instrument (excluding the Loan Documents); (b) lease (capital, operating or otherwise), whether as lessee or lessor thereunder; (c) contract, commitment, agreement, or other arrangement involving the purchase or sale of any inventory by it, or the license of any right to or by it; (d) contract, commitment, agreement, or other arrangement with any of its “Affiliates” (as such term is defined in the Exchange Act) other than a Company; (e) management or employment contract or contract for personal services with any of its Affiliates that is not otherwise terminable at will or on less than ninety (90) days’

notice without liability; (f) collective bargaining agreement; or (g) other contract, agreement, understanding, or arrangement with a third party; that, as to subparts (a) through (g) above, if violated, breached, or terminated for any reason, would have or would be reasonably expected to have a Material Adverse Effect.

Section 6.17. Intellectual Property. Each Company owns, or has the right to use, all of the patents, patent applications, industrial designs, designs, trademarks, service marks, copyrights and licenses, and rights with respect to the foregoing, necessary for the conduct of its business without any known material infringement of valid rights of others to any of the foregoing. Schedule 6.17 hereto sets forth all patents, trademarks, copyrights and service marks owned by each Company which are federally registered as of the Closing Date and all material license agreements of any the foregoing by any Company to another party, as of the Closing Date.

Section 6.18. Insurance. Each Company maintains with financially sound and reputable insurers insurance with coverage (including, if applicable, insurance required by the National Flood Insurance Reform Act of 1994) and limits as required by law and as is customary with Persons engaged in the same businesses as the Companies. Schedule 6.18 hereto sets forth all insurance carried by the Companies on the Closing Date, setting forth in detail the amount and type of such insurance.

Section 6.19. Deposit Accounts and Securities Accounts. The Borrower has provided to the Administrative Agent a list of all banks, other financial institutions and Securities Intermediaries at which any Credit Party maintains Deposit Accounts or Securities Accounts as of the Closing Date, which list correctly identifies the name, address and telephone number of each such financial institution or Securities Intermediary, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

Section 6.20. Accurate and Complete Statements. Neither the Loan Documents nor any written statement made by any Company in connection with any of the Loan Documents contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein or in the Loan Documents not misleading. After due inquiry by the Borrower, there is no known fact that any Company has not disclosed to the Administrative Agent and the Lenders that has or is likely to have a Material Adverse Effect.

Section 6.21. Investment Company; Other Restrictions. No Company is (a) an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, or (b) subject to any foreign, federal, state or local statute or regulation limiting its ability to incur Indebtedness.

Section 6.22. Defaults. No Default or Event of Default exists, nor will any begin to exist immediately after the execution and delivery hereof.

## ARTICLE VII. SECURITY

Section 7.1. Security Interest in Collateral. In consideration of and as security for the full and complete payment of all of the Secured Obligations, the Borrower hereby grants to the Administrative Agent, for the benefit of the Lenders (and affiliates thereof that hold Secured Obligations), a security interest in the Collateral.

Section 7.2. Collections and Receipt of Proceeds by Borrower.

(a) Prior to the exercise by the Administrative Agent and the Required Lenders of their rights under Article IX hereof, both (i) the lawful collection and enforcement of all of the Borrower's Accounts, and (ii) the lawful receipt and retention by the Borrower of all Proceeds of all of the Borrower's Accounts and Inventory shall be as the agent of the Administrative Agent and the Lenders.

(b) Upon written notice to the Borrower from the Administrative Agent after the occurrence and during the continuance of an Event of Default, a Cash Collateral Account shall be opened by the Borrower at the main office of the Administrative Agent (or such other office as shall be designated by the Administrative Agent) and all such lawful collections of the Borrower's Accounts and such Proceeds of the Borrower's Accounts and Inventory shall be remitted daily by the Borrower to the Administrative Agent in the form in which they are received by the Borrower, either by mailing or by delivering such collections and Proceeds to the Administrative Agent, appropriately endorsed for deposit in the Cash Collateral Account. In the event that such notice is given to the Borrower from the Administrative Agent, the Borrower shall not commingle such collections or Proceeds with any of the Borrower's other funds or property, but shall hold such collections and Proceeds separate and apart therefrom upon an express trust for the Administrative Agent, for the benefit of the Lenders. In such case, the Administrative Agent may, in its sole discretion, and shall, at the request of the Required Lenders, at any time and from time to time after the occurrence and during the continuance of an Event of Default, apply all or any portion of the account balance in the Cash Collateral Account as a credit against (i) the outstanding principal or interest of the Loans, or (ii) any other Secured Obligations in accordance with this Agreement. If any remittance shall be dishonored, or if, upon final payment, any claim with respect thereto shall be made against the Administrative Agent on its warranties of collection, the Administrative Agent may charge the amount of such item against the Cash Collateral Account or any other Deposit Account maintained by the Borrower with the Administrative Agent or with any other Lender, and, in any event, retain the same and the Borrower's interest therein as additional security for the Secured Obligations. The Administrative Agent may, in its sole discretion, at any time and from time to time, release funds from the Cash Collateral Account to the Borrower for use in the Borrower's business. The balance in the Cash Collateral Account may be withdrawn by the Borrower upon termination of this Agreement and payment in full of all of the Secured Obligations (other than unasserted contingent indemnity obligations).

(c) After the occurrence and during the continuance of an Event of Default, at the Administrative Agent's written request, the Borrower shall cause all remittances representing collections and Proceeds of Collateral to be mailed to a lockbox at a location acceptable to the Administrative Agent, to which the Administrative Agent shall have access for the processing of

such items in accordance with the provisions, terms and conditions of the customary lockbox agreement of the Administrative Agent.

(d) The Administrative Agent, or the Administrative Agent's designated agent, is hereby constituted and appointed attorney-in-fact for the Borrower with authority and power to endorse, after the occurrence and during the continuance of an Event of Default, any and all instruments, documents, and chattel paper upon the failure of the Borrower to do so. Such authority and power, being coupled with an interest, shall be (i) irrevocable until all of the Secured Obligations (other than unasserted contingent indemnity obligations) are paid, (ii) exercisable by the Administrative Agent at any time and without any request upon the Borrower by the Administrative Agent to so endorse, and (iii) exercisable in the name of the Administrative Agent or the Borrower. The Borrower hereby waives presentment, demand, notice of dishonor, protest, notice of protest, and any and all other similar notices with respect thereto, regardless of the form of any endorsement thereof. Neither the Administrative Agent nor the Lenders shall be bound or obligated to take any action to preserve any rights therein against prior parties thereto.

Section 7.3. Collections and Receipt of Proceeds by Administrative Agent. The Borrower hereby constitutes and appoints the Administrative Agent, or the Administrative Agent's designated agent, as the Borrower's attorney-in-fact to exercise, at any time, after the occurrence and during the continuance of an Event of Default, all or any of the following powers which, being coupled with an interest, shall be irrevocable until the complete and full payment of all of the Secured Obligations (other than unasserted contingent indemnity obligations):

(a) to receive, retain, acquire, take, endorse, assign, deliver, accept, and deposit, in the name of the Administrative Agent or the Borrower, any and all of the Borrower's cash, instruments, chattel paper, documents, Proceeds of Accounts, Proceeds of Inventory, collection of Accounts, and any other writings relating to any of the Collateral. The Borrower hereby waives presentment, demand, notice of dishonor, protest, notice of protest, and any and all other similar notices with respect thereto, regardless of the form of any endorsement thereof. The Administrative Agent shall not be bound or obligated to take any action to preserve any rights therein against prior parties thereto;

(b) to transmit to Account Debtors, on any or all of the Borrower's Accounts, notice of assignment to the Administrative Agent, for the benefit of the Lenders, thereof and the security interest therein, and to request from such Account Debtors at any time, in the name of the Administrative Agent or the Borrower, information concerning the Borrower's Accounts and the amounts owing thereon;

(c) to transmit to purchasers of any or all of the Borrower's Inventory (other than with respect to individual consumers), notice of the Administrative Agent's security interest therein, and to request from such purchasers at any time, in the name of the Administrative Agent or the Borrower, information concerning the Borrower's Inventory and the amounts owing thereon by such purchasers;

(d) to notify and require Account Debtors on the Borrower's Accounts and purchasers of the Borrower's Inventory on credit granted by the Borrower to make payment of their obligations to the Borrower directly to the Administrative Agent;

(e) to enter into or assent to such amendment, compromise, extension, release or other modification of any kind of, or substitution for, the Accounts, or any thereof, as the Administrative Agent, in its sole discretion, may deem to be advisable;

(f) to enforce the Accounts or any thereof, or any other Collateral, by suit or otherwise, to maintain any such suit or other proceeding in the name of the Administrative Agent or the Borrower, and to withdraw any such suit or other proceeding. The Borrower agrees to lend every assistance requested by the Administrative Agent in respect of the foregoing, all at no cost or expense to the Administrative Agent and including, without limitation, the furnishing of such witnesses and of such records and other writings as the Administrative Agent may require in connection with making legal proof of any Account. The Borrower agrees to reimburse the Administrative Agent in full for all court costs and attorneys' fees and every other cost, expense or liability, if any, incurred or paid by the Administrative Agent in connection with the foregoing, which obligation of the Borrower shall constitute Obligations, shall be secured by the Collateral and shall bear interest, until paid, at the Default Rate;

(g) to take or bring, in the name of the Administrative Agent or the Borrower, all steps, actions, suits, or proceedings deemed by the Administrative Agent necessary or desirable to effect the receipt, enforcement, and collection of the Collateral; and

(h) to accept all collections in any form relating to the Collateral, including remittances that may reflect deductions, and to deposit the same into the Cash Collateral Account or, at the option of the Administrative Agent, to apply them as a payment against the Loans or any other Secured Obligations in accordance with this Agreement.

Section 7.4. Administrative Agent's Authority Under Pledged Notes. For the better protection of the Administrative Agent and the Lenders hereunder, the Borrower has executed (or will execute, with respect to future Pledged Notes) an appropriate endorsement on (or separate from) each Pledged Note and has deposited (or will deposit, with respect to future Pledged Notes) such Pledged Note with the Administrative Agent, for the benefit of the Lenders. The Borrower irrevocably authorizes and empowers the Administrative Agent, for the benefit of the Lenders, to, after the occurrence and during the continuance of an Event of Default, (a) ask for, demand, collect and receive all payments of principal of and interest on the Pledged Notes; (b) compromise and settle any dispute arising in respect of the foregoing; (c) execute and deliver vouchers, receipts and acquittances in full discharge of the foregoing; (d) exercise, in the Administrative Agent's discretion, any right, power or privilege granted to the holder of any Pledged Note by the provisions thereof including, without limitation, the right to demand security or to waive any default thereunder; (e) endorse the Borrower's name to each check or other writing received by the Administrative Agent as a payment or other proceeds of or otherwise in connection with any Pledged Note; (f) enforce delivery and payment of the principal and/or interest on the Pledged Notes, in each case by suit or otherwise as the Administrative Agent may desire; and (g) enforce the security, if any, for the Pledged Notes by instituting

foreclosure proceedings, by conducting public or other sales or otherwise, and to take all other steps as the Administrative Agent, in its discretion, may deem advisable in connection with the foregoing; provided, however, that nothing contained or implied herein or elsewhere shall obligate the Administrative Agent to institute any action, suit or proceeding or to make or do any other act or thing contemplated by this Section 7.4 or prohibit the Administrative Agent from settling, withdrawing or dismissing any action, suit or proceeding or require the Administrative Agent to preserve any other right of any kind in respect of the Pledged Notes and the security, if any, therefor.

Section 7.5. Commercial Tort Claims. The Borrower has provided to the Administrative Agent a list of all Commercial Tort Claims of the Companies in existence as of the Closing Date. If the Borrower shall at any time hold or acquire a Commercial Tort Claim, the Borrower shall, no later than the date the next Compliance Certificate is due, notify the Administrative Agent thereof in a writing signed by the Borrower, that sets forth the details thereof and grants to the Administrative Agent (for the benefit of the Lenders) a Lien thereon and on the Proceeds thereof, all upon the terms of this Agreement, with such writing to be prepared by and in form and substance reasonably satisfactory to the Administrative Agent.

Section 7.6. Use of Inventory and Equipment. Until the exercise by the Administrative Agent and the Required Lenders of their rights under Article IX hereof, the Borrower may (a) retain possession of and use its Inventory and Equipment in any lawful manner not inconsistent with this Agreement or with the terms, conditions, or provisions of any policy of insurance thereon; (b) sell or lease its Inventory in the ordinary course of business or as otherwise permitted by this Agreement; and (c) use and consume any raw materials or supplies, the use and consumption of which are necessary in order to carry on the Borrower's business.

## ARTICLE VIII. EVENTS OF DEFAULT

Any of the following specified events shall constitute an Event of Default (each an "Event of Default"):

Section 8.1. Payments. If (a) the interest on any Loan, any commitment or other fee, or any other Obligation not listed in subpart (b) hereof, shall not be paid in full when due and payable or within three Business Days thereafter, or (b) the principal of any Loan, any reimbursement obligation under any Letter of Credit that has been drawn, or any amount owing pursuant to Section 2.11(a) or (b) hereof shall not be paid in full when due and payable.

Section 8.2. Special Covenants. If any Company shall fail or omit to perform and observe Section 5.7, 5.8, 5.9, 5.11, 5.12, 5.13, 5.15, 5.24 or 5.25 hereof.

Section 8.3. Other Covenants. If any Company shall fail or omit to perform and observe any agreement or other provision (other than those referred to in Section 8.1 or 8.2 hereof) contained or referred to in this Agreement or any other Related Writing that is on such Company's part to be complied with, and that Default shall not have been fully corrected within fifteen (15) days after the earlier of (a) any Financial Officer of such Company becomes aware of



the occurrence thereof, or (b) the giving of written notice thereof to the Borrower by the Administrative Agent or the Required Lenders that the specified Default is to be remedied.

Section 8.4. Representations and Warranties. If any representation, warranty or statement made in or pursuant to this Agreement or any other Related Writing or any other material information furnished by any Company to the Administrative Agent or the Lenders, or any thereof, shall be false or erroneous.

Section 8.5. Cross Default. If any Company shall default in the payment of principal or interest due and owing under any Material Indebtedness Agreement beyond any period of grace provided with respect thereto or in the performance or observance of any other agreement, term or condition contained in any agreement under which such obligation is created, if the effect of such default is to allow the acceleration of the maturity of such Indebtedness or to permit the holder thereof to cause such Indebtedness to become due prior to its stated maturity.

Section 8.6. ERISA Default. The occurrence of one or more ERISA Events that (a) the Required Lenders determine could reasonably be expected to have a Material Adverse Effect, or (b) results in a Lien on any of the assets of any Company.

Section 8.7. Change in Control. If any Change in Control shall occur.

Section 8.8. Judgments. There is entered against any Company a final judgment or order for the payment of money by a court of competent jurisdiction, that remains unpaid or unstayed and undischarged for a period (during which execution shall not be effectively stayed) of thirty (30) days after the date on which the right to appeal has expired, provided that such occurrence shall constitute an Event of Default only if the aggregate of all such judgments for all such Companies, shall exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) (less any amount that will be covered by the proceeds of insurance and is not subject to dispute by the insurance provider).

Section 8.9. Security. If any Lien granted in this Agreement or any other Loan Document in favor of the Administrative Agent, for the benefit of the Lenders, shall be determined to be (a) void, voidable or invalid, or is subordinated or not otherwise given the priority contemplated by this Agreement and the Borrower (or the appropriate Credit Party) has failed to promptly execute appropriate documents to correct such matters, or (b) unperfected as to any material amount of Collateral (as determined by the Administrative Agent, in its reasonable discretion) and the Borrower (or the appropriate Credit Party) has failed to promptly execute appropriate documents to correct such matters.

Section 8.10. Validity of Loan Documents. If (a) any material provision, in the sole opinion of the Administrative Agent, of any Loan Document shall at any time cease to be valid, binding and enforceable against any Credit Party; (b) the validity, binding effect or enforceability of any Loan Document against any Credit Party shall be contested by any Credit Party; (c) any Credit Party shall deny that it has any or further liability or obligation under any Loan Document; or (d) any Loan Document shall be terminated, invalidated or set aside, or be

declared ineffective or inoperative or in any way cease to give or provide to the Administrative Agent and the Lenders the benefits purported to be created thereby.

Section 8.11. Solvency. If any Company (other than a Dormant Subsidiary) shall (a) except as permitted pursuant to Section 5.12 hereof, discontinue business; (b) generally not pay its debts as such debts become due; (c) make a general assignment for the benefit of creditors; (d) apply for or consent to the appointment of an interim receiver, a receiver, a receiver and manager, an administrator, a sequestrator, a monitor, a custodian, a trustee, an interim trustee, a liquidator, an agent or any other similar official of all or a substantial part of its assets or of such Company; (e) be adjudicated a debtor or insolvent or have entered against it an order for relief under the Bankruptcy Code, or under any other bankruptcy insolvency, liquidation, winding-up, corporate or similar statute or law, foreign, federal, state or provincial, in any applicable jurisdiction, now or hereafter existing, as any of the foregoing may be amended from time to time, or other applicable statute for jurisdictions outside of the United States, as the case may be; (f) file a voluntary petition under the Bankruptcy Code or seek relief under any bankruptcy or insolvency or analogous law in any jurisdiction outside of the United States, or file a proposal or notice of intention to file such petition; (g) have an involuntary proceeding under the Bankruptcy Code filed against it and the same shall not be controverted within ten days, or shall continue undismissed for a period of sixty (60) days from commencement of such proceeding or case; (h) file a petition, an answer, an application or a proposal seeking reorganization or an arrangement with creditors or seeking to take advantage of any other law (whether federal, provincial or state, or, if applicable, other jurisdiction) relating to relief of debtors, or admit (by answer, by default or otherwise) the material allegations of a petition filed against it in any bankruptcy, reorganization, insolvency or other proceeding (whether federal, provincial or state, or, if applicable, other jurisdiction) relating to relief of debtors; (i) suffer or permit to continue unstayed and in effect for sixty (60) consecutive days any judgment, decree or order entered by a court of competent jurisdiction, that approves a petition or an application or a proposal seeking its reorganization or appoints an interim receiver, a receiver and manager, an administrator, custodian, trustee, interim trustee or liquidator of all or a substantial part of its assets, or of such Company; (j) have an administrative receiver appointed over the whole or substantially the whole of its assets, or of such Company; (k) have assets, the value of which is less than its liabilities; or (l) have a moratorium declared in respect of any of its Indebtedness, or any analogous procedure or step is taken in any jurisdiction.

#### ARTICLE IX. REMEDIES UPON DEFAULT

Notwithstanding any contrary provision or inference herein or elsewhere:

Section 9.1. Optional Defaults. If any Event of Default referred to in Section 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9 or 8.10 hereof shall occur, the Administrative Agent may, with the consent of the Required Lenders, and shall, at the written request of the Required Lenders, give written notice to the Borrower to:

(a) terminate the Commitment, if not previously terminated, and, immediately upon such election, the obligations of the Lenders, and each thereof, to make any further Loan, and the

obligation of the Issuing Lender to issue any Letter of Credit, immediately shall be terminated; and/or

(b) accelerate the maturity of all of the Obligations (if the Obligations are not already due and payable), whereupon all of the Obligations shall become and thereafter be immediately due and payable in full without any presentment or demand and without any further or other notice of any kind, all of which are hereby waived by the Borrower.

Section 9.2. Automatic Defaults. If any Event of Default referred to in Section 8.11 hereof shall occur:

(a) all of the Commitment shall automatically and immediately terminate, if not previously terminated, and no Lender thereafter shall be under any obligation to grant any further Loan, nor shall the Issuing Lender be obligated to issue any Letter of Credit; and

(b) the principal of and interest then outstanding on all of the Loans, and all of the other Obligations, shall thereupon become and thereafter be immediately due and payable in full (if the Obligations are not already due and payable), all without any presentment, demand or notice of any kind, which are hereby waived by the Borrower.

Section 9.3. Letters of Credit. If the maturity of the Obligations shall be accelerated pursuant to Section 9.1 or 9.2 hereof, the Borrower shall immediately deposit with the Administrative Agent, as security for the obligations of the Borrower and any Guarantor of Payment to reimburse the Administrative Agent and the Lenders for any then outstanding Letters of Credit, cash equal to one hundred five percent (105%) of the sum of the aggregate undrawn balance of any then outstanding Letters of Credit. The Administrative Agent and the Lenders are hereby authorized, at their option, to deduct any and all such amounts from any deposit balances then owing by any Lender (or any affiliate of such Lender, wherever located) to or for the credit or account of any Company, as security for the obligations of the Borrower and any Guarantor of Payment to reimburse the Administrative Agent and the Lenders for any then outstanding Letters of Credit.

Section 9.4. Offsets.

(a) If there shall occur or exist any Event of Default referred to in Section 8.11 hereof or if the maturity of the Obligations is accelerated pursuant to Section 9.1 or 9.2 hereof, each Lender shall have the right at any time to set off against, and to appropriate and apply toward the payment of, any and all of the Obligations then owing by the Borrower or a Guarantor of Payment to such Lender (including, without limitation, any participation purchased or to be purchased pursuant to Section 2.2(b), 2.2(c) or 9.5 hereof), whether or not the same shall then have matured, any and all deposit (general or special) balances and all other indebtedness then held or owing by such Lender (including, without limitation, by branches and agencies or any affiliate of such Lender, wherever located) to or for the credit or account of the Borrower or any Guarantor of Payment, all without notice to or demand upon the Borrower or any other Person, all such notices and demands being hereby expressly waived by the Borrower.

(b) Notwithstanding anything in this Agreement to the contrary, if a Lender acts as a Securities Intermediary or a depository institution for a Credit Party, and the applicable Securities Accounts or Deposit Accounts of such Credit Party with such Lender (or an affiliate of a Lender) are not subject to a Control Agreement, then such Lender agrees that such accounts are subject to the Lien of the Administrative Agent (to the extent granted pursuant to the Security Documents) and it will not set off against or appropriate toward the payment of, any Indebtedness owing to such Lender that does not constitute Obligations (other than Customary Setoffs with respect to such Deposit Accounts or Securities Accounts).

Section 9.5. Equalization Provisions. Each Lender agrees with the other Lenders that, if it at any time shall obtain any Advantage over the other Lenders, or any thereof, in respect of the Obligations (except as to Swing Loans and Letters of Credit prior to the Administrative Agent's giving of notice to participate and except under Article III hereof), it shall purchase from the other Lenders, for cash and at par, such additional participation in the Obligations as shall be necessary to nullify such Advantage. If any such Advantage resulting in the purchase of an additional participation as aforesaid shall be recovered in whole or in part from the Lender receiving such Advantage, each such purchase shall be rescinded, and the purchase price restored (but without interest unless the Lender receiving such Advantage is required to pay interest on such Advantage to the Person recovering such Advantage from such Lender) ratably to the extent of the recovery. Each Lender further agrees with the other Lenders that (a) if it at any time shall receive any payment for or on behalf of the Borrower (or through any Guarantor of Payment) on any Indebtedness owing by the Borrower pursuant to this Agreement (whether by voluntary payment, by realization upon security, by reason of offset of any deposit or other indebtedness, by counterclaim or cross-action, by the enforcement of any right under any Loan Document, or otherwise), or (b) if any Lender (or affiliate of a Lender) (i) maintains Deposit Accounts or Securities Accounts of the Borrower or any Domestic Subsidiary, and (ii) exercises a right of offset or takes other action against such Deposit Accounts or Securities Accounts; then such Lender will apply such payment (other than Customary Setoffs with respect to the Deposit Accounts or Securities Accounts referenced in subpart (b) above) first to any and all Obligations owing by the Borrower to that Lender (including, without limitation, any participation purchased or to be purchased pursuant to this Section 9.5 or any other section of this Agreement). Each Credit Party agrees that any Lender so purchasing a participation from the other Lenders or any thereof pursuant to this Section 9.5 may exercise all of its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation.

Section 9.6. Collateral. The Administrative Agent and the Lenders shall at all times have the rights and remedies of a secured party under the U.C.C., in addition to the rights and remedies of a secured party provided elsewhere within this Agreement, in any other Related Writing executed by the Borrower or otherwise provided in law or equity. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may require the Borrower to assemble the collateral securing the Obligations, which the Borrower agrees to do, and make it available to the Administrative Agent and the Lenders at a reasonably convenient place to be designated by the Administrative Agent. The Administrative Agent may, with or without notice to or demand upon the Borrower and with or without the aid of legal process, make use of such force as may be necessary to enter any premises where such collateral, or any

thereof, may be found and to take possession thereof (including anything found in or on such collateral that is not specifically described in this Agreement, each of which findings shall be considered to be an accession to and a part of such collateral) and for that purpose may pursue such collateral wherever the same may be found, without liability for trespass or damage caused thereby to the Borrower. After any delivery or taking of possession of the collateral securing the Obligations, or any thereof, pursuant to this Agreement, then, with or without resort to the Borrower personally or any other Person or property, all of which the Borrower hereby waives, and upon such terms and in such manner as the Administrative Agent may deem advisable, the Administrative Agent, in its discretion, may sell, assign, transfer and deliver any of such collateral at any time, or from time to time. No prior notice need be given to the Borrower or to any other Person in the case of any sale of such collateral that the Administrative Agent determines to be perishable or to be declining speedily in value or that is customarily sold in any recognized market, but in any other case the Administrative Agent shall give the Borrower not fewer than ten days prior notice of either the time and place of any public sale of such collateral or of the time after which any private sale or other intended disposition thereof is to be made. The Borrower waives advertisement of any such sale and (except to the extent specifically required by the preceding sentence) waives notice of any kind in respect of any such sale. At any such public sale, the Administrative Agent or the Lenders may purchase such collateral, or any part thereof, free from any right of redemption, all of which rights the Borrower hereby waives and releases. After deducting all Related Expenses, and after paying all claims, if any, secured by Liens having precedence over this Agreement, the Administrative Agent may apply the net proceeds of each such sale to or toward the payment of the Secured Obligations, whether or not then due, in such order and by such division as the Administrative Agent, in its sole discretion, may deem advisable. Any excess, to the extent permitted by law, shall be paid to the Borrower, and the Borrower shall remain liable for any deficiency. In addition, the Administrative Agent shall at all times have the right to obtain new appraisals of the Borrower or any collateral securing the Obligations, the cost of which shall be paid by the Borrower.

Section 9.7. Other Remedies. The remedies in this Article IX are in addition to, and not in limitation of, any other right, power, privilege, or remedy, either in law, in equity, or otherwise, to which the Lenders may be entitled. The Administrative Agent shall exercise the rights under this Article IX and all other collection efforts on behalf of the Lenders and no Lender shall act independently with respect thereto, except as otherwise specifically set forth in this Agreement.

Section 9.8. Application of Proceeds.

(a) Payments Prior to Exercise of Remedies. Prior to the exercise by the Administrative Agent, on behalf of the Lenders, of remedies under this Agreement or the other Loan Documents, all monies received by the Administrative Agent in connection with the Revolving Credit Commitment shall be applied, unless otherwise required by the terms of the other Loan Documents or by applicable law, to the Loans and Letters of Credit, as appropriate; provided that the Administrative Agent shall have the right at all times to apply any payment received from the Borrower first to the payment of all obligations (to the extent not paid by the Borrower) incurred by the Administrative Agent pursuant to Sections 11.5 and 11.6 hereof and to the payment of Related Expenses.

(b) Payments Subsequent to Exercise of Remedies. After the exercise by the Administrative Agent or the Required Lenders of remedies under this Agreement or the other Loan Documents, all monies received by the Administrative Agent shall be applied, unless otherwise required by the terms of the other Loan Documents or by applicable law, as follows:

(i) first, to the payment of all obligations (to the extent not paid by the Borrower) incurred by the Administrative Agent pursuant to Sections 11.5 and 11.6 hereof and to the payment of Related Expenses to the Administrative Agent;

(ii) second, to the payment pro rata of (A) interest then accrued and payable on the outstanding Loans, (B) any fees then accrued and payable to the Administrative Agent, (C) any fees then accrued and payable to the Issuing Lender or the holders of the Letter of Credit Commitment in respect of the Letter of Credit Exposure, (D) any commitment fees, amendment fees and similar fees shared pro rata among the Lenders under this Agreement that are then accrued and payable, and (E) to the extent not paid by the Borrower, to the obligations incurred by the Lenders (other than the Administrative Agent) pursuant to Sections 11.5 and 11.6 hereof;

(iii) third, for payment of (A) principal outstanding on the Loans and the Letter of Credit Exposure, on a pro rata basis to the Lenders, based upon each such Lender's Commitment Percentage, provided that the amounts payable in respect of the Letter of Credit Exposure shall be held and applied by the Administrative Agent as security for the reimbursement obligations in respect thereof, and, if any Letter of Credit shall expire without being drawn, then the amount with respect to such Letter of Credit shall be distributed to the Lenders, on a pro rata basis in accordance with this subpart (iii), (B) the Indebtedness under any Hedge Agreement with a Lender (or an entity that is an affiliate of a then existing Lender), such amount to be based upon the net termination obligation of the Borrower under such Hedge Agreement, and (C) the Bank Product Obligations owing to a Lender (or an entity that is an affiliate of a then existing Lender) under Bank Product Agreements; with such payment to be pro rata among (A), (B) and (C) of this subpart (iii);

(iv) fourth, to any remaining Secured Obligations (other than unasserted contingent indemnity obligations); and

(v) finally, any remaining surplus after all of the Secured Obligations (other than unasserted contingent indemnity obligations) have been paid in full, to the Borrower or to whomsoever shall be lawfully entitled thereto.

Each Lender hereby agrees to promptly provide all information reasonably requested by the Administrative Agent regarding any Bank Product Obligations owing to such Lender (or affiliate of such Lender) or any Hedge Agreement entered into by a Company with such Lender (or affiliate of such Lender), and each such Lender, on behalf of itself and any of its affiliates, hereby agrees to promptly provide notice to the Administrative Agent upon such Lender (or any

of its affiliates) entering into any such Hedge Agreement or cash management services agreement.

## ARTICLE X. THE ADMINISTRATIVE AGENT

The Lenders authorize KeyBank and KeyBank hereby agrees to act as agent for the Lenders in respect of this Agreement upon the terms and conditions set forth elsewhere in this Agreement, and upon the following terms and conditions:

Section 10.1. Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers hereunder as are delegated to the Administrative Agent by the terms hereof, together with such powers as are reasonably incidental thereto. Neither the Administrative Agent nor any of its affiliates, directors, officers, attorneys or employees shall (a) be liable for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct (as determined by a final non-appealable judgment of a court of competent jurisdiction), or be responsible in any manner to any of the Lenders for the effectiveness, enforceability, genuineness, validity or due execution of this Agreement or any other Loan Documents, (b) be under any obligation to any Lender to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions hereof or thereof on the part of the Borrower or any other Company, or the financial condition of the Borrower or any other Company, or (c) be liable to any of the Companies for consequential damages resulting from any breach of contract, tort or other wrong in connection with the negotiation, documentation, administration or collection of the Loans or Letters of Credit or any of the Loan Documents. Notwithstanding any provision to the contrary contained in this Agreement or in any other Loan Document, the Administrative Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 10.2. Note Holders. The Administrative Agent may treat the payee of any Note as the holder thereof (or, if there is no Note, the holder of the interest as reflected on the books and records of the Administrative Agent) until written notice of transfer shall have been filed with the Administrative Agent, signed by such payee and in form satisfactory to the Administrative Agent.

Section 10.3. Consultation With Counsel. The Administrative Agent may consult with legal counsel selected by the Administrative Agent and shall not be liable for any action taken or

suffered in good faith by the Administrative Agent in accordance with the opinion of such counsel.

Section 10.4. Documents. The Administrative Agent shall not be under any duty to examine into or pass upon the validity, effectiveness, genuineness or value of any Loan Document or any other Related Writing furnished pursuant hereto or in connection herewith or the value of any collateral obtained hereunder, and the Administrative Agent shall be entitled to assume that the same are valid, effective and genuine and what they purport to be.

Section 10.5. Administrative Agent and Affiliate. KeyBank and its affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Companies and Affiliates as though KeyBank were not the Administrative Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, KeyBank or its affiliates may receive information regarding any Company or any Affiliate (including information that may be subject to confidentiality obligations in favor of such Company or such Affiliate) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to other Lenders. With respect to Loans and Letters of Credit (if any), KeyBank and its affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though KeyBank were not the Administrative Agent, and the terms “Lender” and “Lenders” include KeyBank and its affiliates, to the extent applicable, in their individual capacities.

Section 10.6. Knowledge or Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable, in its discretion, for the protection of the interests of the Lenders.

Section 10.7. Action by Administrative Agent. Subject to the other terms and conditions hereof, so long as the Administrative Agent shall be entitled, pursuant to Section 10.6 hereof, to assume that no Default or Event of Default shall have occurred and be continuing, the Administrative Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights that may be vested in it by, or with respect to taking or refraining from taking any action or actions that it may be able to take under or in respect of, this Agreement. The Administrative Agent shall incur no liability under or in respect of this Agreement by acting upon any notice, certificate, warranty or other paper or instrument believed by it to be genuine or authentic or to be signed by the proper party or parties, or with respect to anything that it may do or refrain from doing in the reasonable exercise of its judgment, or that



may seem to it to be necessary or desirable in the premises. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent's acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders.

Section 10.8. Release of Collateral or Guarantor of Payment. In the event of a merger, transfer of assets or other transaction permitted pursuant to Section 5.12 hereof (or otherwise permitted pursuant to this Agreement) where the proceeds of such merger, transfer or other transaction are applied in accordance with the terms of this Agreement to the extent required to be so applied, or in the event of a merger, consolidation, dissolution or similar event, permitted pursuant to this Agreement, the Administrative Agent, at the request and expense of the Borrower, is hereby authorized by the Lenders to (a) release the relevant Collateral (and any other collateral securing the Obligations) from this Agreement or any other Loan Document, (b) release a Guarantor of Payment in connection with such permitted transfer or event, and (c) duly assign, transfer and deliver to the affected Person (without recourse and without any representation or warranty) such Collateral (and any other collateral securing the Obligations) as is then (or has been) so transferred or released and as may be in the possession of the Administrative Agent and has not theretofore been released pursuant to this Agreement.

Section 10.9. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct, as determined by a final and non-appealable judgment of a court of competent jurisdiction.

Section 10.10. Indemnification of Administrative Agent. The Lenders agree to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower) ratably, according to their respective Commitment Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against the Administrative Agent in its capacity as agent in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by the Administrative Agent with respect to this Agreement or any other Loan Document, provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees and expenses) or disbursements resulting from the Administrative Agent's gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction, or from any action taken or omitted by the Administrative Agent in any capacity other than as agent under this Agreement or any other Loan Document. No action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 10.10. The undertaking in this Section 10.10 shall survive repayment of the Loans, cancellation of the Notes, if any, expiration or termination of the Letters of Credit, termination of the Commitment, any foreclosure under, or

modification, release or discharge of, any or all of the Loan Documents, termination of this Agreement and the resignation or replacement of the agent.

Section 10.11. Successor Administrative Agent. The Administrative Agent may resign as agent hereunder by giving not fewer than thirty (30) days prior written notice to the Borrower and the Lenders. If the Administrative Agent shall resign under this Agreement, then either (a) the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders (with the consent of the Borrower so long as an Event of Default does not exist and which consent shall not be unreasonably withheld), or (b) if a successor agent shall not be so appointed and approved within the thirty (30) day period following the Administrative Agent's notice to the Lenders of its resignation, then the Administrative Agent shall appoint a successor agent that shall serve as agent until such time as the Required Lenders appoint a successor agent. If no successor agent has accepted appointment as the Administrative Agent by the date that is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Upon its appointment, such successor agent shall succeed to the rights, powers and duties as agent, and the term "Administrative Agent" means such successor effective upon its appointment, and the former agent's rights, powers and duties as agent shall be terminated without any other or further act or deed on the part of such former agent or any of the parties to this Agreement. After any retiring Administrative Agent's resignation as the Administrative Agent, the provisions of this Article X shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement and the other Loan Documents.

Section 10.12. Issuing Lender. The Issuing Lender shall act on behalf of the Lenders with respect to any Letters of Credit issued by the Issuing Lender and the documents associated therewith. The Issuing Lender shall have all of the benefits and immunities (a) provided to the Administrative Agent in this Article X with respect to any acts taken or omissions suffered by the Issuing Lender in connection with the Letters of Credit and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term "Administrative Agent", as used in this Article X, included the Issuing Lender with respect to such acts or omissions, and (b) as additionally provided in this Agreement with respect to the Issuing Lender.

Section 10.13. Swing Line Lender. The Swing Line Lender shall act on behalf of the Lenders with respect to any Swing Loans. The Swing Line Lender shall have all of the benefits and immunities (a) provided to the Administrative Agent in this Article X with respect to any acts taken or omissions suffered by the Swing Line Lender in connection with the Swing Loans as fully as if the term "Administrative Agent", as used in this Article X, included the Swing Line Lender with respect to such acts or omissions, and (b) as additionally provided in this Agreement with respect to the Swing Line Lender.

Section 10.14. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, (a) the

Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise, to (i) file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent) allowed in such judicial proceedings, and (ii) collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and (b) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 10.15. No Reliance on Administrative Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its affiliates, participants or assignees, may rely on the Administrative Agent to carry out such Lender's or its affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other anti-terrorism law, including any programs involving any of the following items relating to or in connection with the Borrower, its Affiliates or agents, the Loan Documents or the transactions hereunder: (a) any identity verification procedures, (b) any record keeping, (c) any comparisons with government lists, (d) any customer notices or (e) any other procedures required under the CIP Regulations or such other laws.

Section 10.16. Other Agents. Other Agents. The Administrative Agent shall have the continuing right from time to time to designate one or more Lenders (or its or their affiliates) as "syndication agent", "co-syndication agent", "documentation agent", "co-documentation agent", "book runner", "lead arranger", "joint lead arranger", "arrangers" or other designations for purposes hereof. Any such designation referenced in the previous sentence or listed on the cover of this Agreement shall have no substantive effect, and any such Lender and its affiliates so referenced or listed shall have no additional powers, duties, responsibilities or liabilities as a result thereof, except in its capacity, as applicable, as the Administrative Agent, a Lender, the Swing Line Lender or the Issuing Lender hereunder.

## ARTICLE XI. MISCELLANEOUS

Section 11.1. Lenders' Independent Investigation. Each Lender, by its signature to this Agreement, acknowledges and agrees that the Administrative Agent has made no representation or warranty, express or implied, with respect to the creditworthiness, financial condition, or any other condition of any Company or with respect to the statements contained in any information memorandum furnished in connection herewith or in any other oral or written communication between the Administrative Agent and such Lender. Each Lender represents that it has made and shall continue to make its own independent investigation of the creditworthiness, financial condition and affairs of the Companies in connection with the extension of credit hereunder, and agrees that the Administrative Agent has no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto (other than such notices as may be expressly required to be given by the Administrative Agent to the Lenders hereunder), whether coming into its possession before the first Credit Event hereunder or at any time or times thereafter. Each Lender further represents that it has reviewed each of the Loan Documents.

Section 11.2. No Waiver; Cumulative Remedies. No omission or course of dealing on the part of the Administrative Agent, any Lender or the holder of any Note (or, if there is no Note, the holder of the interest as reflected on the books and records of the Administrative Agent) in exercising any right, power or remedy hereunder or under any of the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or under any of the Loan Documents. The remedies herein provided are cumulative and in addition to any other rights, powers or privileges held under any of the Loan Documents or by operation of law, by contract or otherwise.

### Section 11.3. Amendments, Waivers and Consents.

(a) General Rule. No amendment, modification, termination, or waiver of any provision of any Loan Document nor consent to any variance therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) Exceptions to the General Rule. Notwithstanding the provisions of subsection (a) of this Section 11.3:

(i) Consent of Affected Lenders Required. No amendment, modification, waiver or consent shall (A) extend or increase the Commitment of any Lender without the written consent of such Lender, (B) extend the date scheduled for payment of any principal (excluding mandatory prepayments) of or interest on the Loans or Letter of Credit reimbursement obligations or commitment fees payable hereunder without the written consent of each Lender directly affected thereby, (C) reduce the principal amount of any Loan, the stated rate of interest thereon (provided that the institution of the Default Rate or post default interest and a subsequent removal of the Default Rate or post default interest shall not constitute a decrease in interest rate pursuant to this Section 11.3) or the

stated rate of commitment fees payable hereunder, without the consent of each Lender directly affected thereby, (D) change the manner of pro rata application of any payments made by the Borrower to the Lenders hereunder, without the consent of each Lender directly affected thereby, (E) without the unanimous consent of the Lenders, change any percentage voting requirement, voting rights, or the Required Lenders definition in this Agreement, (F) without the unanimous consent of the Lenders, release the Borrower or any Guarantor of Payment or of any material amount of collateral securing the Secured Obligations, except in connection with a transaction specifically permitted hereunder as provided in Section 10.8 hereof, or (G) without the unanimous consent of the Lenders, amend this Section 11.3 or Section 9.5 or 9.8 hereof.

(ii) Provisions Relating to Special Rights and Duties. No provision of this Agreement affecting the Administrative Agent in its capacity as such shall be amended, modified or waived without the consent of the Administrative Agent. The Administrative Agent Fee Letter may be amended or modified by the Administrative Agent and the Borrower without the consent of any other Lender. No provision of this Agreement relating to the rights or duties of the Issuing Lender in its capacity as such shall be amended, modified or waived without the consent of the Issuing Lender. No provision of this Agreement relating to the rights or duties of the Swing Line Lender in its capacity as such shall be amended, modified or waived without the consent of the Swing Line Lender.

(iii) Technical and Conforming Modifications. Notwithstanding the foregoing, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent (A) if such modifications are not adverse to the Lenders and are requested by Governmental Authorities, (B) to cure any ambiguity, defect or inconsistency, or (C) to the extent necessary to integrate any increase in the Commitment or new Loans pursuant to Section 2.9(b) hereof.

(c) Replacement of Non-Consenting Lender. If, in connection with any proposed amendment, waiver or consent hereunder, the consent of all Lenders is required, but only the consent of Required Lenders is obtained, (any Lender withholding consent as described in this subsection (c) being referred to as a “Non-Consenting Lender”), then, so long as the Administrative Agent is not the Non-Consenting Lender, the Administrative Agent may (and shall, if requested by the Borrower), at the sole expense of the Borrower, upon notice to such Non-Consenting Lender and the Borrower, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with the restrictions contained in Section 11.10 hereof) all of its interests, rights and obligations under this Agreement to a financial institution acceptable to the Administrative Agent and the Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from such financial institution (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including any breakage compensation under Article III hereof).

(d) Generally. Notice of amendments, waivers or consents ratified by the Lenders hereunder shall be forwarded by the Administrative Agent to all of the Lenders. Each Lender or other holder of a Note, or if there is no Note, the holder of the interest as reflected on the books and records of the Administrative Agent (or interest in any Loan or Letter of Credit) shall be bound by any amendment, waiver or consent obtained as authorized by this Section 11.3, regardless of its failure to agree thereto.

Section 11.4. Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing and, if to the Borrower, mailed or delivered to it, addressed to it at the address specified on the signature pages of this Agreement, if to the Administrative Agent or a Lender, mailed or delivered to it, addressed to the address of the Administrative Agent or such Lender specified on the signature pages of this Agreement, or, as to each party, at such other address as shall be designated by such party in a written notice to each of the other parties. All notices, statements, requests, demands and other communications provided for hereunder shall be deemed to be given or made when delivered (if received during normal business hours on a Business Day, such Business Day or otherwise the following Business Day), or two Business Days after being deposited in the mails with postage prepaid by registered or certified mail, addressed as aforesaid, or sent by facsimile or electronic communication, in each case of facsimile or electronic communication with telephonic confirmation of receipt. All notices pursuant to any of the provisions hereof shall not be effective until received. For purposes of Article II hereof, the Administrative Agent shall be entitled to rely on telephonic instructions from any person that the Administrative Agent in good faith believes is an Authorized Officer, and the Borrower shall hold the Administrative Agent and each Lender harmless from any loss, cost or expense resulting from any such reliance.

Section 11.5. Costs, Expenses and Documentary Taxes. The Borrower agrees to pay on demand all costs and expenses of the Administrative Agent and all Related Expenses, including but not limited to (a) syndication, administration, travel and out-of-pocket expenses, including but not limited to attorneys' fees and expenses, of the Administrative Agent in connection with the preparation, negotiation and closing of the Loan Documents and the administration of the Loan Documents, and the collection and disbursement of all funds hereunder and the other instruments and documents to be delivered hereunder, (b) extraordinary expenses of the Administrative Agent in connection with the administration of the Loan Documents and the other instruments and documents to be delivered hereunder, and (c) the reasonable fees and expenses of special counsel for the Administrative Agent, with respect to the foregoing, and of local counsel, if any, who may be retained by said special counsel with respect thereto. The Borrower also agrees to pay on demand all costs and expenses (including Related Expenses) of the Administrative Agent and the Lenders, including reasonable attorneys' fees and expenses, in connection with the restructuring or enforcement of the Obligations, this Agreement or any other Related Writing. In addition, the Borrower shall pay any and all stamp, transfer, documentary and other taxes, assessments, charges and fees payable or determined to be payable in connection with the execution and delivery of the Loan Documents, and the other instruments and documents to be delivered hereunder, and agrees to hold the Administrative Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or failure to pay such taxes or fees. All obligations provided for in this Section 11.5 shall survive any termination of this Agreement.

Section 11.6. Indemnification. The Borrower agrees to defend, indemnify and hold harmless the Administrative Agent and the Lenders (and their respective affiliates, officers, directors, attorneys, agents and employees) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees) or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against the Administrative Agent or any Lender in connection with any investigative, administrative or judicial proceeding (whether or not such Lender or the Administrative Agent shall be designated a party thereto) or any other claim by any Person relating to or arising out of any Loan Document or any actual or proposed use of proceeds of the Loans or any of the Obligations, or any activities of any Company or its Affiliates; provided that no Lender nor the Administrative Agent or any other party shall have the right to be indemnified under this Section 11.6 for (a) its own gross negligence or willful misconduct, as determined by a final judgment of a court of competent jurisdiction, (b) such party's material breach of its obligations under this Agreement or any other Loan Document or Related Writing or (c) disputes solely among such parties not arising from or in connection with any action or omission of any Company or any of their Affiliates. All obligations provided for in this Section 11.6 shall survive any termination of this Agreement.

Section 11.7. Obligations Several; No Fiduciary Obligations. The obligations of the Lenders hereunder are several and not joint. Nothing contained in this Agreement and no action taken by the Administrative Agent or the Lenders pursuant hereto shall be deemed to constitute the Administrative Agent or the Lenders a partnership, association, joint venture or other entity. No default by any Lender hereunder shall excuse the other Lenders from any obligation under this Agreement; but no Lender shall have or acquire any additional obligation of any kind by reason of such default. The relationship between the Borrower and the Lenders with respect to the Loan Documents and the other Related Writings is and shall be solely that of debtor and creditors, respectively, and neither the Administrative Agent nor any Lender shall have any fiduciary obligation toward any Credit Party with respect to any such documents or the transactions contemplated thereby.

Section 11.8. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, and by facsimile or other electronic signature, each of which counterparts when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

Section 11.9. Binding Effect; Borrower's Assignment. This Agreement shall become effective when it shall have been executed by the Borrower, the Administrative Agent and each Lender and thereafter shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each of the Lenders and their respective successors and permitted assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Administrative Agent and all of the Lenders.

Section 11.10. Lender Assignments.

(a) Assignments of Commitments. Each Lender shall have the right at any time or times to assign to an Eligible Transferee (other than to a Defaulting Lender), without recourse, all or a percentage of all of the following: (i) such Lender's Commitment, (ii) all Loans made by that Lender, (iii) such Lender's Notes, and (iv) such Lender's interest in any Letter of Credit or Swing Loan, and any participation purchased pursuant to Section 2.2(b) or (c) or Section 9.5 hereof.

(b) Prior Consent. No assignment may be consummated pursuant to this Section 11.10 without the prior written consent of the Borrower and the Administrative Agent (other than an assignment by any Lender to any affiliate of such Lender which affiliate is an Eligible Transferee and either wholly-owned by a Lender or is wholly-owned by a Person that wholly owns, either directly or indirectly, such Lender, or to another Lender), which consent of the Borrower and the Administrative Agent shall not be unreasonably withheld; provided that (i) the consent of the Borrower shall not be required if, at the time of the proposed assignment, any Default or Event of Default shall then exist and (ii) the Borrower shall be deemed to have granted its consent unless the Borrower has expressly objected to such assignment within three Business Days after notice thereof. Anything herein to the contrary notwithstanding, any Lender may at any time make a collateral assignment of all or any portion of its rights under the Loan Documents to a Federal Reserve Bank, and no such assignment shall release such assigning Lender from its obligations hereunder.

(c) Minimum Amount. Each such assignment shall be in a minimum amount of the lesser of Five Million Dollars (\$5,000,000) of the assignor's Commitment and interest herein, or the entire amount of the assignor's Commitment and interest herein.

(d) Assignment Fee. Unless the assignment shall be to an affiliate of the assignor or the assignment shall be due to merger of the assignor or for regulatory purposes, either the assignor or the assignee shall remit to the Administrative Agent, for its own account, an administrative fee of Three Thousand Five Hundred Dollars (\$3,500).

(e) Assignment Agreement. Unless the assignment shall be due to merger of the assignor or a collateral assignment for regulatory purposes, the assignor shall (i) cause the assignee to execute and deliver to the Borrower and the Administrative Agent an Assignment Agreement, and (ii) execute and deliver, or cause the assignee to execute and deliver, as the case may be, to the Administrative Agent such additional amendments, assurances and other writings as the Administrative Agent may reasonably require.

(f) Non-U.S. Assignee. If the assignment is to be made to an assignee that is organized under the laws of any jurisdiction other than the United States or any state thereof, the assignor Lender shall cause such assignee, at least five Business Days prior to the effective date of such assignment, (i) to represent to the assignor Lender (for the benefit of the assignor Lender, the Administrative Agent and the Borrower) that under applicable law and treaties no taxes will be required to be withheld by the Administrative Agent, the Borrower or the assignor with respect to any payments to be made to such assignee in respect of the Loans hereunder, (ii) to furnish to the assignor Lender (and, in the case of any assignee registered in the Register (as



defined below), the Administrative Agent and the Borrower) either U.S. Internal Revenue Service Form W-8ECI, Form W-8IMY, Form W-8BEN, or Form W-8BEN-E, as applicable (wherein such assignee claims entitlement to complete exemption from U.S. federal withholding tax on all payments hereunder), and (iii) to agree (for the benefit of the assignor, the Administrative Agent and the Borrower) to provide to the assignor Lender (and, in the case of any assignee registered in the Register, to the Administrative Agent and the Borrower) a new Form W-8ECI, Form W-8IMY, Form W-8BEN, or Form W-8BEN-E, as applicable, upon the expiration or obsolescence of any previously delivered form and comparable statements in accordance with applicable U.S. laws and regulations and amendments duly executed and completed by such assignee, and to comply from time to time with all applicable U.S. laws and regulations with regard to such withholding tax exemption.

(g) Deliveries by Borrower. Upon satisfaction of all applicable requirements specified in subsections (a) through (f) above, the Borrower shall execute and deliver (i) to the Administrative Agent, the assignor and the assignee, any consent or release (of all or a portion of the obligations of the assignor) required to be delivered by the Borrower in connection with the Assignment Agreement, and (ii) to the assignee, if requested, and the assignor, if applicable, an appropriate Note or Notes. After delivery of the new Note or Notes, the assignor's Note or Notes, if any, being replaced shall be returned to the Borrower marked "replaced".

(h) Effect of Assignment. Upon satisfaction of all applicable requirements set forth in subsections (a) through (g) above, and any other condition contained in this Section 11.10, (i) the assignee shall become and thereafter be deemed to be a "Lender" for the purposes of this Agreement, (ii) the assignor shall be released from its obligations hereunder to the extent that its interest has been assigned, (iii) in the event that the assignor's entire interest has been assigned, the assignor shall cease to be and thereafter shall no longer be deemed to be a "Lender" and (iv) the signature pages hereto and Schedule 1 hereto shall be automatically amended, without further action, to reflect the result of any such assignment.

(i) Administrative Agent to Maintain Register. Administrative Agent shall maintain at the address for notices referred to in Section 11.4 hereof a copy of each Assignment Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as the owner of the Loan recorded therein for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

Section 11.11. Sale of Participations. Any Lender may, in the ordinary course of its commercial banking business and in accordance with applicable law, at any time sell participations to one or more Eligible Transferees (each a "Participant") in all or a portion of its rights or obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Commitment and the Loans and participations owing to it and the Note, if any, held by it); provided that:

- (a) any such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged;
- (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations;
- (c) the parties hereto shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and each of the other Loan Documents;
- (d) such Participant shall be bound by the provisions of Section 9.5 hereof, and the Lender selling such participation shall obtain from such Participant a written confirmation of its agreement to be so bound; and
- (e) no Participant (unless such Participant is itself a Lender) shall be entitled to require such Lender to take or refrain from taking action under this Agreement or under any other Loan Document, except that such Lender may agree with such Participant that such Lender will not, without such Participant's consent, take action of the type described as follows:
  - (i) increase the portion of the participation amount of any Participant over the amount thereof then in effect, or extend the Commitment Period, without the written consent of each Participant affected thereby; or
  - (ii) reduce the principal amount of or extend the time for any payment of principal of any Loan, or reduce the rate of interest or extend the time for payment of interest on any Loan, or reduce the commitment fee, without the written consent of each Participant affected thereby.

The Borrower agrees that any Lender that sells participations pursuant to this Section 11.11 shall still be entitled to the benefits of Article III hereof, notwithstanding any such transfer; provided that the obligations of the Borrower shall not increase as a result of such transfer and the Borrower shall have no obligation to any Participant.

Section 11.12. Replacement of Affected Lenders. Each Lender agrees that, during the time in which any Lender is an Affected Lender, the Administrative Agent shall have the right (and the Administrative Agent shall, if requested by the Borrower), at the sole expense of the Borrower, upon notice to such Affected Lender and the Borrower, to require that such Affected Lender assign and delegate, without recourse (in accordance with the restrictions contained in Section 11.10 hereof), all of its interests, rights and obligations under this Agreement to an Eligible Transferee, approved by the Borrower (unless an Event of Default shall exist) and the Administrative Agent, that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that such Affected Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (recognizing that any Affected Lender may have given up its rights under this Agreement to receive payment of fees and other amounts pursuant to Section 2.6(e) and (f) hereof), from such Eligible Transferee (to

the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including any breakage compensation under Article III hereof).

Section 11.13. Patriot Act Notice. Each Lender, and the Administrative Agent (for itself and not on behalf of any other party), hereby notifies the Credit Parties that, pursuant to the requirements of the Patriot Act, such Lender and the Administrative Agent are required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of each of the Credit Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Credit Parties in accordance with the Patriot Act. The Borrower shall provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by the Administrative Agent or a Lender in order to assist the Administrative Agent or such Lender in maintaining compliance with the Patriot Act.

Section 11.14. Severability of Provisions; Captions; Attachments. Any provision of this Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. The several captions to sections and subsections herein are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement. Each schedule or exhibit attached to this Agreement shall be incorporated herein and shall be deemed to be a part hereof.

Section 11.15. Investment Purpose. Each of the Lenders represents and warrants to the Borrower that such Lender is entering into this Agreement with the present intention of acquiring any Note issued pursuant hereto (or, if there is no Note, the interest as reflected on the books and records of the Administrative Agent) for investment purposes only and not for the purpose of distribution or resale, it being understood, however, that each Lender shall at all times retain full control over the disposition of its assets.

Section 11.16. Entire Agreement. This Agreement, any Note and any other Loan Document or other agreement, document or instrument attached hereto or executed on or as of the Closing Date integrate all of the terms and conditions mentioned herein or incidental hereto and supersede all oral representations and negotiations and prior writings with respect to the subject matter hereof (except with respect to any provisions of the Administrative Agent Fee Letter, the Fee Letter or the Mandate Letter that by their terms survive the termination of such agreements, in each case, which shall remain in full force and effect after the Closing Date).

Section 11.17. Limitations on Liability of the Issuing Lender. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letters of Credit. Neither the Issuing Lender nor any of its officers or directors shall be liable or responsible for (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Issuing Lender against presentation of documents that do not comply with the terms of a Letter

of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the account party on such Letter of Credit shall have a claim against the Issuing Lender, and the Issuing Lender shall be liable to such account party, to the extent of any direct, but not consequential, damages suffered by such account party that such account party proves were caused by (i) the Issuing Lender's willful misconduct or gross negligence (as determined by a final judgment of a court of competent jurisdiction) in determining whether documents presented under a Letter of Credit comply with the terms of such Letter of Credit, or (ii) the Issuing Lender's willful failure to make lawful payment under any Letter of Credit after the presentation to it of documentation strictly complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, the Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation.

Section 11.18. General Limitation of Liability. No claim may be made by any Credit Party or any other Person against any Company, the Administrative Agent, the Issuing Lender, or any other Lender or the affiliates, directors, officers, employees, attorneys or agents of any of them for any damages other than actual compensatory damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any of the other Loan Documents, or any act, omission or event occurring in connection therewith; and the Borrower, each Lender, the Administrative Agent and the Issuing Lender hereby, to the fullest extent permitted under applicable law, waive, release and agree not to sue or counterclaim upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in their favor and regardless of whether any Company, any Lender, Issuing Lender, or the Administrative Agent has been advised of the likelihood of such loss of damage.

Section 11.19. No Duty. All attorneys, accountants, appraisers, consultants and other professional persons (including the firms or other entities on behalf of which any such Person may act) retained by the Administrative Agent or any Lender with respect to the transactions contemplated by the Loan Documents shall have the right to act exclusively in the interest of the Administrative Agent or such Lender, as the case may be, and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to the Borrower, any other Companies, or any other Person, with respect to any matters within the scope of such representation or related to their activities in connection with such representation. The Borrower agrees, on behalf of itself and its Subsidiaries, not to assert any claim or counterclaim against any such persons with regard to such matters, all such claims and counterclaims, now existing or hereafter arising, whether known or unknown, foreseen or unforeseeable, being hereby waived, released and forever discharged.

Section 11.20. Legal Representation of Parties. The Loan Documents were negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement or any other Loan Document to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

Section 11.21. Governing Law; Submission to Jurisdiction.

(a) Governing Law. This Agreement, each of the Notes and any other Related Writing shall be governed by and construed in accordance with the laws of the State of New York and the respective rights and obligations of the Borrower, the Administrative Agent, and the Lenders shall be governed by New York law.

(b) Submission to Jurisdiction. The Borrower hereby irrevocably submits to the non-exclusive jurisdiction of any New York state or federal court sitting in New York County, New York, over any action or proceeding arising out of or relating to this Agreement, the Obligations or any other Related Writing, and the Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York state or federal court. The Borrower, on behalf of itself and its Subsidiaries, hereby irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue in any action or proceeding in any such court as well as any right it may now or hereafter have to remove such action or proceeding, once commenced, to another court on the grounds of FORUM NON CONVENIENS or otherwise. The Borrower agrees that a final, non-appealable 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.

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JURY TRIAL WAIVER. TO THE EXTENT PERMITTED BY LAW, THE BORROWER, THE ADMINISTRATIVE AGENT AND EACH LENDER WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS AGREEMENT OR ANY NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED THERETO.

IN WITNESS WHEREOF, the parties have executed and delivered this Credit and Security Agreement as of the date first set forth above.

Address: 9800 59<sup>th</sup> Avenue North  
Minneapolis, Minnesota 55442  
Attention: Chief Accounting Officer & General  
Counsel

SELECT COMFORT CORPORATION

By: /s/ Robert Poirier  
Robert Poirier  
Vice President and Chief Accounting Officer

Signature Page 1 of 3 to  
Credit and Security Agreement

Address: 127 Public Square  
Cleveland, Ohio 44114  
Attention: Institutional Bank

KEYBANK NATIONAL ASSOCIATION  
as the Administrative Agent, the Swing Line  
Lender, an Issuing Lender and as a Lender

By: /s/ Marianne T. Meil  
Marianne T. Meil  
Senior Vice President

Signature Page 2 of 3 to  
Credit and Security Agreement

Address: 50 South Sixth Street  
Suite 1000  
Minneapolis, Minnesota 55402  
Attention: Wesley Anderson

BMO HARRIS BANK, N.A.

By: /s/ Wesley M. Anderson  
Wesley M. Anderson  
Senior Vice President

Signature Page 3 of 3 to  
Credit and Security Agreement



# SCHEDULE 1

## COMMITMENTS OF LENDERS

<u>LENDERS</u>	<u>REVOLVING CREDIT COMMITMENT PERCENTAGE</u>	<u>REVOLVING CREDIT COMMITMENT AMOUNT</u>	<u>MAXIMUM AMOUNT</u>
KeyBank National Association	50%	\$50,000,000	\$50,000,000
BMO Harris Bank, N.A.	50%	\$50,000,000	\$50,000,000
Total Commitment Amount	100%	<u>\$50,000,000</u>	\$100,000,000

## SCHEDULE 2

### GUARANTORS OF PAYMENT

Select Comfort Retail Corporation, a Minnesota corporation  
Select Comfort Canada Holding Inc., a Minnesota corporation  
Select Comfort SC Corporation, a Minnesota corporation

# SCHEDULE 3

## PLEDGED SECURITIES

<u>Pledgor</u>	<u>Name of Subsidiary</u>	<u>Jurisdiction of Subsidiary</u>	<u>Shares Outstanding</u>	<u>Shares Pledged</u>	<u>Certificate Number of Pledged Shares</u>	<u>Ownership Percentage of Pledgor</u>
Select Comfort Corporation	Select Comfort Retail Corporation	Minnesota	100,000	100,000	3	100%
Select Comfort Corporation	Select Comfort Canada Holding Inc.	Minnesota	1,000	1,000	3	100%
Select Comfort Corporation	Select Comfort SC Corporation (f/k/a selectcomfort.com corporation)	Minnesota	1,000	1,000	3	100%
Select Comfort Canada Holding Inc.	Select Comfort COSC Canada ULC	Alberta, Canada	100	65	C-4	100%
Select Comfort Corporation	Select Comfort Limited	United Kingdom	100	65	4	100%

SCHEDULE 4

MORTGAGED REAL PROPERTY

Select Comfort Corporation

Real property in the City of Plymouth, County of Hennepin, State of Minnesota (Parcel Identification No. 01-118-22-13-0010).

## SCHEDULE 5.3

### QUARTERLY REPORTING PERIODS

#### 2015

Quarter 1 ends: April 4, 2015  
Quarter 2 ends: July 4, 2015  
Quarter 3 ends: October 3, 2015  
Quarter 4 ends: January 2, 2016

#### 2016

Quarter 1 ends: April 2, 2016  
Quarter 2 ends: July 2, 2016  
Quarter 3 ends: October 1, 2016  
Quarter 4 ends: December 31, 2016

#### 2017

Quarter 1 ends: April 1, 2017  
Quarter 2 ends: July 1, 2017  
Quarter 3 ends: September 30, 2017  
Quarter 4 ends: December 30, 2017

#### 2018

Quarter 1 ends: March 31, 2018  
Quarter 2 ends: June 30, 2018  
Quarter 3 ends: September 29, 2018  
Quarter 4 ends: December 29, 2018

#### 2019

Quarter 1 ends: March 30, 2019  
Quarter 2 ends: June 29, 2019  
Quarter 3 ends: September 28, 2019  
Quarter 4 ends: December 28, 2019

#### 2020

Quarter 1 ends: March 28, 2020  
Quarter 2 ends: June 27, 2020  
Quarter 3 ends: September 26, 2020  
Quarter 4 ends: January 2, 2021

**SCHEDULE 5.8**  
**INDEBTEDNESS**

None.

## SCHEDULE 5.9

### LIENS

1. Filings against the Borrower in the office of the Minnesota Secretary of State covering specific items of equipment and related specific property subject to customary equipment lease transactions, in favor of the following secured parties:
  - a. Dell Financial Services L.P. (5/07/07) (#200716682095)
  - b. Crown Credit Company (12/08/08) (#200814115696)
  - c. Hiblow USA Inc. (2/06/09) (#200914877111)
  - d. RBS Asset Finance, Inc. (12/29/10) (#201022601763)
  - e. RBS Asset Finance, Inc. (2/8/11) (#201123075072)
  - f. Bank of the West (5/9/12) (#201228249951)
  - g. Flex Financing (2/5/15) (#810063801141)
2. Other filings against the Borrower in the office of the Minnesota Secretary of State as listed below:
  - a. GE Money Bank (n/k/a Synchrony Bank) (1/10/06) (#200610129999): Certain property that arises under or in connection with the private label revolving consumer credit program made available to qualified consumer customers of the Borrower by GE Money Bank for the financing of purchases of products and services from the Borrower in the US. Such property includes goods purchased by customers of the Borrower that are financed by GE Money Bank but returned by such customers to the Borrower for which the Borrower has not repaid the cost of such goods to GE Money Bank.
3. Filings against Select Comfort Retail Corporation in the office of the Minnesota Secretary of State as listed below:
  - a. GE Money Bank (1/10/06) (n/k/a Synchrony Bank)(#200610129937): Certain property that arises under or in connection with the private label revolving consumer credit program made available to qualified consumer customers of Select Comfort Retail Corporation by GE Money Bank for the financing of purchases of products and services from Select Comfort Retail Corporation in the US. Such property includes goods purchased by customers of Select Comfort Retail Corporation that are financed by GE Money Bank but returned by such customers to Select Comfort Retail Corporation for which Select Comfort Retail Corporation has not repaid the cost of such goods to GE Money Bank.
  - b. The following filings covering specific equipment and related properties:

- i. Gelco Corporation dba GE Fleet Services (4/2/14) (#201436078568)
- ii. Gelco Corporation dba GE Fleet Services (4/30/14) (#201436419789)
- iii. Gelco Corporation dba GE Fleet Services (5/15/14) (#201436610556)
- iv. Gelco Corporation dba GE Fleet Services (5/29/14) (#201436771196)
- v. Gelco Corporation dba GE Fleet Services (6/18/14) (#201436995675)
- vi. Gelco Corporation dba GE Fleet Services (6/25/14) (#201437069459)
- vii. Gelco Corporation dba GE Fleet Services (7/9/14) (#201437204442)

4. Filings against Select Comfort SC Corporation in the office of the Minnesota Secretary of State as listed below:

- a. IHFC Properties, LLC – a filing covering installations, goods, furniture and fixtures and other property at a specified location in High Point, NC (9/23/13) (#2013338896538)
- b. Raymond Leasing Corporation – a filing covering specific material handling equipment and associated accessories (6/3/15) (#828636901659)



## SCHEDULE 6.1

### CORPORATE EXISTENCE; SUBSIDIARIES; FOREIGN QUALIFICATION

#### Jurisdiction of Organization or Formation

Select Comfort Corporation – Minnesota

Other Companies – see Schedule 3

#### States where Qualified as a Foreign Corporation

<u>State</u>	<u>Select Comfort Corporation</u>	<u>Select Comfort Retail Corporation</u>	<u>Select Comfort SC Corporation</u>	<u>Select Comfort Canada Holding Inc</u>	<u>State</u>
Alabama		X			AL
Alaska		X			AK
Arizona		X			AZ
Arkansas		X			AR
California		X			CA
Colorado		X			CO
Connecticut		X			CT
Delaware		X			DE
District of Columbia		X			DC
Florida		X			FL
Georgia		X			GA
Hawaii		X			HI
Idaho		X			ID
Illinois		X			IL
Indiana		X			IN
Iowa		X			IA
Kansas		X			KS
Kentucky		X			KY
Louisiana		X			LA
Maine		X			ME
Maryland		X			MD
Massachusetts		X			MA
Michigan		X			MI
Minnesota	N/A	N/A	N/A	N/A	MN
Mississippi		X			MS

<u>State</u>	<u>Select Comfort Corporation</u>	<u>Select Comfort Retail Corporation</u>	<u>Select Comfort SC Corporation</u>	<u>Select Comfort Canada Holding Inc</u>	<u>State</u>
Missouri		X			MO
Montana		X			MT
Nebraska		X			NE
Nevada		X			NV
New Hampshire		X			NH
New Jersey		X			NJ
New Mexico		X			NM
New York		X			NY
North Carolina		X	X		NC
North Dakota		X			ND
Ohio		X			OH
Oklahoma		X			OK
Oregon		X			OR
Pennsylvania		X			PA
Rhode Island		X			RI
South Carolina	X	X	X	X	SC
South Dakota		X			SD
Tennessee		X			TN
Texas		X			TX
Utah	X	X			UT
Vermont		X			VT
Virginia		X			VA
Washington		X			WA
West Virginia		X			WV
Wisconsin		X			WI
Wyoming		X			WY

Federal Tax Identification Numbers (for Foreign Subsidiaries, Tax ID number of jurisdiction of organization unless otherwise provided)

Select Comfort Corporation – 41-1597886

Select Comfort Retail Corporation – 41-1749757

Select Comfort Canada Holding Inc.- 41-1894273

Select Comfort SC Corporation – 41-1935901

Select Comfort COSC Canada ULC – 85147 5525 RC 0002

Select Comfort Limited – 45-2474475 (FEIN)

### Subsidiaries

See Schedule 3. Select Comfort Limited is a Dormant Subsidiary

### Chief Executive Offices and Principal Places of Business

See Schedule 6.9 for the Chief Executive Offices of each Company, and such locations are also the Principal Place of Business for such Company.

## **SCHEDULE 6.5**

### **REAL ESTATE OWNED BY THE COMPANIES**

Select Comfort Corporation owns:

Real property in the City of Plymouth, County of Hennepin, State of Minnesota (Parcel Identification No. 01-118-22-13-0010), described as follows:

Parcel 1: lot 3, Block 1, Bass Creek Business Park 4<sup>th</sup> Addition, Hennepin County, Minnesota (Torrens property: Certificate of Title No. 1206704).

Parcel 2: Non-exclusive water-main easement set forth in Grant of Easement, dated October 28, 1999, filed November 10, 1999, as Document Number 3224063, Office of Registrar of Titles, Hennepin County, Minnesota, over and across that portion of that part of Lot 2, Block 1, Bass Creek Business Park 3<sup>rd</sup> Addition described as follows: Lot 2, Block 1, Bass Creek Business Part 3<sup>rd</sup> Addition, except that part of the North 330 feet thereof lying West of a line drawn at right angles to the North line of said Block 1 from a point thereon distant 1320 feet along said line from the Northwest corner of the Northeast Quarter of Section 1, Township 118, Range 22.

Parcel 3: Non-exclusive water-main easement set forth in Grant of Easement, dated October 29, 1999, filed November 10, 1999, as Document Number 3224062, Office of Registrar of Titles, Hennepin County, Minnesota, over and across a portion of that part of Lot 1, Block 3, Bass Creek Business Park Addition described as follows: That part of Lot 1, Block 3, Bass Creek Business Park Addition, embraced within the Northeast quarter of Section 1, Township 118, Range 22, Hennepin county, Minnesota.

Parcel 4: Non-exclusive appurtenant easements set forth in the Declaration of Private Water Easement dated September 30, 1998, filed October 21, 1998, as Document Number 3078700, as amended by Amendment to Declaration of Private Water Easement dated November 2, 1999, filed November 10, 1999, as Document Number 3224061, Office of Registrar of Titles, Hennepin County, Minnesota, over and across a portion of Lot 4, Block 1, Bass Creek Business Park 4<sup>th</sup> Addition, Hennepin County, Minnesota.

## SCHEDULE 6.9

### LOCATIONS

1. Chief Executive Office of Borrower and each Domestic Subsidiary as of Closing Date:

9800 59<sup>th</sup> Avenue North  
Minneapolis, MN 55442

2. Chief Executive Office of each Foreign Subsidiary.

- a. Select Comfort COSC Canada ULC – 3400, 350 7<sup>th</sup> Ave SW, Calgary AB T29 3N9
- b. Select Comfort Limited – 100 New Bridge Street, London, England EC4 6JA

3. Locations of Accounts, Inventory and Equipment of Borrower and each Domestic Subsidiary as of Closing Date (all locations are leased):

See attached, and paragraph 5 below.

In addition, the Credit Parties may from time to time have Inventory at locations on a short term or temporary basis in connection with trade shows or special events.

4. Location of Accounts, Inventory and Equipment of Foreign Subsidiaries: see paragraph 2 above.

5. As requested under Section 5.19(i), following are locations, as of the Closing Date, at which is located Inventory and Equipment (excluding leasehold improvements) of the Credit Parties reasonably expected to have an aggregate value in excess of \$250,000:

<b>Name of Bailee, Warehouseman, Processor or Consignee</b>	<b>Location of Inventory and Goods</b>
The Plastics Group	2101 Cedar Street Freemont, OH 43420
RP Sweeney Warehouses	601 North Stone Street Freemont, OH 43420
Archway Marketing	19850 S Diamond Lake Road Rogers, MN 55374
Carpenter Company	P.O. Box 160446 Clearfield, UT 84016
Carpenter Company	2009 Keisler Dairy Rd Conover, NC 28613
Creation Technologies	3939 North Fraser Way Burnaby BC V5J 5J2 Canada

<b>Name of Bailee, Warehouseman, Processor or Consignee</b>	<b>Location of Inventory and Goods</b>
Leggett & Platt	446 Delaplain Rd. Georgetown, KY 40324
Leggett & Platt	Calle Enrico Fermi # 351 Parque Ind. Rio Bravo Ciudad Juarez, Chihuahua, Mexico C.P. 32550
Leggett & Platt	12273 Gateway West El Paso, TX 79936
Benchmark Electronics	Circuito de la Productividad No. 132-A Parque Industrial Guadalajara El Salto, Jalisco 45690 Mexico
E & O Tools and Plastics, Inc.	19178 Industrial Blvd NW Elk River, MN 55330
<b>Name of Landlord</b>	
(Select Comfort – SC Plant) Truluck Industries, Inc. 1014 St. Andrews Blvd. Charleston, SC 29407	630 Western Lane Irmo, SC 29063
(Select Comfort – SLC Plant) CLPF – SLIC 8, L.P. c/o Clarion Partners 1717 McKinney Avenue, Suite 1900 Dallas, TX 75202	675 N Wright Brothers Drive Salt Lake City, UT 84116
(Select Comfort - Facility) GLP US Management LLC Two North Riverside Plaza Suite 2350 Chicago, IL 60606	6105 Trenton Ln N Plymouth, MN 55442
(Select Comfort -Comfortaire) Orders Realty Co., Inc. P.O. Box 8127 Greenville, SC 29604	103 Shaw Street Greenville, SC 29609
(Select Comfort – Corporate Office) Aegon USA Realty Advisors, LLC 4333 Edgewood Rd. NE Cedar Rapids, IA 52499-5553	9800 59 <sup>th</sup> Avenue North Plymouth, MN 55442

Location Number	Location Name	Address		City	State	Zip Code
1003	Ridgedale Center	12503 Wayzata Blvd.		Minnetonka	MN	55305
1004	Mall of America	256 South Avenue	Space S256	Bloomington	MN	55425
1005	Burnsville Center	1178 Burnsville Center	Space 1073	Burnsville	MN	55306
1007	Fox River Mall	4301 W. Wisconsin Avenue	Space 400	Appleton	WI	54915
1014	Mall St. Matthews	5000 Shelbyville Road	Space 1770	Louisville	KY	40207
1015	Westroads Mall	10000 California	Space 2431	Omaha	NE	68114
1016	Town Center at Cobb	400 Ernest W. Barrett Pkwy	Suite N10	Kennesaw	GA	30144
1019	North Point Mall	1206 Northpoint Circle		Alpharetta	GA	30022
1020	Towson Town Center	825 Dulaney Valley Road	Space 3350	Towson	MD	21204
1021	The Mall in Columbia	10300 Little Patuxent Parkway		Columbia	MD	21044
1028	Freehold Raceway Mall	3710 Route 9	Suite B104	Freehold	NJ	07728
1031	Arrowhead Towne Center	7700-1155 W. Arrowhead Town Center		Glendale	AZ	85308
1032	Paradise Valley Mall	4550-226 E. Cactus Road		Phoenix	AZ	85032
1036	Stoneridge	1044 Stoneridge Mall		Pleasanton	CA	94588
1038	Westfield Carlsbad	2525 El Camino Real	Suite #231A	Carlsbad	CA	92008
1049	Holyoke Mall	50 Holyoke Street	Space 204	Holyoke	MA	01040
1051	Clackamas Town Center	12000 SE 82 <sup>nd</sup> Ave	E103	Portland	OR	97266
1052	Eastview Mall	418 Eastview Mall	Suite 131A	Victor	NY	14564
1055	Bellevue Square	1014 Bellevue Square		Bellevue	WA	98004
1059	The Woodlands Mall	1201 Lake Woodlands Drive	Space 2096	Woodlands	TX	77380
1060	Vista Ridge Mall	2401 S. Stemmons Freeway	Suite 2218	Lewisville	TX	75067
1061	Collin Creek Mall	811 N. Central Expressway		Plano	TX	75075
1063	The Parks at Arlington	3811 S. Cooper	Suite 2052	Arlington	TX	76015
1065	Westfield Brandon	418 Brandon Town Center Drive		Brandon	FL	33511
1068	Altamonte Mall	451 E. Altamonte Drive		Altamonte Springs	FL	32701
1071	Coastland Center	1954 N. Tamiami Trail	Suite M3	Naples	FL	34102

Location Number	Location Name	Address	Address	City	State	Zip Code
1100	The Oaks Mall CA	196 W Hillcrest Dr	Suite E235	Thousand Oaks	CA	91360
1101	Vintage Faire Mall	3401 Dale Road	Suite N16	Modesto	CA	95356
1102	Westfield North County	200 E. Via Rancho Parkway	Suite 113	Escondido	CA	92025
1106	Smith Haven Mall	365 Smith Haven	Suite A06B	Lake Grove	NY	11755
1107	Hamilton Place	2100 Hamilton Place Blvd.	#211	Chattanooga	TN	37421
1110	Kitsap Mall	10315 Silverdale Way	Space H-03	Silverdale	WA	98383
1112	Valley West Mall	1551 Valley W. Drive	Suite 165	Des Moines	IA	50266
1113	Emerald Square	999 S. Washington Street	Space 101	Attleboro	MA	02760
1114	Pheasant Lane	310 Daniel Webster Highway		South Nashua	NH	03060
1115	Rockaway Townsquare	Route 80 & Mt. Hope Ave.	Room 1065	Rockaway	NJ	07866
1118	Cary Towne Center	1105 Walnut Street	Space	Cary	NC	27511
1121	Riverchase Galleria	3000 Riverchase Galleria	Space 275	Birmingham	AL	35244
1125	Hanes Mall	3320 Silas Creek Pkwy	Suite BU-652	Winston/Salem	NC	27103
1126	Westfield Southcenter	436 Southcenter Mall		Tukwila	WA	98188
1130	Woodfield Mall	L-117 Woodfield Mall		Chicago	IL	60173
1132	Lakeside Mall	14600 Lakeside Circle		Sterling Heights	MI	48313
1134	Sunvalley Mall	377 SunValley Mall		Concord	CA	94520
1135	Cottonwood Mall	10000 Coors Boulevard NW		Albuquerque	NM	87114
1138	Laurel Park Place	37700 W. Six Mile Road		Livonia	MI	48152
1139	Solomon Pond Mall	601 Donald Lynch Blvd,	Suite 5441	Marlborough	MA	01752
1144	Meridian Mall	1982 West Grand River Ave.		Okemos	MI	48864
1145	Park Meadows Mall	8505 Park Meadow Center Drive		Littleton	CO	80124
1148	Maine Mall	230 Maine Mall Road		South Portland	ME	04106
1154	Westfield Southlake	1981 Southlake Mall		Merrillville	IN	46410
1156	SouthPark Mall	164 SouthPark Center		Strongsville	OH	44136
1160	King of Prussia	690 West Dekalb Pike	Suite 2042	King of Prussia	PA	19406
1161	Oxford Valley Mall	2300 E. Lincoln Highway	Suite 258	Langhorne	PA	19047



Location Number	Location Name	Address	Address	City	State	Zip Code
1162	Town East Mall	2130 Town East Mall		Mesquite	TX	75150
1166	The Crossroads	6650 Westnedge	Suite 206	Portage	MI	49024
1167	Penn Square	1901 NW Expressway	Suite 2059A	Oklahoma City	OK	73118
1168	West Towne Mall	100 W. Towne Mall		Madison	WI	53719
1169	Columbia Mall	2300 Bernadette Drive	Suite 436	Columbia	MO	65203
1171	White Oaks Mall	2501 W. Wabash Ave.		Springfield	IL	62704
1172	Wolfchase Galleria	2760 N Germantown Dr	Room 1590	Memphis	TN	38133
1177	Barton Creek Square	2901 S. Capital of Texas Highway		Austin	TX	78746
1179	Fair Oaks Mall	11750 Fair Oak Malls	Ste M140	Fairfax	VA	22033
1183	Kenwood Towne Center	7875 Montgomery Road	Space L113	Cincinnati	OH	45236
1188	Fayette Mall	3401 Nicholasville Road	Suite I-940	Lexington	KY	40503
1189	Genesee Valley Center	G-4378 Miller Road		Flint	MI	48507
1190	Mall of New Hampshire	1500 S. Willow Street	Space N141A	Manchester	NH	03103
1192	Deptford Mall	1750 Deptford Center Road	Suite 1242	Deptford	NJ	08096
1195	Bridgewater Commons	400 Commons Way		Bridgewater	NJ	08807
1197	Mayfair Mall	2500 N. Mayfair Drive		Wauwatosa	WI	53226
1199	Maplewood Mall	3001 White Bear Avenue North	Suite 2030	Maplewood	MN	55109
1200	The Mall at Tuttle Crossing	5043 Tuttle Crossing Blvd	Room 223	Dublin	OH	43016
1203	West Acres	3902 13 <sup>th</sup> Ave. South	Space 217	Fargo	ND	58103
1206	Woodland Mall	3175 28 <sup>th</sup> Street SE, Ste E102		Grand Rapids	MI	49508
1210	Westfield UTC – San Diego	4505 La Jolla Village Drive		San Diego	CA	92122
1217	Westfield Hawthorn	325 Hawthorn Center		Vernon Hills	IL	60061
1218	The Village at Dayton Mall	2796 Miamisburg-Centerville Road		Dayton	OH	45459
1219	CoolSprings Galleria	1800 Galleria Blvd Suite 2360		Franklin	TN	37067
1220	Honey Creek Mall	3401 US Highway 41		Terre Haute	IN	47802
1222	Baybrook Mall	1342Baybrook Mall		Friendswood	TX	77546

Location Number	Location Name	Address	Address	City	State	Zip Code
1223	Mall of Louisiana	6401 Bluebonnet Blvd.	Suite B650	Baton Rouge	LA	70836
1224	Westfield Garden State Plaza	1069 Garden State Plaza		Paramus	NJ	07652
1227	Southgate Mall	2901 Brooks Street		Missoula	MT	59801
1228	Crabtree Valley Mall	4325 Glenwood Avenue		Raleigh	NC	27612
1230	Westmoreland Mall	5256 Route 30	Suite NL8	Greensburg	PA	15601
1232	Mid Rivers	2040 Mid-Rivers Mall		St. Peters	MO	63376
1236	St. Clair Square	196 St. Clair Square		Fairview Heights	IL	62208
1238	Columbia Center	634 Columbia Center		Kennewick	WA	99336
1246	Westfield Santa Anita	400 South Baldwin	Suite #340-L	Arcadia	CA	91007
1251	Superstition Springs Ctr	6555 E. Southern Ave.	Suite 2018	Mesa	AZ	85206
1255	Coral Ridge Mall	1451 Coral Ridge Avenue	Space 417	Coralville	IA	52241
1257	Meadows Mall	4300 Meadows Lane	Space 101	Las Vegas	NV	89107
1259	Lynnhaven Mall	701 Lynnhaven Parkway	Suite F05	Virginia Beach	VA	23452
1270	Westfield Annapolis	1400 Annapolis Mall	Space 111	Annapolis	MD	21401
1287	Northpark Mall MO	101 N. Range Line Road	Space 226	Joplin	MO	64801
1293	Twelve Oaks Mall	27690 Novi Road	Space D-183	Novi	MI	48377
1300	St. Charles Towne Center	11110 Mall Circle	Space P02	Waldorf	MD	20603
1303	Fashion Fair	651 E. Shaw Avenue		Fresno	CA	93710
1306	Dulles Town Center	21100 Dulles Town Center	Suite 285	Sterling	VA	20166
1322	River Hills Mall	1850 Adams Street	Suite 328/330	Mankato	MN	56001
1323	Apache Mall	648 Apache Mall		Rochester	MN	55902
1324	Alderwood Mall	3000 184 <sup>th</sup> Street SW	Space 112	Lynnwood	WA	98037
1325	Southern Park	7401 Market Street		Youngstown	OH	44512
1333	Deerbrook Mall	20131 Hwy 59	Suite 1412	Humble	TX	77338
1346	Mall of Georgia	3333 Buford Drive		Buford	GA	30519
1348	Marketplace Mall	2000 N. Neil Street		Champaign	IL	61820
1349	Tacoma Mall	4502 South Steel Street	Suite 1300	Tacoma	WA	98409
1350	The Shops at Mission Viejo	The Shops at Mission Viejo	Space 32	Mission Viejo	CA	92692
1353	White Marsh Mall	8200 Perry Hall Road	Space 2500	Baltimore	MD	21236

Location Number	Location Name	Address	Address	City	State	Zip Code
1358	Concord Mills	8111 Concord Mills Blvd.	Space 611	Concord	NC	28027
1359	South Bay Galleria	1815 Hawthorne Blvd	Space 226	Redondo Beach	CA	90278
1360	RiverTown Crossings	3700 Rivertown Parkway SW		Grandville	MI	49418
1364	Promenade Mall	40764 Winchester Road		Temecula	CA	92591
1365	Antelope Valley Mall	1233 West Avenue P.		Palmdale	CA	93551
1389	Galleria at Tyler	2039 Galleria at Tyler		Riverside	CA	92503
1392	Exton Square Mall	113 Exton Square Parkway	Space 2665	Exton	PA	19341
1393	Stonebriar Centre	2601 Preston Road	Space 2090	Frisco	TX	75034
1394	FlatIron Crossing	1 West FlatIron Crossing Drive	Space 2228	Broomfield	CO	80021
1396	Galleria at Roseville	1151 Galleria Blvd.	Suite 2058	Roseville	CA	95678
1397	Christiana Mall	511 Christiana Mall Rd.	Space 1100	Newark	DE	19702
1400	Arundel Mills	7000 Arundel Mills Circle	Suite 505	Hanover	MD	21076
1402	Rimrock Mall	300 S. 24 <sup>th</sup> St. West	Suite E-2	Billings	MT	59102
1404	Fox Run Mall	50 Fox Run Road	Space H-11	Newington	NH	03801
1406	Great Lakes Mall	7850 Mentor Ave		Mentor	OH	44060
1409	The Mall at Robinson	100 Robinson Center Drive	Box 2075	Pittsburgh	PA	15205
1415	The Mall @ Wellington Green	10300 W. Forrest Hill Blvd		Wellington	FL	33414
1417	West County	80 West County Center		Des Peres	MO	63131
1419	Layton Hills	2052 Layton Hills Mall		Layton	UT	84041
1421	College Mall	2942 B East 3 <sup>rd</sup> Street	Space G-01C	Bloomington	IN	47401
1422	Tyrone Square	6988 Tyrone Square	Space 1061	St. Petersburg	FL	33710
1423	Westfield Topanga	6600 Topanga Canyon Road	Suite 1058E	Canoga Park	CA	91303
1427	Memorial City Mall	303 Memorial City	Space 742	Houston	TX	77024
1429	Polaris Fashion Place	1500 Polaris Pkwy	Space 2018	Columbus	OH	43240
1432	Westfield Belden Village Mall	4230 Belden Village Mall	Ste A 14	Canton	OH	44718
1433	Westfield Oak Ridge	925 Blossom Hill Road	Suite 1096	San Jose	CA	95123
1434	Westfield Great Northern	4945 Great Northern Mall	Space 598	North Olmsted	OH	44070

Location Number	Location Name	Address	Address	City	State	Zip Code
1435	North East Mall	1101 Melbourne Road	Space A3G	Hurst	TX	76053
1436	Chandler Fashion Center	3111 West Chandler Blvd.	Suite 1128	Chandler	AZ	85226
1441	Perimeter Mall	4400 Ashford-Dunwoody Rd. Suite 1230		Atlanta	GA	30346
1442	Westfield Valencia Town Center	24201 W. Valencia Blvd.		Valencia	CA	91355
1443	Westfield Montgomery	7101 Democracy Blvd. Space 2020		Bethesda	MD	20817
1449	Westfield Countryside	27001 US 19	Space 1029	Clearwater	FL	33761
1453	Maple Grove – Arbor Lakes	12111 Elm Creek Blvd.		Maple Grove	MN	55369
1455	Deer Park Town Center	Long Grove Road		Deer Park	IL	60010
1456	The Florida Mall	8001 S. Orange Blossom Trail	Suite 190	Orlando	FL	32809
1463	Geneva Commons	1522 Commons Drive		Geneva	IL	60134
1469	Potomac Mills Mall	2700 Potomac Mills Circle	Space 675	Prince William Count	VA	22192
1477	Sherman Oaks – Fashion Square	14006 Riverside Drive		Sherman Oaks	CA	91423
1478	Lehigh Valley Mall	250 Lehigh Valley Mall	Suite 2069	Whitehall	PA	18052
1485	The Avenue Viera	Lake Andrew Drive		Viera	FL	32940
1488	Coastal Grand	2000 Coastal Grand Circle		Myrtle Beach	SC	29577
1490	Quail Springs Mall	2501 W. Memorial Road	Suite #143	Oklahoma City	OK	73134
1500	St Johns Town Center	Town Center Parkway	Suite D-43	Jacksonville	FL	32225
1501	Walden Galleria	One Walden Galleria	Suite D-219	Buffalo	NY	14225
1502	Crossgates Mall	1 Crossgate Mall Road	Suite E-209	Albany	NY	12203
1504	Loveland – Shops at Centerra	5865 Sky Pond Drive Suite G148		Loveland	CO	80538
1505	Brookfield Square	95 N. Moorland Avenue	Space 24	Brookfield	WI	53005
1506	Cross Creek Mall	705 Cross Creek Mall, Ste 200		Fayetteville	NC	28303
1507	Firewheel Center	160 Cedar Sage Dr Space C05		Garland	TX	75040
1508	Algonquin Commons	1746 South Randall Road		Algonquin	IL	60156
1511	The Summit Sierra	13925 S Virginia Street Suite 246		Reno	NV	89511

Location Number	Location Name	Address	Address	City	State	Zip Code
1512	Capital City Mall	3506 Capital City Mall Drive	Suite 809	Camp Hill	PA	17011
1514	Bangor Mall	663 Stillwater Avenue		Bangor	ME	04401
1517	South Hills Village	301 South Hills Village		Pittsburgh	PA	15241
1520	Louisville-Paddock Shops	4300 Summit Plaza		Louisville	KY	40241
1521	The Shoppes at Eastchase	7072 Eastchase Pkwy		Montgomery	AL	36117
1522	Asheville Mall	3 South Tunnel Road		Asheville	NC	28805
1523	Dover Mall	1365 Dover Mall	Unit #112	Dover	DE	19901
1524	Westfield Capital Mall	625 Black Lake Blvd.		Olympia	WA	98502
1525	Coon Rapids – Riverdale Village	12609 Riverdale Blvd NW Suite 111		Coon Rapids	MN	55433
1527	Irvine Spectrum Center	652 Spectrum Center Drive	Suite 938	Irvine	CA	92618
1528	Aurora – Southlands Mall	6295 South Main St Suite 101		Aurora	CO	80016
1539	Scranton – Shoppes at Montage	1131 Shoppes Blvd Suite 1131		Moosic	PA	18507
1543	The Shoppes at Webb Gin	1250 Scenic Hwy Suite 1224		Snellville	GA	30078
1544	Prien Lake Mall	496 West Prien Lake Road		Lake Charles	LA	70601
1547	Broadway Square Mall	4601 S. Broadway	Unit G02	Tyler	TX	75703
1551	Apple Blossom Mall	1850 Apple Blossom Drive	Room N157A	Winchester	VA	22601
1552	Bowie Town Center	15606 Emerald Way		Bowie	MD	20716
1553	Corona – The Shops at Dos Lagos	2785 Cabot Dr Suite 130		Corona	CA	92883
1554	Grand Traverse Mall	3200 S. Airport Road West		Traverse City	MI	49684
1555	Hulen Mall	4800 S. Hulen Street	Space 1555	Fort Worth	TX	76132
1556	Fashion Place	6191 S. State	Suite 1815	Murray	UT	84107
1558	The Shops at Saucon Valley	2880 Center Valley Pkwy	Space 617	Allentown	PA	18034
1559	The Greene	4419 Walnut St Suite F117		Dayton	OH	45440
1560	Patrick Henry Mall	12300 Jefferson Ave Suite 703		Newport News	VA	23602
1562	Pinnacle Hills Promenade	2203 Promenade Blvd Suite 8115		Rogers	AR	72758
1564	Bayshore Town Center	5900 N. Port Washington		Milwaukee	WI	53217

Location Number	Location Name	Address	Address	City	State	Zip Code
1565	The Streets at Southpoint	6910 Fayette Rd	Suite 192	Durham	NC	27713
1566	Plainfield – Metropolis	340 Metropolis Mile	Suite B105	Plainfield	IN	46168
1568	Mayfaire Town Center	6835 Conservation Way		Wilmington	NC	28405
1569	The Avenue Peachtree City	502 Circle Gate		Peachtree City	GA	30269
1572	McCain Mall	3929 McCain Blvd		North Little Rock	AR	72116
1574	Poughkeepsie Galleria	2001 South Road		Poughkeepsie	NY	12601
1575	Destiny USA	9090 Destiny USA Drive	Space F125	Syracuse	NY	13204
1577	Brea Mall	1006B Brea Mall		Brea	CA	92821
1579	Westminster Mall	1107 Westminster Mall	Ste 1107	Westminster	CA	92683
1580	SanTan Village	2212 E. Williamsfield Rd	Suite 436	Gilbert	AZ	85296
1581	York Galleria	2899 Whiteford Rd	Suite #110	York	PA	17402
1583	Victoria Gardens	7900 Monet Ave		Rancho Cucamonga	CA	91729
1586	Louis Joliet	3340 Mall Loop Dr Space 1065		Chicago	IL	60431
1587	Westfield Old Orchard	4999 Old Orchard Center	Suite B15	Skokie	IL	60077
1588	Warrington –Valley Square	1524 Main Street	Building 8, Suite 802	Warrington	PA	18976
1589	Serramonte Center	3 Serramonte Center	Space #725	Daly City	CA	94015
1591	Shoppes at Fallen Timbers	3100 Main Street	Suite 1130	Maumee	OH	43537
1594	Promenade Bolingbrook	619 E Boughton Rd		Bolingbrook	IL	60440
1595	Bel Air Mall	3487 Bel air Mall	Space C-10	Mobile	AL	36606
1599	The Village of Rochester Hills	130 N Adams Rd		Rochester Hills	MI	48309
1601	The Avenue Murfreesboro	2615 Medical Center Pkwy	Suite 2385	Murfreesboro	TN	37129
1602	Gulf View Square	9409 US Hwy 19		Port Richey	FL	34668
1603	Easton Town Center	230 Easton Town Center	C204	Columbus	OH	43219
1607	Francis Scott Key	5500 Buckeystown Pike Space 666		Frederick	MD	21703
1609	The Shops at Wiregrass	28329 Paseo Drive	Unit 170 Bld 11	Wesley Chapel	FL	33544
1610	The Shops at La Cantera	15900 La Cantera Pkwy	Suite 7700	San Antonio	TX	78256
1611	Shops at Pembroke Gardens	14541 Southwest 5 <sup>th</sup> St	Ste 4090	Pembroke Pines	FL	33027
1613	Westgate Mall	7701 Interstate 40 W Suite 116		Amarillo	TX	79121

Location Number	Location Name	Address		City	State	Zip Code
1616	Georgetown – Wolf Ranch	1013 W University Ave Suite 140		Georgetown	TX	78628
1618	Northwoods Mall	2150 Northwoods Blvd.		North Charleston	SC	29406
1619	Harford Mall	696 Bel Air Rd	Space J12	Bel Air	MD	21014
1620	ABQ Uptown	2200 Louisiana Blvd NE	Suite 8B	Albuquerque	NM	87110
1621	Shreveport – Shoppes @ Bellemeade	6535 Youree Dr Suite 405		Shreveport	LA	71105
1623	Dakota Square	2400 10 <sup>th</sup> St SW Suite 405		Minot	ND	86303
1627	Town Center at Boca Raton	6000 Glades Road	Suite A1305	Boca Raton	FL	33431
1628	Northpark Mall MS	1200 East County Line Road	Suite 266	Ridgeland	MS	39157
1629	Streets of West Chester	9441 Civic Center Drive	Suite A-4	West Chester	OH	45069
1630	Shoppes at River Crossing	5080 Riverside Drive	Suite 410	Macon	GA	31210
1632	The Promenade at Chenal	17721 Chenal Parkway	Suite B101	Little Rock	AR	72223
1634	Augusta Mall	3450 Wrightsboro Road	Suite A205	Augusta	GA	30909
1636	McAllen – Palms Crossing	3300 Expressway 83	Building 100, Suite 160	McAllen	TX	78501
1639	Colerian – Stone Creek Towne Ctr	3645 Stone Creek Towne Blvd	Suite C	Colerain Township	OH	45251
1640	Reading Shoppes at Wyomissing	710 Woodland Road	Suite W	Wyomissing	PA	19610
1641	Zona Rosa	7300 NW 87 <sup>th</sup> Terrace	Suite H109	Kansas City	MO	64153
1643	Valley Plaza Mall	2701 Ming Ave	Suite 152	Bakersfield	CA	93304
1645	Hamilton Town Center	13976 Towne Center Road	Suite 800	Noblesville	IN	46060
1646	Shoppes at Hamilton	541 Route 130	Suite 432	Hamilton	NJ	08691
1647	Shoppes at Cross Keys	611 Cross Keys Road	Suite B227	Sicklerville	NJ	08081
1648	Woodbury Lakes	9000 Hudson Road	Suite 616	Woodbury	MN	55125
1649	Meadows at Lake Saint Louis	21 Meadows Circle Drive	Suite 320	Lake St. Louis	MO	63367
1650	Pearland Town Center	11200 Broadway	Suite 410	Pearland	TX	77584
1657	Marlton – Promenade at Sagemore	500 Route 73 south	Suite C18	Marlton	NJ	08053
1661	The District at Valley View	4822 Valley View Blvd NW	Suite L-06	Roanoke	VA	24012
1662	Corpus Christi – Moore Plaza	5425 South Padre Island Drive		Corpus Christi	TX	78411

Location Number	Location Name	Address	Address	City	State	Zip Code
1663	Orange Park – Blanding Blvd	528-6 Blanding Blvd	Suite 6	Orange Park	FL	32073
1664	Arden Fair	1689 Arden Way	Suite 1020	Sacramento	CA	95815
1665	Redwood City	570 El Camino Real	Suite 100	Redwood City	CA	94063
1667	Scottsdale at Camelback	4545 N. Scottsdale Road	Suite 103	Scottsdale	AZ	85251
1668	Sarasota – Fruitville Rd.	5077 Fruitville Road	Suite 101	Sarasota	FL	34232
1670	San Antonio – Quarry Village	340 E Basse Road	Suite 105	San Antonio	TX	78209
1671	Richmond – Short Pump	11833 W. Broad Street		Richmond	VA	23233
1673	Valley Fair Mall	Suite B329	2855 Stevens Creek Blvd	Santa Clara	CA	95050
1674	Henderson – Sunset Plaza	1124 W Sunset Road		Henderson	NV	89014
1675	Houston – Champions	5203 SM 1960 W	Suite Z	Houston	TX	77069
1676	Shops at Southlake	1251 E Southlake Blvd	Suite 337	Southlake	TX	76092
1677	E. Vancouver-Lacamas Crossing	19206 SE 1 <sup>st</sup> Street	Suite 120	Camas	WA	98607
1678	Paducah	5128 Hinkleville Rd		Paducah	KY	42001
1679	Aurora, IL	4412 East New York St	Unit C	Aurora	IL	60504
1680	Mishawaka – University Crossing	103 E University Drive		Granger	IN	46530
1682	Oakbrook Promenade	3031 Butterfield Road		Oak Brook	IL	60523
1683	The Plaza at Speedway	10810 Parallel Parkway		Kansas City	KS	66109
1685	Fairlawn – West Market Plaza	3891G Medina Road		Akron	OH	44333
1686	Wichita East – 21 <sup>st</sup> /Rock	2210 N. Rock Road		Wichita	KS	67226
1687	Lee’s Summit	940 NW Blue Parkway	Suite C	Lee’s Summit	MO	64086
1688	Greenville – Magnolia Park	1025 Woodruff Road	Suite A101	Greenville	SC	29607
1689	Davenport – Elmore Crossing	5270 Elmore Avenue		Davenport	IA	52807
1692	Austin – Southpark Meadows	9900 Southbound IH 35 Suite W400		Austin	TX	78748
1694	CO Springs – Citadel Crossing	739 N. Academy Boulevard		Colorado Springs	CO	80909
1695	Grand Junction	2504 Hwy 6 & 50	Suite 250	Grand Junction	CO	81505
1696	Redlands	1271 Alabama St.		Redlands	CA	92374
1697	Westfield Culver City	6000 Sepulveda Blvd Suite 2391		Culver City	CA	90230



Location Number	Location Name	Address		City	State	Zip Code
1699	Columbus, GA	6759 Veterans Parkway		Columbus	GA	31909
1700	Hesperia – High Desert Gateway	12717 Main Street	Suite 520	Hesperia	CA	92345
1701	Greenwood Corner	8707 U.S. 31 South		Greenwood	IN	46227
1702	Valley Mall	17301 Valley Mall Road	Unit #530	Hagerstown	MD	21740
1703	Tucon – Oracle Wetmore	4362 North Oracle Road	Suite 104	Tucson	AZ	85705
1704	Orlando – Waterford Lakes	326 N. Alafaya Trail		Orlando	FL	32828
1705	Covington, LA	70415 Hwy 21 Suite D		Covington	LA	70433
1706	Pittsburgh Mills Blvd	2029 Pittsburgh Mills Boulevard		Tarentum	PA	15084
1707	Waco – Central Texas Marketplace	2808 W Loop 340	Suite H15	Waco	TX	76711
1709	First Colony Mall	270 First Colony Mall	16535 Southwest Freeway	Sugar Land	TX	77479
1711	Beachwood – Chagrin Blvd.	27889 Chagrin Blvd		Woodmere	OH	44122
1713	Dallas – Park Lane	8060 Park Lane Suite 108		Dallas	TX	75231
1714	Opry Mills	157 Opry Mills Drive	523A	Nashville	TN	37214
1715	Arborland Center	3597-C Washtenaw Avenue		Ann Arbor	MI	48104
1717	Metairie – Veterans Blvd.	4852 Veteran Memorial Blvd	Suite A	Metairie	LA	70006
1718	McKinney	1920 El Dorado Parkway	Suite 200	McKinney	TX	75069
1720	Gurnee	6631 Grand Avenue, Unit 3		Gurnee	IL	60031
1721	Santa Fe	3530 Zafarano Drive	Suite C5	Santa Fe	NM	87507
1722	Westfield Mainplace	2800 North Main Street	Suite 740	Santa Ana	CA	92705
1723	Austin – Domain	3310 W. Braker Lane		Austin	TX	78758
1725	Indianapolis – Keystone	4205 East 82 <sup>nd</sup> Street		Indianapolis	IN	46250
1726	Arbor Place	6700 Douglasville Blvd	Space 1390	Douglasville	GA	30135
1727	Springfield Mall	1250 Baltimore Pike	Suite U10A	Springfield	PA	19064
1728	Edina – France Ave.	3871 Gallagher Drive		Edina	MN	55435
1729	Buckhead – Lenox Rd.	3435 Lenox Road NE		Atlanta	GA	30326
1730	Erie Marketplace	7060 Peach Street		Erie	PA	16509

Location Number	Location Name	Address	Address	City	State	Zip Code
1731	Brentwood, MO	1016 South Brentwood Boulevard		St. Louis	MO	63117
1732	Norman – University Town Center	1621 24 <sup>th</sup> Ave NW		Norman	OK	73069
1733	Orem – University Pkwy	160 East University Parkway	Suite A	Orem	UT	84097
1734	Fort Lauderdale – Federal Why.	2141 North Federal Highway		Fort Lauderdale	FL	33305
1735	Watchung NJ	116 Route 22		North Plainfield	NJ	07060
1736	Pineville	8912 Unit C Pineville-Matthews Rd		Pineville	NC	28226
1737	Federicksburg – Central Park	1440 Carl D Silver Parkway		Fredericksburg	VA	22401
1738	Wausau	4720 Rib Mountain Drive	Suite 102	Wausau	WI	54401
1740	Delafield	2916 Golf Rd		Delafield	WI	53018
1741	McDonough-South Point	1434 Hwy 20 West		McDonough	GA	30252
1742	Streets of Brentwood	2375 Sand Creek Road, #108		Brentwood	CA	94513
1744	West Omaha	17710 West Center Road	Suite 300	Omaha	NE	68130
1745	St Cloud	4170 Division Street	Suite 110	St. Cloud	MN	56302
1746	Sandy – State/11400	66 West 11400 South		Sandy	UT	84070
1747	Denver West-Colfax Ave.	14025 W Colfax Drive		Lakewood	CO	80401
1748	Blue Springs – Adams Dairy	705 NE Coronado Drive		Blue Springs	MO	64015
1749	Biloxi – Promenade at Dlberville	3868 Promenade Parkway	Suite B	Biloxi	MS	39540
1751	Ocala	2645 SW College Road	Suite 101	Ocala	FL	34471
1752	Pinecrest – Dixie Hwy.	12235 S Dixie Hwy		Pinecrest	FL	33156
1754	Knoxville-Turkey Creek	10901 Parkside Dr	Suite 104	Knoxville	TN	37922
1755	Southaven	200 Goodman Road	Suite 105	Southaven	MS	38671
1756	Troy	491 E Big Beaver Rd		Troy	MI	48083
1757	Spokane Valley	13920 East Indiana Ave Suite A		Spokane	WA	99211
1758	Springfield MO	1315 E Battlefield Rd		Springfield	MO	65804
1759	Glendale CO-Colorado Blvd.	895 S. Colorado Boulevard		Denver	CO	80246

Location Number	Location Name	Address	Address	City	State	Zip Code
1760	Roseville MN	1719 County Road B2 West		Roseville	MN	55113
1761	Sioux City	5001 Sergeant Road	Suite 255 – Unit 30	Sioux City	IA	51106
1762	Eugene	1125 Valley River Dr	Suite A	Eugene	OR	97401
1763	Eau Claire	4734 Golf Road		Eau Claire	WI	54701
1764	Idaho Falls	2001 S 25 <sup>th</sup> E	Space D-1	Ammon	ID	83406
1765	Redding – Shasta Crossing	1315 Churn Creek Road Suite G2		Redding	CA	96003
1766	Richmond – Midlothian	11530 Midlothian Turnpike		Midlothian	VA	23235
1767	St. Joseph	5307 N Belt Highway	Suite 101	St Joseph	MO	64506
1768	Overland Park – 95 <sup>th</sup> /Quivira	11916 W 95 <sup>th</sup> St		Lenexa	KS	66215
1769	El Paso-Fountains at Farah	8889 Gateway W Blvd	Ste 1210	El Paso	TX	79925
1770	Walnut Creek	1619 Mt Diablo Blvd		Walnut Creek	CA	94596
1771	Glendale, CA	350 North Glendale Ave	Ste G	Glendale	CA	91206
1772	The Shoppes at Chino Hills	13855 City Ctr Dr, Suite 3025		Chino Hills	CA	91709
1774	Elk Grove	9158 W Stockton Blvd		Elk Grove	CA	95758
1775	Charlottesville Fashion Square	1600 Rio Rd E	Room 1214C	Charlottesville	VA	22901
1776	Lincoln Park – Clybourn Ave	1801 N Clybourn Ave		Chicago	IL	60614
1777	North Charlotte	9402 Northlake West Drive		Charlotte	NC	28216
1778	Lafayette IN	2131 Sagamore Parkway South	Suite B	Lafayette	IN	47905
1779	Tampa – Westshore Blvd	4270 Spruce Street		Tampa	FL	33607
1780	Santa Barbara	3993 State Street	Five Points Shopping Center	Santa Barbara	CA	93105
1781	Seaside, CA	1957 Fremont Blvd		Seaside	CA	93955
1782	Pinole	1471 Fitzgerald Drive	Suite 103	Pinole	CA	94564
1783	Manhasset	1575 Northern Boulevard		Manhasset	NY	11030
1784	Fairfield CT	340 Grasmere Ave		Fairfield	CT	06825
1786	East Hanover	290 Routh 10 West		East Hanover	NJ	07936
1787	Cambridge	357 Fresh Pond Parkway		Cambridge	MA	02138
1788	Fort Wayne	4602 Illinois Road, Suite 102		Fort Wayne	IN	46804

Location Number	Location Name	Address	Address	City	State	Zip Code
1789	Danbury CT	3 Sugar Hollow Road Suite 3B		Danbury	CT	06810
1791	Knoxville – West Hills	7731 KINGSTON PIKE, SUITE 101		Knoxville	TN	37919
1792	Greenville NC – 11 Galleria	11 Galleria Shopping Center	920 Criswell Drive, Suite 101	Greenville	NC	27834
1793	Melville	520 Walt Whitman Road		Melville	NY	11747
1794	Mountain View	2580 West El Camino Real, Suite 6		Mountain View	CA	94040
1795	Cerritos	11400 South Street		Cerritos	CA	90703
1797	Santa Maria	2134 S Bradley Road Suite B-2		Santa Maria	CA	93455
1798	Mall at Rockingham Park	99 Rockingham Park Blvd	Suite E206	Salem	NH	03079
1799	Northshore Mall	210 Andover Street Ste P123A		Peabody	MA	01960
1803	College Station	1530 Texas Ave S	Ste 500	College Station	TX	77840
1804	Burlington MA	90 Middlesex Turnpike		Burlington	MA	01803
1806	Lincoln-O Street	6005 O Street	Suite C	Lincoln	NE	68501
1807	Duluth	2104 Maple Grove Road		Duluth	MN	55811
1808	Sioux Falls	3600 W 41 <sup>st</sup> Street		SIOUX FALLS	SD	57106
1809	Santa Monica	1332 Wilshire Blvd		Santa Monica	CA	90403
1810	San Dimas	462 N Lone Hill Ave		San Dimas	CA	91773
1813	Fremont – Pacific Commons	43838 Pacific Commons Blvd		Fremont	CA	94538
1814	Nashville – Belle Meade	96 White Bridge Pike	Suite 104	Nashville	TN	37205
1815	Vacaville – Nut Tree	1615 Monte Vista Ave	Suite 101	Vacaville	CA	95688
1816	Spokane – North Division	5903 N. Division Street		Spokane	WA	99208
1819	San Antonio-Selma	15069 IH 35 N, #102		Selma	TX	78154
1820	Athens	1789 Oconee Connector		Athens	GA	30606
1821	Oxnard – Riverpark	2740 Portico Way		Oxnard	CA	93036
1822	Pensacola	1500 Airport Blvd		Pensacola	FL	32504
1823	Woodbridge	171 Route 1 South		Woodbridge	NJ	08840
1824	Waterloo	2027 Crossroad Blvd.		Waterloo	IA	50702
1825	Rapid City	1734 Eglin Street	Suite 700	Rapid City	SD	57701
1826	Moreno Valley	2711 Canyon Springs Parkway		Riverside	CA	92507
1828	Green Bay	2330 Oneida Street		Green Bay	WI	54304
1829	Evansville	499 N. Green River Rd		Evansville	IN	47715

Location Number	Location Name	Address	Address	City	State	Zip Code
1830	Gastonia	2272 E. Franklin Blvd	Ste 100	Gastonia	AL	28054
1832	Brick	709 Route 70		Brick	NJ	08723
1833	Hattiesburg	6156 Hwy 98 West		Hattiesburg	MS	39402
1834	Parkway Place	2801 Memorial Parkway South	Suite R236	Huntsville	AL	35801
1836	Cumming GA	1530 Market Place Blvd		Cumming	GA	30041
1837	Columbia – Two Notch Rd.	10254 Two Notch Road		Columbia	SC	29229
1838	Santa Rosa	2350 Santa Rosa Ave.		Santa Rosa	CA	95407
1839	Manchester CT – Evergreen Walk	201 Evergreen Way		South Windsor	CT	06074
1840	Greenfield	5096 South 76 <sup>th</sup> St		Greenfield	WI	53220
1841	West Des Moines	6630 Mills Civic Parkway		West Des Moines	IA	50266
1842	South County – Lindbergh Blvd.	7333 S Lindburgh Blvd, Ste B		St Louis	MO	63125
1843	Florence KY	6785 Houston Road	Suite 100	Florence	KY	41042
1844	Houston-Kirby Village	5819-A Kirby Drive		Houston	TX	77005
1845	New London – Waterford Commons	915 Hartford Turnpike, Suite 28B		Waterford	CT	06385
1847	Emeryville – Bay Street	5683 Bay Street		Emeryville	CA	94608
1848	Bend-The Forum	2680 NE Highway 20		Bend	OR	97701
1849	Cranston – Garden City Center	14 Hillside Road		Cranston	RI	02920
1850	Hillsboro – Tanasbourne	2790 NW 188 <sup>th</sup> Ave		Hillsboro	OR	97124
1851	Northglenn CO	Webster Lake Promenade Shopping Center	100 East 129 <sup>th</sup> Avenue, Unit B110	Northglenn	CO	80233
1852	Lindale Mall	4444 1 <sup>st</sup> Ave NE		Cedar Rapids	IA	52402
1853	Pittsburgh – Ross Township	4840 McKnight Rd, Ste A		Pittsburgh	PA	15237
1855	Topeka	1133 SW Wanamaker Road		Topeka	KS	66604
1856	Santee – Trolley Square	9824 Mission George Road, Suite E		Santee	CA	92071
1858	Boynton Beach	390 N Congress Ave		Boynton Beach	FL	33426
1859	Dothan	3431 Montgomery Highway	Suite 1	Dothan	AL	36303
1861	Aventura	18650 Biscayne Blvd		Aventura	FL	33180

Location Number	Location Name	Address	Address	City	State	Zip Code
1862	Fort Myers	12635 S Cleveland Ave, #102		Ft. Myers	FL	33907
1863	Aspen Grove	7301 S Santa Fe Dr		Littleton	CO	80120
1864	Chesterfield – Boones Crossing	16890 Chesterfield Airport Rd.		Chesterfield	MO	63005
1865	Chico Crossroads	2065 Dr. Martin Luther King Jr. Parkway		Chico	CA	95928
1866	Toledo-Monroe St.	5254 Monroe Street		Toledo	OH	43623
1867	Meridian ID	3680 E Fairview Ave, Ste 100		Meridian	ID	83642
1868	Gainesville VA	The Promenade at Virginia Gateway	14065 Promenade Commons Street	Gainsville	VA	20155
1869	Petaluma	901 E. Washington St.		Petaluma	CA	94952
1870	Totowa	578 Route 46		Totowa	NJ	07512
1871	Ridge Hill	77 Market Street		Yonkers	NY	10710
1872	Wichita West – New Market Square	2441North Maize Road, Ste 2501		Wichita	KS	67205
1873	Greenwood Mall	2625 Scottsville Road		Bowling Green	KY	42104
1874	Cedar Hill – Pleasant Run Rd.	415 Pleasant Run Rd		Cedar Hill	TX	75104
1875	North Ridge – Porter Ranch	19765 #A Rinaldi Street		Northridge	CA	91326
1876	Quaker Bridge Mall	3320 US Hwy 1		Lawrenceville	NJ	06848
1877	City Center – San Francisco	2675 Geary Boulevard		San Francisco	CA	94118
1878	Longview TX	3088 North Eastman Road, Ste 104		Longview	TX	75605
1879	Medford, OR	1765 N. Riverside Ave		Medford	OR	97501
1880	The Shops at Nanuet	75 West Route 59		Clarkstown	NY	10954
1881	Pecanland Mall	4700 Millhaven Rd		Monroe	LA	71203
1882	Coconut Point	23140 Fashion Drive		Estero	FL	33982
1883	Jackson TN	1232 Vann Dr		Jackson	TN	38305
1884	Savannah – Abercorn	7805 Abercorn Street		Savannah	GA	31406
1886	Overland Park – Corbin Park	6725 W 135 <sup>th</sup> St		Overland Park	KS	66223
1887	Westfield South Shore Mall	1701 Sunrise Highway		Bay Shore	NY	11706
1888	Saginaw	2721 Tittabawassee Rd		Saganaw	MI	48604
1889	Johnson City-Roan St	2301 North Roan St.		Johnson City	TN	37601

Location Number	Location Name	Address		City	State	Zip Code
1890	Greensboro – Wendover Village	4205 W Wendover Ave, Suite A		Greensboro	NC	27407
1891	Rockford IL	7310 Walton Street Suite B		Rockford	IL	61108
1892	Abilene	4225 Southwest Dr		Abilene	TX	79606
1893	CO Springs – N. Academy Blvd	7620 N Academy Blvd		Colorado Springs	CO	80902
1894	Lubbock TX	5605 Slide Road		Lubbock	TX	79414
1895	Birmingham – Hwy. 280	4618 Hwy 280	Suite 100	Birmingham	AL	35242
1896	New Hartford	4815 Commercial Drive	Ste 100	New Hartford	NY	13413
1897	Millbury – Shoppes at Blackstone	70 Worcester-Provident Turnpike	Suite 617	Millbury	MA	01527
1898	Frontier Mall	1400 Dell Range Blvd, Space 86		Cheyenne	WY	82009
1899	Burlington VT	205 Dorset St		South Burlington	VT	05403
1900	MIDLAND TX	4400 Midland Drive		Midland	TX	79707
1901	Kendall	12636 N Kendall Dr		Kendal	FL	33186
1902	Mall at Barnes Crossing	1001 Barnes Crossing Road		Tupelo	MS	38804
1903	Lafayette LA	4231 Ambassador Caffery Pkwy, Ste 3		Lafayette	LA	70508
1904	Austin – Cedar Park	909 E WHITESTONE BLVD STE A		CEDAR PARK	TX	78613
1905	Peachtree Corners	5150 Peachtree Parkway		Peachtree Corners	GA	30092
1906	Summerlin NV	11035 Lavender Hills Drive, Ste 100		Las Vegas	NV	89135
1907	Spartanburg	210 W Blackstock Road		Spartanburg	SC	29301
1908	Tysons Corner	1961 Chain Bridge Rd	Space O05L	Mclean	VA	22102
1909	Springfield	6839 Springfield Mall		Springfield	VA	22150
1910	Palm Desert	44489 Town Center Way, Suite A		Palm Desert	CA	92260
1911	Peoria IL	Sterling Commings	4119 N Sterling Avenue	Peoria	IL	61615
1912	Tulsa – 71 <sup>st</sup> St.	9205 E 71 <sup>st</sup> Street		Tulsa	OK	74133
1913	Westfield Citrus Park	8067 Citrus Park Town Center		Tampa	FL	33625
1914	West Plano – Park Blvd	2100 Dallas Parkway, Suite 124		Plano	TX	75093
1915	Orland Park	15631 South LaGrange Road		Orland Park	IL	60462

Location Number	Location Name	Address	Address	City	State	Zip Code
1916	Westbury NY	900 Old Country Road		Hempstead	NY	11590
1917	Tigard-Bridgeport Village	7211 SW Bridgeport Road		Tigard	OR	97224
1918	Lancaster PA	1480 Harrisburg Pike		Lancaster	PA	17601
1919	Davie FL	2115 S University Dr		Davie	FL	33324
1920	Columbia-Harbison Blvd	189 Harbison Blvd, Ste B		Columbia	SC	29212
1921	VALDOSTA	1701 NORMA DRIVE, STE C		VALDOSTA	GA	31601
1922	Tucson-Broadway Blvd.	5465 E Broadway Blvd		Tucson	AZ	85711
1923	Natick	1245 Worcester St; Suite 1052		Natick	MA	01760
1924	Dubuque – Asbury Plaza	2515 Northwest Arterial Suite 9		Dubuque	IA	52002
1925	Cincinnati-Eastgate Marketplace	810 Eastgate North Drive, Ste 300		Cincinnati	OH	45245
1926	Gainesville FL	7011 W Newberry Road		Gainesville	FL	32605
1930	Houston Premium Outlet	29300 Hempstead Road		Cypress	TX	77433
1936	South Coast-Bristol St	3638 Briston Street	Metro Town Square	Santa Ana	CA	92704
1937	Tallahassee	346 South Magnolia Drive		Tallahassee	FL	32301
1215TEMP	Westfarms Mall	283 South Road	Space C214 Westfarms Mall	Farmington	CT	06032
6105 Corp	Plymouth Headquarters – 6105	6105 Trenton Lane N		Minneapolis	MN	55442
9800 Corp	Plymouth Headquarters – 9800	9800 59 <sup>th</sup> Ave N		Minneapolis	MN	55442
Irmo Distribution	South Carolina Distribution Center	630 Western Lane		Irmo	SC	29063
Irmo Storage	South Carolina Storage	1020 Idlewild Boulevard		Columbia	SC	29201
SLC Distribution	Salt Lake City Distribution Center	675 N. Wright Bros. Dr.		Salt Lake City	UT	84116
SLC Storage	Salt Lake City Storage	580 N. Wright Bros. Dr.		Salt Lake City	UT	84116
	International Home Furnishings Center	Space No. M637 210 East Commerce Avenue		High Point	NC	27260



**SCHEDULE 6.11**

**EMPLOYEE BENEFIT PLANS**

Medical (including prescription drug plan) Plan

Dental Plan

Vision Plan

Medical Flexible Spending Account Plan

Short Term Disability Plan

Life Insurance & AD&D Insurance Plan

Long Term Disability Plan

401(k) Plan

Employee Assistance Plan

Executive Severance Pay Plan

Executive Physical Plan

Executive Investment Plan

## SCHEDULE 6.16

### MATERIAL AGREEMENTS

As listed in the most recent 10-K of the Borrower for fiscal year 2014, filed February 27, 2015:

Exhibit No.	Description	Method of Filing
10.1	Net Lease Agreement dated December 3, 1993 between the Company and Opus Corporation	Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793)
10.2	Amendment of Lease dated August 10, 1994 between the Company and Opus Corporation	Incorporated by reference to Exhibit 10.2 contained in the Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793)
10.3	Second Amendment to Lease dated May 10, 1995 between the Company and Rushmore Plaza Partners Limited Partnership (successor to Opus Corporation)	Incorporated by reference to Exhibit 10.3 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793)
10.4	Letter Agreement dated as of October 5, 1995 between the Company and Rushmore Plaza Partners Limited Partnership	Incorporated by reference to Exhibit 10.4 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793)
10.5	Third Amendment of Lease, Assignment and Assumption of Lease and Consent dated as of January 1, 1996 among the Company, Rushmore Plaza Partners Limited Partnership and Select Comfort Direct Corporation	Incorporated by reference to Exhibit 10.5 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793)

<b>Exhibit No.</b>	<b>Description</b>	<b>Method of Filing</b>
10.6	Fourth Amendment to Lease dated June 30, 2003 between Cabot Industrial Properties, L.P. (successor to Rushmore Plaza Partners Limited Partnership) and Select Comfort Direct Corporation	Incorporated by reference to Exhibit 10.6 contained in Select Comfort's Annual report on Form 10-K for the fiscal year ended January 3, 2004 (File No. 0-25121)
10.7	Fifth Amendment to Lease dated August 28, 2006 between Cabot Industrial Properties, L.P. (successor to Rushmore Plaza Partners Limited Partnership) and Select Comfort Direct Corporation	Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Quarterly report on Form 10-Q for the quarter ended September 30, 2006 (File No. 0-25121)
10.8	Lease Agreement dated as of September 19, 2002 between the Company and Blind John, LLC (as successor to Frastacky (US) Properties Limited Partnership)	Incorporated by reference to Exhibit 10.6 contained in Select Comfort's Annual Report on Form 10-K for the fiscal year ended December 28, 2002 (File No. 0-25121)
10.9	Amendment Three to Lease between Select Comfort Corporation and Blind John, LLC dated February 28, 2012	Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Current Report on Form 8-K filed March 2, 2012 (File No. 0-25121)
10.10	Lease Agreement dated September 30, 1998 between the Company and ProLogis Development Services Incorporated	Incorporated by reference to Exhibit 10.12 contained in Select Comfort's Annual Report on Form 10-K for the fiscal year ended December 28, 2002 (File No. 0-25121)
10.11	Net Lease Agreement (Build-to-Suit) by and between Opus Northwest LLC, as Landlord, and Select Comfort Corporation, as Tenant, dated July 26, 2006	Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Quarterly report on Form 10-Q for the quarter ended July 1, 2006 (File No. 0-25121)
10.17	Select Comfort Corporation Amended and Restated 2010 Omnibus Incentive Plan	Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Current Report on Form 8-K filed May 15, 2013 (File No. 0-25121)
10.21	Select Comfort Executive Investment Plan (December 1, 2014 Restatement)	Filed herewith

<b>Exhibit No.</b>	<b>Description</b>	<b>Method of Filing</b>
10.29	Amended and Restated Select Comfort Corporation Executive Severance Pay Plan	Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Current Report on Form 8-K filed August 21, 2008 (File No. 0-25121)
10.30	First Amendment to Amended and Restated Select Comfort Corporation Executive Severance Pay Plan	Incorporated by reference to Exhibit 10.34 contained in Select Comfort's Annual Report on Form 10-K for the fiscal year ended January 3, 2009 (File No. 0-25121)
10.32	Master Supply Agreement dated July 16, 2013 between the Company and Supplier <sup>(1)</sup>	Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended September 28, 2013 (File No. 0-25121)
10.33	Retailer Program Agreement effective as of January 1, 2014 by and between Synchrony Bank, Select Comfort Corporation and Select Comfort Retail Corporation <sup>(1)</sup>	Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended June 28, 2014 (File No. 0-25121)
10.34	First Amendment to Retailer Program Agreement, dated effective as of October 1, 2014 by and between Synchrony Bank, Select Comfort Corporation and Select Comfort Retail Corporation	Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Current Report on Form 8-K filed October 1, 2014 (File No. 0-25121)

**SCHEDULE 6.17****INTELLECTUAL PROPERTY****1. U.S. and Foreign Patent Registrations.**

- All patent registrations listed below are assigned to Select Comfort Corporation with the exception of the last two registrations (US Patent Nos. 7,389,554 and 6,804,848) which are assigned to Select Comfort SC Corporation, a subsidiary of Select Comfort Corp.

TITLE	Country	Application No.	Patent No.	Expiration Date
Improved Air Control System for an Air Bed	Australia	1996051371	692,687	18-Oct-15
System and Method for Detecting a Leak in an Air Bed	Australia	2007353871	2007353871	24-May-27
System and Method for Improved Pressure Adjustment	Australia	2008353972	2008353972	4-Apr-28
Remote Control	Australia	14579/20133	351372	13-Sep-23
Interactive Air Bed	Austria	2734718.6	1392143	7-Jun-22
Interactive Air Bed	Belgium	2734718.6	1392143	7-Jun-22
Improved Air Control System for an Air Bed	Canada	2204260	2204260	18-Oct-15
Improved Air Control System for an Air Bed	Canada	2538933	2538933	18-Oct-15
Improved Air Control System for an Air Bed	Canada	2563027	2563027	18-Oct-15
Inflatable Mattress with Improved Border Support Wall	Canada	2232657	2232657	19-Sep-16
Valve Enclosure Assembly	Canada	2243942	2243942	28-Jul-18
Interactive Air Bed	Canada	2449094	2449094	7-Jun-22
System and Method for Detecting a Leak in an Air Bed	Canada	2688027	2688027	24-May-27
System and Method for Improved Pressure Adjustment	Canada	2720467	2720467	4-Apr-28

TITLE	Country	Application No.	Patent No.	Expiration Date
Improved Air Control System for an Air Bed	Czech Republic	PV1319-97	297 809	18-Oct-15
System and Method for Improved Pressure Adjustment	Czech Republic	8745110.0	2273903	4-Apr-28
Interactive Air Bed	Denmark	2734718.6	1392143	7-Jun-22
Improved Air Control System for an Air Bed	Europe	95940626.5	789,976	18-Oct-15
Interactive Air Bed	Europe	2734718.6	1392143	7-Jun-22
System and Method for Improved Pressure Adjustment	Europe	8745110.0	2273903	4-Apr-28
Remote Control	Europe	001384333-0001	001384333-0001	16-Sep-38
Interactive Air Bed	Finland	2734718.6	1392143	7-Jun-22
Design for Hand Held Remote Control Unit	France	952481	952481	26-Apr-20
Interactive Air Bed	France	2734718.6	1392143	7-Jun-22
Interactive Air Bed	Germany	2734718.6	1392143	7-Jun-22
Interactive Air Bed	Ireland	2734718.6	1392143	7-Jun-22
Interactive Air Bed	Italy	2734718.6	1392143	7-Jun-22
Improved Air Control System for an Air Bed	Japan	1996-514868	3,824,640	18-Oct-15
Improved Air Control System for an Air Bed	Mexico	MX/a/1997/0003190	194,151	18-Oct-15
Interactive Air Bed	Netherlands	2734718.6	1392143	7-Jun-22
Improved Air Control System for an Air Bed	New Zealand	297205	297,205	18-Oct-15
Improved Air Control System for an Air Bed	New Zealand	334239	334,239	18-Oct-15

Remote Control	New Zealand	41806	418046	13-Sep-36
Interactive Air Bed	Norway	20035246	325087	7-Jun-22

TITLE	Country	Application No.	Patent No.	Expiration Date
Interactive Air Bed	Spain	2734718.6	1392143	7-Jun-22
Interactive Air Bed	Sweden	2734718.6	1392143	7-Jun-22
Improved Air Control System for an Air Bed	United Kingdom	95940626.5	789,976	18-Oct-15
System and Method for Improved Pressure Adjustment	United Kingdom	8745110.0	2273903	4-Apr-28
Inflatable Mattress With Improved Border Support Wall	United States	08/538,404	5,642,546	19-Sep-15
Inflatable Mattress With Improved Border Support Wall - CON	United States	08/782,058	5,765,246	19-Sep-15
Valve Enclosure Assembly - REX	United States	08/901,144, 90/012,456	5,904,172 C1	28-Jul-17
Multi-Zone Support	United States	09/257,404	6,202,239	25-Feb-19
Air Mattress for a Sleeper Sofa	United States	09/266,392	6,108,844	11-Mar-19
System and Method for Sleep Surface Adjustment - REX	United States	09/522,484, 90/012,445	6,397,419	10-Jun-20
Sleeper Sofa With an Air Mattress	United States	09/266,540	6,161,231	11-Mar-19
Bed Foundation	United States	10/742,173	6,832,397	6-Jul-21
Interactive Air Bed	United States	10/165,108	6,763,541	7-Jun-22
Corner Piece for a Soft-Sided Mattress	United States	10/047,068	6,708,357	14-Jan-22
Leg and Bracket Assembly for a Bed Foundation	United States	10/284,634	6,883,191	6-Jul-21
Remote Control	United States	29/200,739	D502,929	15-Mar-19
System and Method for Detecting a Leak in an Air Bed - CON	United States	13/724,818	8,931,329	24-May-27
System and Method for Detecting a Leak in an Air Bed	United States	12/600,398	8,336,369	28-Sep-28





TITLE	Country	Application No.	Patent No.	Expiration Date
Sleeping Surface Having Two Longitudinally Connected Bladders With a Support Member	United States	11/753,387	7,865,988	17-Nov-25
System and Method for Improved Pressure Adjustment	United States	12/936,084	8,769,747	27-Jul-28
Multi-Zone Fluid Chamber and Mattress System	United States	13/828,985	8,966,689	14-Mar-33
Remote Control	United States	29/449,209	D691,118	8-Oct-27
Partner Snore Feature for Adjustable Bed Foundation	United States	13/803,671	8,984,687	14-Mar-33
Remote Control	United States	29/449,245	D698,338	28-Jan-28
Remote Control	United States	29/449,793	D697,874	21-Jan-28
Air Pump	United States	26/461,744	D701,536	25-Mar-28
Sheet for a Split-Top Adjustable Bed	United States	14/146,327	8,973,183	2-Jan-34
Tablet or Laptop Support Cushion	United States	29/491,319	D728,254	5-May-29
System and Method for Adjusting Settings of a Bed With a Remote Control	United States	14/206,892	8,893,339	12-Mar-34
Air Mattress Control System and Method	United States	10/002,992	6,686,711	31-Dec-21
High-Profile Mattress Having an Upper Low-Profile Module With an Air Posturizing Sleep Surface	United States	10/389,173	6,804,848	14-Mar-23
Air Sleep System with Dual Elevating Air Posturizing Sleep Surfaces	United States	11/173,543	7,389,554	2-Jun-23

## 2. U.S. and Foreign Trademark, Service mark, and Copyright Registrations

<b>Country</b>	<b>Mark</b>	<b>Owner</b>	<b>Classes</b>	<b>Reg. #</b>	<b>Issued</b>
US	AIRFIT	Select Comfort Corporation	20	4739290	19-May-15
US	CELENIA	Select Comfort SC Corporation	20	2506794	13-Nov-01
US	CERENITY	Select Comfort SC Corporation	20	2999419	27-Sep-05
US	CERULEAN HP	Select Comfort SC Corporation	20	2382939	05-Sep-00
US	CIRRUS	Select Comfort SC Corporation	20	2366271	11-Jul-00
US	CLIMATEFIT	Select Comfort Corporation	24	4552344	17-Jun-14
US	COMFORT CLUB	Select Comfort Corporation	35	2042605	11-Mar-97
US	COMFORT. INDIVIDUALIZED.	Select Comfort Corporation	35	4661689	30-Dec-14
US	COMFORTAIRE	Select Comfort SC Corporation	20	1275216	24-Apr-84
US	COMFORTAIRE...COMFORT FOR LIFE	Select Comfort SC Corporation	20	3043493	17-Jan-06
US	COMFORTFIT	Select Comfort Corporation	24, 35	4003582	26-Jul-11
Australia	 DESIGN (Arrow and Circle)	Select Comfort Corporation	20, 24, 35	931129	24-Feb-03
Canada	 DESIGN (Arrow and Circle)	Select Comfort Corporation	NA, NA	609449	05-May-04
European Community	 DESIGN (Arrow and Circle)	Select Comfort Corporation	20, 24, 35	2895100	27-Jul-04




Country	Mark	Owner	Classes	Reg. #	Issued
Japan	 DESIGN (Arrow and Circle)	Select Comfort Corporation	20, 24, 35	4783695	02-Jul-04
Mexico	 DESIGN (Arrow and Circle)	Select Comfort Corporation	35	1496968	20-Nov-14
Mexico	 DESIGN (Arrow and Circle)	Select Comfort Corporation	24	958293	19-Oct-06
Mexico	 DESIGN (Arrow and Circle)	Select Comfort Corporation	20	958747	24-Oct-06
US	 DESIGN (Arrow and Circle)	Select Comfort Corporation	20, 24, 35	2803624	06-Jan-04
Germany	 DESIGN (ARROWS AND CIRCLE)	Select Comfort Corporation	20, 24, 35	302012018898	30-Aug-12
China	 DOUBLE ARROW LOGO	Select Comfort Corporation	20	8254835	21-Apr-14
Norway	 DOUBLE ARROW LOGO	Select Comfort Corporation	20, 24, 35	244154	06-Feb-08
US	DREAMAIRE	Select Comfort SC Corporation	20	2870116	03-Aug-04
US	 DUALAIR TECHNOLOGY INSIDE & Double Arrows Logo	Select Comfort Corporation	20		

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Country	Mark	Owner	Classes	Reg. #	Issued
US	 DUALTEMP (Stylized)	Select Comfort Corporation	20	4420145	15-Oct-13
US	FAMILY CONNECTED, SLEEP PERFECTED	Select Comfort Corporation	20, 35		
US	FLEXTOP	Select Comfort Corporation	20	4609411	23-Sep-14
US	FLEXTOP	Select Comfort Corporation	24		
Australia	GRIDZONE	Select Comfort Corporation	20	1187674	26-Feb-08
New Zealand	GRIDZONE	Select Comfort Corporation	20	771859	10-Jul-07
US	GRIDZONE	Select Comfort Corporation	17, 20	3137303	29-Aug-06
US	HEALTHY CHOICE COLLECTION	Select Comfort SC Corporation	20	2767623	23-Sep-03
US	INDIVIDUALFIT	Select Comfort Corporation	35	4023575	06-Sep-11
US	INDIVIDUALIZED SLEEP EXPERIENCES	Select Comfort SC Corporation	20	4463046	07-Jan-14
Australia	INTRALUX	Select Comfort Corporation	17	1223048	02-Jul-08
Int'l Registration	INTRALUX	Select Comfort Corporation	17	949219	18-Jul-07
US	INTRALUX	Select Comfort Corporation	20	2860124	06-Jul-04
US	IT'S THE BED THAT COUNTS	Select Comfort Corporation	20, 35	3640679	16-Jun-09
US	KNOW BETTER SLEEP	Select Comfort Corporation	35	4713336	31-Mar-15
US	LOONA THE SLEEP TIGHT GAME	Select Comfort Corporation	9	4338429	21-May-13
US	LUXFIT	Select Comfort Corporation	20	4491833	04-Mar-14


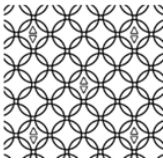
<b><u>Country</u></b>	<b><u>Mark</u></b>	<b><u>Owner</u></b>	<b><u>Classes</u></b>	<b><u>Reg. #</u></b>	<b><u>Issued</u></b>
US	 NO COUNTING SHEEP LOGO	Select Comfort Corporation	20	1954866	06-Feb-96
European Community		Select Comfort Corporation	20, 24, 35	7296403	14-May-09
Australia	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
China	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
Croatia	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
European Community	PERSONAL RENEWAL	Select Comfort Corporation	20	0901612	05-Oct-06
Int'l Registration	PERSONAL RENEWAL	Select Comfort Corporation	20	0901612	05-Oct-06
Japan	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
Liechtenstein	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
Macedonia	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
Monaco	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
Morocco	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
Norway	PERSONAL RENEWAL	Select Comfort Corporation	20	0901612	05-Oct-06
Romania	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
Russian Federation	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
Singapore	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	08-Jun-07



<b><u>Country</u></b>	<b><u>Mark</u></b>	<b><u>Owner</u></b>	<b><u>Classes</u></b>	<b><u>Reg. #</u></b>	<b><u>Issued</u></b>
Switzerland	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
Ukraine	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
Vietnam	PERSONAL RENEWAL	Select Comfort Corporation	20	901612	05-Oct-06
US	PILLOW[OLOGY]	Select Comfort Corporation	20	3628199	26-May-09
US	PILLOWFIT	Select Comfort Corporation	20, 35	3986953	28-Jun-11
US	PLUSHFIT	Select Comfort Corporation	20	4696641	03-Mar-15
US	PROBABLY THE BEST BED IN THE WORLD	Select Comfort Corporation	20, 35		
US	ROYALAIRE	Select Comfort SC Corporation	20	2698412	18-Mar-03
Argentina	SELECT COMFORT	Select Comfort Corporation	20	2401534	15-Oct-10
Argentina	SELECT COMFORT	Select Comfort Corporation	35	2129979	24-Nov-06
Argentina	SELECT COMFORT	Select Comfort Corporation	24	2129980	24-Nov-06
Australia	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	1168932	23-Aug-05
Brazil	SELECT COMFORT	Select Comfort Corporation	35		
Canada	SELECT COMFORT	Select Comfort Corporation	NA, NA	602961	23-Feb-04
Canada	SELECT COMFORT	Select Comfort Corporation	N20	375518	09-Nov-90
Chile	SELECT COMFORT	Select Comfort Corporation	20, 24	754481	24-Mar-06
Chile	SELECT COMFORT	Select Comfort Corporation	35	754479	24-Mar-06
European Community	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	003018959	07-Feb-05

<b><u>Country</u></b>	<b><u>Mark</u></b>	<b><u>Owner</u></b>	<b><u>Classes</u></b>	<b><u>Reg. #</u></b>	<b><u>Issued</u></b>
Germany	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	302012018897	13-Feb-15
Hong Kong	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	300483354	24-Aug-05
India	SELECT COMFORT	Select Comfort Corporation	20, 24, 35		
Int'l Registration	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	880279	23-Aug-05
Ireland	SELECT COMFORT	Select Comfort Corporation	20	B157043	16-Aug-95
Japan	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	880279	23-Aug-05
Korea, Republic of	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	880279	23-Aug-05
Mexico	SELECT COMFORT	Select Comfort Corporation	24	973077	21-Feb-07
Mexico	SELECT COMFORT	Select Comfort Corporation	35	972461	15-Feb-07
Mexico	SELECT COMFORT	Select Comfort Corporation	20	964552	29-Nov-06
New Zealand	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	734642	24-Aug-05
Russian Federation	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	880279	23-Aug-05
Russian Federation	SELECT COMFORT	Select Comfort Corporation	20	127374	16-Jun-95
Singapore	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	880279	23-Aug-05
South Africa	SELECT COMFORT	Select Comfort Corporation	20	2005/19030	23-Jan-09
Taiwan	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	1222179	01-Aug-06
Taiwan	SELECT COMFORT	Select Comfort Corporation	20	738020	01-Dec-96
Ukraine	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	880279	23-Aug-05



Country	Mark	Owner	Classes	Reg. #	Issued
United Kingdom	SELECT COMFORT	Select Comfort Corporation	20	B1528905	08-Mar-93
US	SELECT COMFORT	Select Comfort Corporation	20	1976214	28-May-96
US	SELECT COMFORT	Select Comfort Corporation	20	1581562	06-Feb-90
Vietnam	SELECT COMFORT	Select Comfort Corporation	20, 24, 35	880279	23-Aug-05
Norway	 SELECT COMFORT & CIRCLE/ARROWS DESIGN	Select Comfort Corporation	20, 24, 35	235618	16-Oct-06
China	SELECT COMFORT (ENGLISH)	Select Comfort Corporation	20	4805838	28-Jan-10
China	SELECT COMFORT (ENGLISH)	Select Comfort Corporation	24	4805837	28-Jun-10
China	SELECT COMFORT (ENGLISH)	Select Comfort Corporation	35	4805836	21-Feb-09
China	SELECT COMFORT (IN CHINESE)	Select Comfort Corporation	20	5528767	28-Aug-09
China	SELECT COMFORT (IN CHINESE)	Select Comfort Corporation	35	4968264	14-Mar-09
US	 SELECT COMFORT (STYLIZED AND/OR WITH DESIGN)	Select Comfort Corporation	20	2803623	06-Jan-04
Germany	 SELECT COMFORT AND DESIGN (ARROWS AND CIRCLE)	Select Comfort Corporation	20, 24, 35	302012018899	30-Aug-12
Canada	 <small>CREATOR OF THE SLEEP NUMBER BED</small> SELECT COMFORT CREATOR OF THE SLEEP NUMBER BED & DESIGN	Select Comfort Corporation	NA, NA	610899	21-May-04

Country	Mark	Owner	Classes	Reg. #	Issued
Canada	 SELECT COMFORT CREATOR OF THE SLEEP NUMBER BED & DESIGN	Select Comfort Corporation	NA, NA	618842	08-Sep-04
Germany	 SELECT COMFORT CREATOR OF THE SLEEP NUMBER BED AND DESIGN	Select Comfort Corporation	20, 24, 35	302012018856	11-Oct-12
Japan	SELECT COMFORT IN JAPANESE (KATAKANA)	Select Comfort Corporation	20	4291185	09-Jul-99
US	 SIGNATURE PATTERN (DOUBLE CIRCLES)	Select Comfort Corporation	20		
US	 SIGNATURE PATTERN (SINGLE CIRCLES)	Select Comfort Corporation	20		
US	SLEEP BETTER ON AIR	Select Comfort Corporation	35	2326197	07-Mar-00
Australia	SLEEP IQ	Select Comfort SC Corporation	09, 20, 42		
Canada	SLEEP IQ	Select Comfort SC Corporation	09, 20, 42		
European Community	SLEEP IQ	Select Comfort SC Corporation	09, 20, 42		
Int'l Registration	SLEEP IQ	Select Comfort SC Corporation	09, 20, 42		

<b><u>Country</u></b>	<b><u>Mark</u></b>	<b><u>Owner</u></b>	<b><u>Classes</u></b>	<b><u>Reg. #</u></b>	<b><u>Issued</u></b>
New Zealand	SLEEP IQ	Select Comfort SC Corporation	09, 20, 42		
United Kingdom	SLEEP IQ	Select Comfort SC Corporation	09, 20, 42		
US	SLEEP IQ	Select Comfort SC Corporation	09, 20, 42	4605824	16-Sep-14
Albania	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Argentina	SLEEP NUMBER	Select Comfort Corporation	24	2129977	24-Nov-06
Argentina	SLEEP NUMBER	Select Comfort Corporation	20	2129978	24-Nov-06
Argentina	SLEEP NUMBER	Select Comfort Corporation	35	2129976	24-Nov-06
Australia	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Australia	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	868055	05-Mar-01
Bahrain	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Brazil	SLEEP NUMBER	Select Comfort Corporation	35	827787987	22-Jan-08
Brazil	SLEEP NUMBER	Select Comfort Corporation	24	827787863	22-Jan-08
Brazil	SLEEP NUMBER	Select Comfort Corporation	20	827787952	22-Jan-08
Canada	SLEEP NUMBER	Select Comfort Corporation	NA, NA	633703	24-Feb-05
Chile	SLEEP NUMBER	Select Comfort Corporation	35	754480	24-Mar-06
Chile	SLEEP NUMBER	Select Comfort Corporation	20, 24	754478	24-Mar-06
Croatia	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
European Community	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05

<b><u>Country</u></b>	<b><u>Mark</u></b>	<b><u>Owner</u></b>	<b><u>Classes</u></b>	<b><u>Reg. #</u></b>	<b><u>Issued</u></b>
European Community	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	2116408	30-May-02
Germany	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	302012018860	29-Aug-12
Hong Kong	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	301308267	20-Mar-09
Hong Kong	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	300485541	29-Aug-05
Iceland	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
India	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	1372724	31-Mar-07
Indonesia	SLEEP NUMBER	Select Comfort Corporation	35	IDM000233177	15-Jan-10
Indonesia	SLEEP NUMBER	Select Comfort Corporation	20	IDM000169288	15-Jul-08
Int'l Registration	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Israel	SLEEP NUMBER	Select Comfort Corporation	20	147128	03-May-02
Israel	SLEEP NUMBER	Select Comfort Corporation	35	179386	07-Nov-06
Israel	SLEEP NUMBER	Select Comfort Corporation	24	179385	07-Nov-06
Israel	SLEEP NUMBER	Select Comfort Corporation	20	179155	07-Nov-06
Japan	SLEEP NUMBER	Select Comfort Corporation	20, 24	4534262	11-Jan-02
Japan	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Korea	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Macedonia	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Malaysia	SLEEP NUMBER	Select Comfort Corporation	20	7018125	19-Feb-09

<b><u>Country</u></b>	<b><u>Mark</u></b>	<b><u>Owner</u></b>	<b><u>Classes</u></b>	<b><u>Reg. #</u></b>	<b><u>Issued</u></b>
Malaysia	SLEEP NUMBER	Select Comfort Corporation	24	7018126	23-Feb-09
Malaysia	SLEEP NUMBER	Select Comfort Corporation	35	7018127	10-Mar-11
Mexico	SLEEP NUMBER	Select Comfort Corporation	24	945306	27-Jul-06
Mexico	SLEEP NUMBER	Select Comfort Corporation	35	919838	20-Feb-06
Mexico	SLEEP NUMBER	Select Comfort Corporation	20	945307	27-Jul-06
Montenegro	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
New Zealand	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	734726	25-Aug-05
Norway	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	222920	16-Apr-04
Oman	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Russian Federation	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Saudi Arabia	SLEEP NUMBER	Select Comfort Corporation	20	1049/37	22-Feb-09
Serbia	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Singapore	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Switzerland	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Taiwan	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	1222180	01-Aug-06
Thailand	SLEEP NUMBER	Select Comfort Corporation	20	TM286733	23-Sep-08
Thailand	SLEEP NUMBER	Select Comfort Corporation	24	TM286102	11-Sep-08
Thailand	SLEEP NUMBER	Select Comfort Corporation	35	SM41514	13-Feb-09

Country	Mark	Owner	Classes	Reg. #	Issued
Turkey	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
Ukraine	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
United Arab Emirates	SLEEP NUMBER	Select Comfort Corporation	20	101204	31-Mar-10
United Arab Emirates	SLEEP NUMBER	Select Comfort Corporation	24	101207	31-Mar-10
United Arab Emirates	SLEEP NUMBER	Select Comfort Corporation	35	101208	31-Mar-10
US	SLEEP NUMBER	Select Comfort Corporation	20, 24	2753633	19-Aug-03
US	SLEEP NUMBER	Select Comfort Corporation	35	2641045	22-Oct-02
US	SLEEP NUMBER	Select Comfort Corporation	20	2618999	10-Sep-02
Vietnam	SLEEP NUMBER	Select Comfort Corporation	20, 24, 35	864330	23-Aug-05
US	 SLEEP NUMBER & Design (Arrow & Circle) Select Comfort Corporation		20, 24, 35		
China	SLEEP NUMBER (ENGLISH)	Select Comfort Corporation	20	4805841	21-May-09
China	SLEEP NUMBER (ENGLISH)	Select Comfort Corporation	24	4805840	21-Apr-09
China	SLEEP NUMBER (ENGLISH)	Select Comfort Corporation	35	4805839	21-Feb-09
China	SLEEP NUMBER (IN CHINESE)	Select Comfort Corporation	35	4968262	14-Mar-09
China	SLEEP NUMBER (IN CHINESE)	Select Comfort Corporation	20	4968263	14-Mar-09
European Community	 SLEEP NUMBER AND DESIGN (ARROWS AND CIRCLE) Select Comfort Corporation		20, 24, 35	10708436	07-Aug-12



Country	Mark	Owner	Classes	Reg. #	Issued
Germany	 SLEEP NUMBER AND DESIGN (ARROWS AND CIRCLE)	Select Comfort Corporation	20, 24, 35	302012018900	30-Aug-12
US	 Sleep Number Icon - Black Outline	Select Comfort Corporation	20, 24, 35		
US	SLEEP NUMBER INNER CIRCLE	Select Comfort Corporation	35	4136483	01-May-12
Hong Kong	SLEEP NUMBER PERSONAL PREFERENCE	Select Comfort Corporation	20	300594847	08-Mar-06
US	SLEEPIQ KIDS	Select Comfort Corporation	09, 20, 42		
US	 SLEEPIQ KIDS (Stylized)	Select Comfort Corporation	09, 20, 42		
US	SMART BED FOR SMART KIDS	Select Comfort Corporation	20		
Albania	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07
Australia	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07
Croatia	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07
European Community	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07
Iceland	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07
Int'l Registration	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07
Liechtenstein	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07
Macedonia	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07

Country	Mark	Owner	Classes	Reg. #	Issued	
Monaco	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07	
Montenegro	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07	
Morocco	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07	
Romania	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07	
Russian Federation	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07	
Serbia	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07	
Switzerland	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07	
Turkey	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	10-Jan-09	
Ukraine	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	938178	31-Aug-07	
US	TAKE CONTROL OF YOUR SLEEP	Select Comfort Corporation	35	3576817	17-Feb-09	
US	Tech-e	Select Comfort Corporation	9	4684538	10-Feb-15	
Canada	THE AIR BED COMPANY	Select Comfort Corporation	N20	551562	26-Sep-01	
US	THE MAGIC IS IN THE AIR	Select Comfort SC Corporation	20	4717143	07-Apr-15	
US	THE ONLY BED THAT GROWS WITH THEM	Select Comfort Corporation	20			
US	THE ONLY BED THAT KNOWS YOU.	Select Comfort Corporation	35	4510326	08-Apr-14	
Canada			Select Comfort Corporation	NA, NA	609130	03-May-04
US	TONIGHT BEDTIME. TOMORROW THE WORLD.	Select Comfort Corporation	20, 35			

<b><u>Country</u></b>	<b><u>Mark</u></b>	<b><u>Owner</u></b>	<b><u>Classes</u></b>	<b><u>Reg. #</u></b>	<b><u>Issued</u></b>
Australia	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
Canada	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	NA	TMA746540	31-Aug-09
China	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24	898384	31-Aug-06
Croatia	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
European Community	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
Iceland	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
Int'l Registration	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
Japan	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	12-Sep-08
Korea	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	25-Feb-08
Liechtenstein	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
Macedonia	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
Monaco	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
Morocco	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
Norway	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
Romania	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
Russian Federation	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
Singapore	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	21-Aug-07
Switzerland	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06

<b><u>Country</u></b>	<b><u>Mark</u></b>	<b><u>Owner</u></b>	<b><u>Classes</u></b>	<b><u>Reg. #</u></b>	<b><u>Issued</u></b>
Ukraine	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
US	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	2702762	01-Apr-03
Vietnam	WHAT'S YOUR SLEEP NUMBER?	Select Comfort Corporation	20, 24, 35	898384	31-Aug-06
US	WHISPERFLO	Select Comfort SC Corporation	7	3055175	31-Jan-06
US	YOU'RE MORE THAN JUST A NUMBER TO US	Select Comfort SC Corporation	35		

<b><u>Country</u></b>	<b><u>Title</u></b>	<b><u>Owner</u></b>	<b><u>Reg. #</u></b>	<b><u>Issued</u></b>
China	Copyright Registrations for Double Arrow Logo and Sleep Number & Double Arrow Logo	Select Comfort Corporation	2011-F-037456	30-Mar-11
US	Get the best night's sleep ever.	Select Comfort Corporation	TX0004236085	11-Jul-96
US	Why Select Comfort outperforms innersprings and waterbeds for support.	Select Comfort Corporation	TX0004236086	11-Jul-96
US	Select Comfort: letter from the president.	Select Comfort Corporation	TX0004236087	11-Jul-96

**SCHEDULE 6.18**

**INSURANCE**

See attached.

**SCHEDULE 7.4**

**PLEDGED NOTES**

None.

EXHIBIT A  
FORM OF  
REVOLVING CREDIT NOTE

\$ \_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, the undersigned, SELECT COMFORT CORPORATION, a Minnesota corporation (the "Borrower"), promises to pay, on the last day of the Commitment Period, as defined in the Credit Agreement (as hereinafter defined), to the order of \_\_\_\_\_ ("Lender") at the main office of KEYBANK NATIONAL ASSOCIATION, as the Administrative Agent, as hereinafter defined, 127 Public Square, Cleveland, Ohio 44114-1306 the principal sum of

\_\_\_\_\_ AND 00/100 .....DOLLARS

or the aggregate unpaid principal amount of all Revolving Loans, as defined in the Credit Agreement, made by Lender to the Borrower pursuant to Section 2.2(a) of the Credit Agreement, whichever is less, in lawful money of the United States of America.

As used herein, "Credit Agreement" means the Credit and Security Agreement dated as of September 9, 2015, among the Borrower, the Lenders, as defined therein, and KeyBank National Association, as the administrative agent for the Lenders (the "Administrative Agent"), as the same may from time to time be amended, restated or otherwise modified. Each capitalized term used herein that is defined in the Credit Agreement and not otherwise defined herein shall have the meaning ascribed to it in the Credit Agreement.

The Borrower also promises to pay interest on the unpaid principal amount of each Revolving Loan from time to time outstanding, from the date of such Revolving Loan until the payment in full thereof, at the rates per annum that shall be determined in accordance with the provisions of Section 2.3(a) of the Credit Agreement. Such interest shall be payable on each date provided for in such Section 2.3(a); provided that interest on any principal portion that is not paid when due shall be payable on demand.

The portions of the principal sum hereof from time to time representing Base Rate Loans and Eurodollar Loans, interest owing thereon and payments of principal and interest of any thereof, shall be shown on the records of Lender by such method as Lender may generally employ; provided that failure to make any such entry shall in no way detract from the obligations of the Borrower under this Note or the Credit Agreement.

If this Note shall not be paid at maturity, whether such maturity occurs by reason of lapse of time or by operation of any provision for acceleration of maturity contained in the Credit Agreement, the principal hereof and the unpaid interest thereon shall bear interest, pursuant to the terms of the Credit Agreement, until paid, at a rate per annum equal to the Default Rate. All payments of principal of and interest on this Note shall be made in immediately available funds.

This Note is one of the Revolving Credit Notes referred to in the Credit Agreement and is entitled to the benefits thereof. Reference is made to the Credit Agreement for a description of

the right of the undersigned to anticipate payments hereof, the right of the holder hereof to declare this Note due prior to its stated maturity, and other terms and conditions upon which this Note is issued.

Except as expressly provided in the Credit Agreement, the Borrower expressly waives presentment, demand, protest and notice of any kind. This Note shall be governed by and construed in accordance with the laws of the State of New York.

JURY TRIAL WAIVER. THE BORROWER, TO THE EXTENT PERMITTED BY LAW, HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS NOTE OR ANY OTHER NOTE OR INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED THERETO.

SELECT COMFORT CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



\$10,000,000

FOR VALUE RECEIVED, the undersigned, SELECT COMFORT CORPORATION, a Minnesota corporation (the “Borrower”), promises to pay to the order of KEYBANK NATIONAL ASSOCIATION (the “Swing Line Lender”) at the main office of KEYBANK NATIONAL ASSOCIATION, as the Administrative Agent, as hereinafter defined, 127 Public Square, Cleveland, Ohio 44114-1306 the principal sum of

or the aggregate unpaid principal amount of all Swing Loans, as defined in the Credit Agreement (as hereinafter defined), made by the Swing Line Lender to the Borrower pursuant to Section 2.2(c) of the Credit Agreement, whichever is less, in lawful money of the United States of America on the earlier of the last day of the Commitment Period, as defined in the Credit Agreement, or, with respect to each Swing Loan, the Swing Loan Maturity Date applicable thereto.

The Borrower also promises to pay interest on the unpaid principal amount of each Swing Loan from time to time outstanding, from the date of such Swing Loan until the payment in full thereof, at the rates per annum that shall be determined in accordance with the provisions of Section 2.3(b) of the Credit Agreement. Such interest shall be payable on each date provided for in such Section 2.3(b); provided that interest on any principal portion that is not paid when due shall be payable on demand.

The principal sum hereof from time to time, and the payments of principal and interest thereon, shall be shown on the records of the Swing Line Lender by such method as the Swing Line Lender may generally employ; provided that failure to make any such entry shall in no way detract from the obligations of the Borrower under this Note or the Credit Agreement.

If this Note shall not be paid at maturity, whether such maturity occurs by reason of lapse of time or by operation of any provision for acceleration of maturity contained in the Credit Agreement, the principal hereof and the unpaid interest thereon shall bear interest, pursuant to the terms of the Credit Agreement, until paid, at a rate per annum equal to the Default Rate. All payments of principal of and interest on this Note shall be made in immediately available funds.

This Note is the Swing Line Note referred to in the Credit Agreement and is entitled to the benefits thereof. Reference is made to the Credit Agreement for a description of the right of the undersigned to anticipate payments hereof, the right of the holder hereof to declare this Note due prior to its stated maturity, and other terms and conditions upon which this Note is issued.

Except as expressly provided in the Credit Agreement, the Borrower expressly waives presentment, demand, protest and notice of any kind. This Note shall be governed by and construed in accordance with the laws of the State of New York.

**JURY TRIAL WAIVER.** THE BORROWER, TO THE EXTENT PERMITTED BY LAW, HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS NOTE OR ANY OTHER NOTE OR INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED THERETO.

SELECT COMFORT CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT C  
FORM OF  
NOTICE OF LOAN

\_\_\_\_\_, 20\_\_

KeyBank National Association, as the Administrative Agent  
127 Public Square  
Cleveland, Ohio 44114  
Attention: Institutional Bank

Ladies and Gentlemen:

The undersigned, \_\_\_\_\_, on behalf of Select Comfort Corporation, a Minnesota corporation (the "Borrower"), refers to the Credit and Security Agreement, dated as of September 9, 2015 (as the same may from time to time be amended, restated or otherwise modified, the "Credit Agreement", the terms defined therein being used herein as therein defined), among the undersigned, the Lenders, as defined in the Credit Agreement, and KeyBank National Association, as the administrative agent for the Lenders (the "Administrative Agent"), and hereby gives you notice, pursuant to Section 2.5 of the Credit Agreement that the Borrower hereby requests a Loan under the Credit Agreement, and in connection therewith sets forth below the information relating to the Loan (the "Proposed Loan") as required by Section 2.5 of the Credit Agreement:

- (a) The Business Day of the Proposed Loan is \_\_\_\_\_, 20\_\_.
- (b) The amount of the Proposed Loan is \$\_\_\_\_\_.
- (c) The Proposed Loan is to be a Base Rate Loan \_\_\_\_ / Eurodollar Loan \_\_\_\_ /  
Swing Loan \_\_\_\_.  
(Check one.)
- (d) If the Proposed Loan is a Eurodollar Loan, the Interest Period requested is  
one month \_\_\_\_, two months \_\_\_\_, three months \_\_\_\_, six months \_\_\_\_.  
(Check one.)

The undersigned hereby certifies on behalf of the Borrower that the following statements are true on the date hereof, and will be true on the date of the Proposed Loan:

- (i) the representations and warranties contained in the Credit Agreement are correct in all material respects, before and after giving effect to the Proposed Loan and the application of the proceeds therefrom, as though made on and as of such date (except to the extent any thereof expressly relate to an earlier date, in which case such representations and warranties are true and correct in all material respects as of such earlier date);

(ii) no event has occurred and is continuing, or would result from such Proposed Loan, or the application of proceeds therefrom, that constitutes a Default or Event of Default; and

(iii) the applicable conditions set forth in Section 2.5 and Article IV of the Credit Agreement have been satisfied.

SELECT COMFORT CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT D  
FORM OF  
COMPLIANCE CERTIFICATE

For the Quarterly Reporting Period ended \_\_\_\_\_

THE UNDERSIGNED HEREBY CERTIFIES THAT:

(1) I am the duly elected [President] or [DESIGNATE FINANCIAL OFFICER] of Select Comfort Corporation, a Minnesota corporation (the “Borrower”);

(2) I am familiar with the terms of that certain Credit and Security Agreement, dated as of September 9, 2015, among the Borrower, the lenders party thereto (together with their respective successors and assigns, collectively, the “Lenders”), as defined in the Credit Agreement, and KeyBank National Association, as the Administrative Agent (as the same may from time to time be amended, restated or otherwise modified, the “Credit Agreement”, the terms defined therein being used herein as therein defined), and the terms of the other Loan Documents, and I have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and condition of the Borrower and its Subsidiaries during the accounting period covered by the attached financial statements;

(3) The review described in paragraph (2) above did not disclose, and I have no knowledge of, the existence of any condition or event that constitutes or constituted a Default or Event of Default, at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate;

(4) The representations and warranties made by the Borrower contained in the Credit Agreement are true and correct in all material respects as though made on and as of the date hereof (except to the extent any thereof expressly relate to an earlier date, in which case such representations and warranties are true and correct in all material respects as of such earlier date); and

(5) Set forth on Attachment I hereto are calculations of the financial covenants set forth in Section 5.7 of the Credit Agreement, which calculations show compliance with the terms thereof.

IN WITNESS WHEREOF, I have signed this certificate the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SELECT COMFORT CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT E  
FORM OF  
ASSIGNMENT AND ACCEPTANCE AGREEMENT

This Assignment and Acceptance Agreement (this "Assignment Agreement") between \_\_\_\_\_ (the "Assignor") and \_\_\_\_\_ (the "Assignee") is dated as of \_\_\_\_\_, 20\_\_\_\_. The parties hereto agree as follows:

1. Preliminary Statement. Assignor is a party to a Credit and Security Agreement, dated as of September 9, 2015 (as the same may from time to time be amended, restated or otherwise modified, the "Credit Agreement"), among Select Comfort Corporation, a Minnesota corporation (the "Borrower"), the lenders party thereto (together with their respective successors and assigns, collectively, the "Lenders" and, individually, each a "Lender"), and KeyBank National Association, as the administrative agent for the Lenders (the "Administrative Agent"). Capitalized terms used herein and not otherwise defined herein shall have the meanings attributed to them in the Credit Agreement.

2. Assignment and Assumption. Assignor hereby sells and assigns to Assignee, and Assignee hereby purchases and assumes from Assignor, an interest in and to Assignor's rights and obligations under the Credit Agreement, effective as of the Assignment Effective Date (as hereinafter defined), equal to the percentage interest specified on Annex 1 hereto (hereinafter, the "Assigned Percentage") of Assignor's right, title and interest in and to (a) the Commitment, (b) any Loan made by Assignor that is outstanding on the Assignment Effective Date, (c) Assignor's interest in any Letter of Credit outstanding on the Assignment Effective Date, (d) any Note delivered to Assignor pursuant to the Credit Agreement, and (e) the Credit Agreement and the other Related Writings. After giving effect to such sale and assignment and on and after the Assignment Effective Date, Assignee shall be deemed to have a "Commitment Percentage" under the Credit Agreement equal to the Commitment Percentage set forth in subpart II.A on Annex 1 hereto and an Assigned Amount as set forth on subpart I.B of Annex 1 hereto (hereinafter, the "Assigned Amount").

3. Assignment Effective Date. The Assignment Effective Date (the "Assignment Effective Date") shall be [\_\_\_\_\_, \_\_\_\_] (or such other date agreed to by the Administrative Agent). On or prior to the Assignment Effective Date, Assignor shall satisfy the following conditions:

(a) receipt by the Administrative Agent of this Assignment Agreement, including Annex 1 hereto, properly executed by Assignor and Assignee and accepted and consented to by the Administrative Agent and, if necessary pursuant to the provisions of Section 11.10(b) of the Credit Agreement, by the Borrower;

(b) receipt by the Administrative Agent from Assignor of a fee of Three Thousand Five Hundred Dollars (\$3,500), if required by Section 11.10(d) of the Credit Agreement;

(c) receipt by the Administrative Agent from Assignee of an administrative questionnaire, or other similar document, which shall include (i) the address for notices under the

Credit Agreement, (ii) the address of its Lending Office, (iii) wire transfer instructions for delivery of funds by the Administrative Agent, and (iv) such other information as the Administrative Agent shall request; and

(d) receipt by the Administrative Agent from Assignor or Assignee of any other information required pursuant to Section 11.10 of the Credit Agreement or otherwise necessary to complete the transaction contemplated hereby.

4. Payment Obligations. In consideration for the sale and assignment of Loans hereunder, Assignee shall pay to Assignor, on the Assignment Effective Date, the amount agreed to by Assignee and Assignor. Any interest, fees and other payments accrued prior to the Assignment Effective Date with respect to the Assigned Amount shall be for the account of Assignor. Any interest, fees and other payments accrued on and after the Assignment Effective Date with respect to the Assigned Amount shall be for the account of Assignee. Each of Assignor and Assignee agrees that it will hold in trust for the other party any interest, fees or other amounts which it may receive to which the other party is entitled pursuant to the preceding sentence and to pay the other party any such amounts which it may receive promptly upon receipt thereof.

5. Credit Determination; Limitations on Assignor's Liability. Assignee represents and warrants to Assignor, the Borrower, the Administrative Agent and the Lenders (a) that it is capable of making and has made and shall continue to make its own credit determinations and analysis based upon such information as Assignee deemed sufficient to enter into the transaction contemplated hereby and not based on any statements or representations by Assignor; (b) Assignee confirms that it meets the requirements to be an assignee as set forth in Section 11.10 of the Credit Agreement; (c) Assignee confirms that it is able to fund the Loans and the Letters of Credit as required by the Credit Agreement; (d) Assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement and the other Related Writings are required to be performed by it as a Lender thereunder; and (e) Assignee represents that it has reviewed each of the Loan Documents and by its signature to this Assignment Agreement, agrees to be bound by and subject to the terms and conditions of the Loan Documents as if it were an original party thereto. It is understood and agreed that the assignment and assumption hereunder are made without recourse to Assignor and that Assignor makes no representation or warranty of any kind to Assignee and shall not be responsible for (i) the due execution, legality, validity, enforceability, genuineness, sufficiency or collectability of the Credit Agreement or any other Related Writings, (ii) any representation, warranty or statement made in or in connection with the Credit Agreement or any of the other Related Writings, (iii) the financial condition or creditworthiness of the Borrower or any Guarantor of Payment, (iv) the performance of or compliance with any of the terms or provisions of the Credit Agreement or any of the other Related Writings, (v) the inspection of any of the property, books or records of the Borrower, or (vi) the validity, enforceability, perfection, priority, condition, value or sufficiency of any collateral securing or purporting to secure the Loans or Letters of Credit. Neither Assignor nor any of its officers, directors, employees, agents or attorneys shall be liable for any mistake, error of judgment, or action taken or omitted to be taken in connection with the Loans, the Letters of Credit, the Credit Agreement or the other Related Writings, except for its or their own gross negligence or willful misconduct. Assignee appoints the

Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement as are delegated to the Administrative Agent by the terms thereof.

6. Indemnity. Assignee agrees to indemnify and hold harmless Assignor against any and all losses, cost and expenses (including, without limitation, attorneys' fees) and liabilities incurred by Assignor in connection with or arising in any manner from Assignee's performance or non-performance of obligations assumed under this Assignment Agreement.

7. Subsequent Assignments. After the Assignment Effective Date, Assignee shall have the right, pursuant to Section 11.10 of the Credit Agreement, to assign the rights which are assigned to Assignee hereunder, provided that (a) any such subsequent assignment does not violate any of the terms and conditions of the Credit Agreement, any of the other Related Writings, or any law, rule, regulation, order, writ, judgment, injunction or decree and that any consent required under the terms of the Credit Agreement or any of the other Related Writings has been obtained, (b) the assignee under such assignment from Assignee shall agree to assume all of Assignee's obligations hereunder in a manner satisfactory to Assignor, and (c) Assignee is not thereby released from any of its obligations to Assignor hereunder.

8. Reductions of Aggregate Amount of Commitments. If any reduction in the Total Commitment Amount occurs between the date of this Assignment Agreement and the Assignment Effective Date, the percentage of the Total Commitment Amount assigned to Assignee shall remain the percentage specified in Section 1 hereof and the dollar amount of the Commitment of Assignee shall be recalculated based on the reduced Total Commitment Amount.

9. Acceptance of Administrative Agent; Notice by Assignor. This Assignment Agreement is conditioned upon the acceptance and consent of the Administrative Agent and, if necessary pursuant to Section 11.10 of the Credit Agreement, upon the acceptance and consent of the Borrower; provided that the execution of this Assignment Agreement by the Administrative Agent and, if necessary, by the Borrower is evidence of such acceptance and consent.

10. Entire Agreement. This Assignment Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

11. Governing Law. This Assignment Agreement shall be governed by the laws of the State of New York.

12. Notices. Notices shall be given under this Assignment Agreement in the manner set forth in the Credit Agreement. For the purpose hereof, the addresses of the parties hereto (until notice of a change is delivered) shall be the address set forth under each party's name on the signature pages hereof.

13. Counterparts. This Assignment Agreement may be executed in any number of counterparts, by different parties hereto in separate counterparts and by facsimile signature, each



of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

[Remainder of page intentionally left blank.]

14. JURY TRIAL WAIVER. EACH OF THE UNDERSIGNED, TO THE EXTENT PERMITTED BY LAW, WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, AMONG THE ADMINISTRATIVE AGENT, ANY OF THE LENDERS, AND THE BORROWER, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS ASSIGNMENT AGREEMENT OR ANY NOTE OR OTHER AGREEMENT, INSTRUMENT OR DOCUMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH OR THE TRANSACTIONS RELATED HERETO.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment Agreement by their duly authorized officers as of the date first above written.

[NAME OF THE ASSIGNOR]

Address: \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[NAME OF THE ASSIGNEE]

Address: \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and Consented to this \_\_\_\_ day  
of \_\_\_\_, 20\_\_:

KEYBANK NATIONAL ASSOCIATION  
as the Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and Consented to this \_\_\_\_ day  
of \_\_\_\_, 20\_\_:

SELECT COMFORT CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ANNEX 1  
TO  
ASSIGNMENT AND ACCEPTANCE AGREEMENT

On and after the Assignment Effective Date, after giving effect to all other assignments being made by Assignor on the Assignment Effective Date, the Commitment of Assignee, and, if this is less than an assignment of all of Assignor's interest, Assignor, shall be as follows:

I. INTEREST BEING ASSIGNED TO ASSIGNEE

A. Assigned Percentage \_\_\_\_\_%

B. Assigned Amount \$\_\_\_\_\_

II. ASSIGNEE'S COMMITMENT (as of the Assignment Effective Date)

A. Assignee's Commitment Percentage  
under the Credit Agreement \_\_\_\_\_%

B. Amount of Assignee's Commitment  
under the Credit Agreement \$\_\_\_\_\_

III. ASSIGNOR'S COMMITMENT (as of the Assignment Effective Date)

A. Assignor's Commitment Percentage  
under the Credit Agreement \_\_\_\_\_%

B. Amount of Assignor's Commitment  
under the Credit Agreement \$\_\_\_\_\_

**AGREEMENT AND PLAN OF MERGER**  
**BY AND AMONG**  
**SELECT COMFORT CORPORATION**  
**SCC SUBSIDIARY CORP.**  
**BAM LABS, INC.**  
**AND**  
**SHAREHOLDER REPRESENTATIVE SERVICES LLC**  
**AS STOCKHOLDER REPRESENTATIVE**

**September 9, 2015**

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### **Exhibit**   **Description**

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## AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “**Agreement**”) is made and entered into as of September 9, 2015 by and among Select Comfort Corporation, a Minnesota corporation (“**Parent**”), SCC Subsidiary Corp., a Delaware corporation and a wholly owned subsidiary of Parent (“**Merger Sub**”), BAM Labs, Inc., a Delaware corporation (the “**Company**”), and Shareholder Representative Services LLC, a Colorado limited liability company solely in its capacity as stockholder representative (the “**Stockholder Representative**”). All capitalized terms that are used but not defined herein shall have the respective meanings ascribed thereto in **Annex A**.

### W I T N E S S E T H:

WHEREAS, the boards of directors of each of Parent, Merger Sub and the Company have determined that it would be advisable and in the best interests of each corporation and their respective stockholders that Parent acquire the Company through the statutory merger of Merger Sub with and into the Company, pursuant to which the Company would become a wholly-owned subsidiary of Parent (the “**Merger**”), upon the terms and conditions set forth in this Agreement and in accordance with the applicable provisions of Delaware Law, and in furtherance thereof, have approved this Agreement, the Merger and the other transactions contemplated by this Agreement and the Related Agreements (the “**Transactions**”).

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements, as more fully set forth herein, in connection with the Merger and the other Transactions.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and other premises set forth herein, the mutual benefits to be gained by the performance thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, the parties hereto hereby agree as follows:

### ARTICLE I THE MERGER

**1.1 The Merger.** At the Effective Time (as defined below), on the terms and subject to the conditions set forth in this Agreement, the Certificate of Merger in substantially the form attached hereto as **Exhibit A** (the “**Certificate of Merger**”) and the applicable provisions of Delaware Law, Merger Sub shall merge with and into the Company, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation and shall become a wholly-owned subsidiary of Parent. The Company, as the surviving corporation after the Merger, is sometimes referred to herein as the “**Surviving Corporation**.”

#### **1.2 Closing and Effective Times.**

(a) Unless this Agreement is validly terminated pursuant to **Section 8.1**, the Merger shall be consummated at a closing (the “**Closing**”) on a date that is within two (2) Business Days following satisfaction or waiver (if permissible hereunder) of the conditions set forth in **Article VI** (other than those conditions that by their nature are to be satisfied at the Closing, but subject to satisfaction or waiver (if permissible hereunder) of those conditions), at the offices of Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California, unless another time or place is mutually agreed upon in writing by Parent and the Company. The date upon which the Closing actually occurs shall be referred to herein as the “**Closing Date**.”

(b) **Effective Time.** On the Closing Date, the parties hereto shall cause the Merger to be consummated by filing the Certificate of Merger with the Secretary of State of the State of Delaware in accordance with the applicable provisions of Delaware Law. The time of the filing and acceptance by the Secretary of State of the State of Delaware, or such other later time as may be agreed in writing by Parent, Merger Sub and the Company and specified in the Certificate of Merger, shall be referred to herein as the “**Effective Time.**”

### **1.3 Organizational Documents of the Surviving Corporation and Surviving Entity.**

(a) Unless otherwise determined by Parent prior to the Effective Time, the certificate of incorporation of the Surviving Corporation shall be amended and restated as of the Effective Time to be identical to the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time, until thereafter amended in accordance with Delaware Law and as provided in such certificate of incorporation; *provided, however*, that at the Effective Time, Article I of the certificate of incorporation of the Surviving Corporation shall be amended and restated in its entirety to read as follows: “The name of the corporation is SleepIQ LABS Inc.”

(b) Unless otherwise determined by Parent prior to the Effective Time, the bylaws of Merger Sub as in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation as of the Effective Time until thereafter amended in accordance with Delaware Law and as provided in the certificate of incorporation of the Surviving Corporation and such bylaws.

### **1.4 Directors and Officers of the Surviving Corporation and Surviving Entity.**

(a) Unless otherwise determined by Parent prior to the Effective Time, the directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation immediately after the Effective Time, each to hold the office of a director of the Surviving Corporation in accordance with the provisions of Delaware Law and the certificate of incorporation and bylaws of the Surviving Corporation until his or her successor is duly elected and qualified.

(b) Unless otherwise determined by Parent prior to the Effective Time, the officers of Merger Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation immediately after the Effective Time, each to hold office in accordance with the provisions of the bylaws of the Surviving Corporation.

**1.5 General Effects of the Merger.** At the Effective Time, the effects of the Merger shall be as provided in the applicable provisions of Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, except as otherwise agreed to pursuant to the terms of this Agreement, all of the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

### **1.6 Effect of Merger on Capital Stock of Constituent Corporations.**

(a) **Merger Sub Capital Stock.** At the Effective Time, by virtue of the Merger and without further action on the part of Parent, Merger Sub, the Company or the respective stockholders thereof, each share of capital stock of Merger Sub that is issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and non-assessable share of Company Common Stock (and the shares of the Company into which the shares of Merger Sub capital stock are so converted shall be the only shares of the Company’s capital stock that are issued and

outstanding immediately after the Effective Time). Each certificate evidencing ownership of shares of Merger Sub capital stock will evidence ownership of such shares of Company Common Stock.

(b) ***Company Capital Stock.***

(i) ***Generally.*** At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the respective stockholders thereof, each share of Company Capital Stock (excluding (A) Cancelled Shares, which shall be treated in the manner set forth in **Section 1.6(b)(ii)**, and (B) Dissenting Shares, which shall be treated in the manner set forth in **Section 1.6(b)(iii)**) issued and outstanding as of immediately prior to the Effective Time shall be cancelled and extinguished and shall be converted automatically into the right to receive, upon the terms set forth in this **Section 1.6(b)(i)** and throughout this Agreement (including the escrow provisions set forth in **Article VII** of this Agreement) and surrender of the certificate representing such shares of Company Capital Stock in the manner provided in **Section 1.7**, the Per Share Consideration; *provided, however*, that the aggregate payment amount payable pursuant to this **Section 1.6(b)(i)** shall not exceed the amount of the Total Consideration; *provided, further*, that (i) 10% of that portion of the Total Consideration that otherwise would be payable at the Closing to the Stockholders (other than Parent) pursuant to this **Section 1.6(b)(i)** shall be withheld at the Closing from the amount of cash payable to each such Stockholder and deposited into the Escrow Fund pursuant to **Section 1.7(b)**, which cash shall be distributed to the former holders of such shares of Company Capital Stock in accordance with, and subject to, the terms and conditions of this Agreement and the Escrow Agreement, and (ii) \$250,000 shall be withheld and placed in the Expense Fund pursuant to **Sections 1.7(c)** and **7.6**. For purposes of calculating the amount of cash payable to each Stockholder in respect of their shares of Company Capital Stock pursuant to this **Section 1.6(b)(i)**, all shares of Company Capital Stock held by each Stockholder shall be aggregated on a certificate-by-certificate (or like instrument) basis.

(ii) ***Cancellation of Treasury Stock and Parent Stock.*** At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the respective stockholders thereof, and notwithstanding any other provisions of this Agreement to the contrary, each share of Company Capital Stock held by the Company or any direct or indirect wholly owned Subsidiary of the Company immediately prior to the Effective Time and each share of Company Capital Stock held by Parent or its controlled Affiliates (the “**Cancelled Shares**”) shall be automatically canceled and extinguished without any conversion thereof, and no consideration shall be delivered or deliverable in respect thereof.

(iii) ***Dissenting Shares.*** Notwithstanding any other provisions of this Agreement to the contrary, any shares of Company Capital Stock outstanding immediately prior to the Effective Time and with respect to which the holder thereof has properly demanded appraisal rights in accordance with Section 262 of Delaware Law and Chapter 13 of the California General Corporation Law (the “**CGCL**”), and who has not effectively withdrawn or lost such holder’s appraisal or dissenters’ rights under Delaware Law or, if applicable, the CGCL (collectively, the “**Dissenting Shares**”), shall not be converted into or represent a right to receive the applicable consideration for Company Capital Stock set forth in **Section 1.6(b)(i)**, but the holder thereof shall only be entitled to such rights as are provided by Delaware Law or, if applicable, the CGCL. Notwithstanding the provisions of this **Section 1.6(b)(iii)**, if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) such holder’s appraisal or dissenters’ rights under Delaware Law or, if applicable, the CGCL, then, as of the later of the Effective Time and the occurrence of such event, such holder’s shares shall automatically be converted into and represent only the right to receive, upon surrender of the certificate representing such shares, upon the terms set forth in this **Section 1.6(b)(iii)** and throughout this Agreement (including the escrow holdback, expense fund and indemnification provisions of this Agreement), the consideration for Company Capital Stock set forth in **Section 1.6(b)(i)**, without interest

thereon. The Company shall give Parent (A) prompt notice of any written demand for appraisal received by the Company pursuant to the applicable provisions of Delaware Law or, if applicable, the CGCL and (B) the opportunity to participate in all negotiations and proceedings with respect to such demands. The Company shall not, except with the prior written consent of Parent, make any payment with respect to any such demands or offer to settle or settle any such demands. Any communication to be made by the Company to any Stockholder with respect to such demands shall be submitted to Parent in advance and shall not be presented to any Stockholder prior to the Company receiving Parent's written consent.

(c) ***Company Options.***

(i) ***Company Options.***

(A) ***Vested Company Options.*** Effective as of the Effective Time, each Vested Company Option (or portion thereof) that is outstanding as of immediately prior to the Effective Time shall be cancelled and the holder thereof shall be entitled to receive, upon the terms and subject to the conditions set forth in this **Section 1.6(c)(i)(A)** and throughout this Agreement and in consideration of such cancellation, the Per Option Consideration. Promptly following the Closing, Parent shall pay (or cause to be paid) the Per Option Consideration, less applicable withholdings, in respect of such Vested Company Options; *provided, however*, that 10% of that portion of the cash amount that otherwise would be payable at the Closing to each Vested Company Optionholder shall be withheld at the Closing from the amount of cash payable to each such Vested Company Optionholder and deposited into the Escrow Fund pursuant to **Section 1.7(b)**, which cash amount will be distributed to the former holders of such Vested Company Options in accordance with, and subject to, the terms and conditions of this Agreement and the Escrow Agreement.

(B) ***Unvested Company Options Held by Continuing Employees.*** Effective as of the Effective Time, each Unvested Company Option (or portion thereof) that is outstanding as of immediately prior to the Effective Time and held by a Continuing Employee shall be cancelled without the payment of any consideration therefor.

(C) ***Unvested Company Options Held by Non-Continuing Employees.*** Effective as of the Effective Time, each Unvested Company Option (or portion thereof) that is outstanding as of immediately prior to the Effective Time and held by a Non-Continuing Employee shall be cancelled without the payment of any consideration therefor.

**1.7 Payment of Merger Consideration for Company Capital Stock.**

(a) ***Paying Agent.*** U.S. Bank National Association, or another Person selected by Parent and reasonably acceptable to the Company, shall serve as the Paying Agent (the "**Paying Agent**") for the Merger.

(b) ***Escrow Amount.*** On the Closing Date, Parent shall transfer or cause to be transferred to the Escrow Agent an amount of cash equal to the Escrow Amount, to be held in trust as an escrow fund (the "**Escrow Fund**") under the terms of this Agreement and the Escrow Agreement.

(c) ***Expense Fund.*** On the Closing Date, Parent shall transfer or cause to be transferred to a segregated client bank account maintained by the Stockholder Representative an amount of cash equal to the amount of the Expense Fund to be held and distributed in accordance with the terms of this Agreement.

(d) **Exchange Procedures.** Prior to Closing, the Company shall provide to each Stockholder a letter of transmittal in the form attached hereto as **Exhibit B** (the “**Letter of Transmittal**”). If a Letter of Transmittal duly completed and validly executed in accordance with the instructions thereto, and a certificate representing shares of Company Capital Stock (the “**Company Stock Certificates**”) is properly surrendered to Parent or the Paying Agent not later than three (3) Business Days prior to the Closing Date, then Parent shall cause its transfer agent to issue to the holder of such Company Stock Certificate that portion of the Total Consideration issuable in respect thereto pursuant to **Section 1.6(b)(i)** as soon as practicable, but in no event later than one (1) Business Day after the Closing Date, and the Company Stock Certificate so surrendered shall be cancelled. If a Letter of Transmittal duly completed and validly executed in accordance with the instructions thereto, and a Company Stock Certificate is properly surrendered to Parent or the Paying Agent at any time later than three (3) Business Days prior to the Closing Date, then Parent shall cause its transfer agent to issue to the holder of such Company Stock Certificate that portion of the Total Consideration issuable in respect thereto pursuant to **Section 1.6(b)(i)** no later than three (3) Business Days following such surrender, and the Company Stock Certificate so surrendered shall be cancelled. No portion of the Total Consideration will be paid to the holder of any unsurrendered Company Stock Certificate with respect to shares of Company Capital Stock formerly represented thereby until the holder of record of such Company Stock Certificate shall surrender such Company Stock Certificate and validly executed Paying Agent documents pursuant hereto.

(e) **Lost, Stolen or Destroyed Certificates.** In the event any Company Stock Certificate shall have been lost, stolen or destroyed, the Paying Agent or Parent shall pay, in exchange for such lost, stolen or destroyed certificate, the portion of the Total Consideration, if any, payable in respect thereto pursuant to **Section 1.6(b)** upon the making of an affidavit of that fact by the holder thereof; *provided, however*, that Parent may, in its discretion, or as required by the Paying Agent, and as a condition precedent to the issuance thereof, require the Stockholder who is the owner of such lost, stolen or destroyed certificates to provide an indemnification agreement (without the requirement of posting a bond) in a form and substance acceptable to Parent against any claim that may be made against Parent, the Surviving Corporation or the Paying Agent with respect to the certificates alleged to have been lost, stolen or destroyed.

(f) **No Further Ownership Rights in Company Capital Stock.** The cash paid in respect of the surrender for exchange of shares of Company Capital Stock in accordance with the terms of this Agreement shall be deemed to be full satisfaction of all rights pertaining to such shares of Company Capital Stock, and there shall be no further registration of transfers on the records of the Company or the Surviving Corporation of shares of Company Capital Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Company Stock Certificates are presented to the Company or the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this **Article I**.

(g) **No Liability.** Notwithstanding anything to the contrary in this Agreement, none of Parent, the Paying Agent, the Surviving Corporation, or any party hereto shall be liable to a Stockholder for any amount paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

**1.8 Withholding Taxes.** The Company, the Paying Agent, Parent and the Surviving Corporation, shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement such amounts as may be required to be deducted or withheld therefrom under any provision of federal, local or foreign tax law or under any Legal Requirements or applicable Orders. To the extent such amounts are so deducted or withheld, such amounts shall be remitted to the appropriate Governmental Entity and treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

**1.9 Taking of Further Action.** If at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, or to vest Parent with full right, title and possession to all of the Company Capital Stock, then each of the Surviving Corporation, Parent and the officers and directors of each of the Surviving Corporation and Parent are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

Subject to any disclosure set forth in (i) the specific section, subsection or subclause of the disclosure schedule delivered by the Company to Parent on the date of this Agreement prior to the execution and delivery of this Agreement (the “**Disclosure Schedule**”) that corresponds to the specific section, subsection or subclause of each representation and warranty set forth in this **Article II**, or (ii) any other section, subsection or subclause of the Disclosure Schedule solely if and to the extent that it is reasonably apparent on the face of such disclosure that it applies to another section, subsection or subclause of this **Article II**, the Company hereby represents and warrants to Parent and Merger Sub as follows:

**2.1 Organization and Good Standing.** (a) The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Company has the requisite corporate power to own, lease and operate its assets and properties and to carry on its business as currently conducted. The Company is duly qualified or licensed to do business and in good standing as a foreign corporation in each jurisdiction in which the character or location of its assets or properties (whether owned, leased or licensed) or the nature of its business make such qualification or license necessary to the Company’s business as currently conducted. The Company has Made Available true, correct and complete copies of its certificate of incorporation, as amended to date (the “**Certificate of Incorporation**”) and bylaws, as amended to date, each in full force and effect on the date of this Agreement (collectively, the “**Charter Documents**”). Since the date of the Charter Documents Made Available, the Board of Directors of the Company has not approved or proposed any amendment to any of the Charter Documents.

(b) **Section 2.1(b)** of the Disclosure Schedule lists the directors and officers of the Company and every jurisdiction in which the Company has Employees or facilities or otherwise conducts its business as of the date of this Agreement. The operations now being conducted by the Company are not now and have never been conducted by the Company under any other name. There are no outstanding powers of attorney executed by or on behalf of the Company.

**2.2 Authority and Enforceability.** The Company has all requisite power and authority to enter into this Agreement and any Related Agreements to which it is a party and, subject to receipt of the Requisite Stockholder Approval, to consummate the Merger and the other Transactions. The execution and delivery of this Agreement and any Related Agreements to which the Company is a party and the consummation of the Merger and the other Transactions have been duly authorized by all necessary corporate action on the part of the Company (including the unanimous approval of the Board of Directors of the Company (the “**Requisite Board Approval**”)) and no further corporate or other action is required on the part of the Company to authorize this Agreement and any Related Agreements to which the Company is a party or to consummate the Merger or any other Transactions, other than the adoption of this Agreement and approval of the Merger by the Stockholders of the Company who hold (a) at least a majority of the voting power of the outstanding shares of Company Capital Stock, voting together as a single class on an as converted into Company Common Stock basis, (b) at least a majority of the voting

power of the Company Common Stock, voting together as a single class, and (c) at least a majority of the voting power of the outstanding shares of Company Preferred Stock, voting together as a single class (clauses (a), (b) and (c), collectively, the “**Requisite Stockholder Approval**”). The Requisite Stockholder Approval is the only vote of the Stockholders required under applicable Legal Requirements, Delaware Law, the CGCL, the Charter Documents and all Contracts to which the Company is a party to legally adopt this Agreement and approve the Merger and the other Transactions. The Board of Directors of the Company has unanimously approved this Agreement, the Merger and the other Transactions, and recommended to the Stockholders to vote in favor of adoption of this Agreement and approval of the Merger and the other Transactions (the “**Company Recommendation**”). This Agreement and each of the Related Agreements to which the Company is a party have been duly executed and delivered by the Company and assuming the due authorization, execution and delivery by the other parties hereto and thereto, constitute the valid and binding obligations of the Company enforceable against it in accordance with their respective terms, subject to (x) Legal Requirements of general application relating to bankruptcy, insolvency, moratorium, the relief of debtors and enforcement of creditors’ rights in general, and (y) rules of law governing specific performance, injunctive relief, other equitable remedies and other general principles of equity (clauses (x) and (y) collectively, the “**Enforceability Limitations**”).

**2.3 Governmental Approvals and Consents.** No consent, notice, waiver, approval, Order or authorization of, or registration, declaration or filing with any Governmental Entity, is required by, or with respect to, the Company in connection with the execution and delivery of this Agreement and any Related Agreement to which the Company is a party or the consummation of the Merger or any other Transactions, except for (a) such consents, notices, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable securities laws and state “blue sky” laws and (b) the filing of the Certificates of Merger with the Secretary of State of the State of Delaware.

**2.4 No Conflicts.** The execution and delivery by the Company of this Agreement and any Related Agreement to which the Company is a party, and the consummation of the Transactions, will not conflict with or result in any violation of or default under (with or without notice or lapse of time, or both) or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit under (any such event, a “**Conflict**”) (a) any provision of the Charter Documents, as amended, (b) any Contract to which the Company is a party or by which any of its properties or assets (whether tangible or intangible) are bound or (c) any Legal Requirement or Order applicable to the Company or any of its properties or assets (whether tangible or intangible).

### **2.5 Company Capital Structure.**

(a) The authorized capital stock of the Company consists of 52,500,000 shares of Company Common Stock, of which 9,376,112 shares are issued and outstanding on the date of this Agreement; 1,769,220 shares of Company Seed Series A Preferred Stock, of which 1,769,220 shares are issued and outstanding on the date of this Agreement; 2,265,906 shares of Company Seed Series B Preferred Stock, of which 2,265,906 shares are issued and outstanding on the date of this Agreement; 5,126,956 shares of Company Seed Series C Preferred Stock, of which 5,126,956 shares are issued and outstanding on the date of this Agreement; 10,551,494 shares of Company Series A Preferred Stock, of which 10,551,494 shares are issued and outstanding on the date of this Agreement; 10,869,565 shares of Company Series B Preferred Stock, of which 10,869,565 shares are issued and outstanding on the date of this Agreement; and 6,802,271 shares of Company Series C Preferred Stock, of which 2,509,574 shares are issued and outstanding on the date of this Agreement. As of the date of this Agreement, each share of Company Preferred Stock is convertible on a one-share-for-one-share basis into Company Common Stock and will be pursuant to their terms, be entitled to receive solely the same consideration as shares of Company Common Stock, on an as-converted basis. All outstanding shares of Company Capital Stock

are duly authorized, validly issued, fully paid and non-assessable and are not subject to preemptive rights created by statute, the Charter Documents, or any agreement to which the Company is a party or by which it is bound.

(b) All outstanding shares of Company Capital Stock and Company Options have been issued or repurchased (in the case of shares that were outstanding and repurchased by the Company or any stockholder of the Company) in compliance with all applicable Legal Requirements, and were issued, transferred and repurchased (in the case of shares that were outstanding and repurchased by the Company or any stockholder of the Company) in accordance with any right of first refusal or similar right or limitation Known to the Company. No Stockholder has exercised any right of redemption, if any, provided in the Certificate of Incorporation with respect to shares of the Company Preferred Stock, and the Company has not received notice that any Stockholder intends to exercise such rights. There are no declared or accrued but unpaid dividends with respect to any shares of Company Capital Stock. Other than the Company Capital Stock set forth in **Sections 2.5(a)** and **2.5(c)** of this Agreement or the Disclosure Schedule, the Company has no other capital stock authorized, issued or outstanding as of the date of this Agreement.

(c) Except for the Plan, the Company has never adopted, sponsored or maintained any stock option plan or any other plan or agreement providing for equity or equity-related compensation to any person (whether payable in shares, cash or otherwise). The Company has reserved 4,500,000 shares of Company Common Stock for issuance to employees and directors of, and consultants to, the Company upon the issuance of stock or the exercise of options or the granting or purchase of restricted stock granted under the Plan, of which (i) 1,404,666 shares are issuable, as of the date of this Agreement, upon the exercise of outstanding, unexercised options granted under the Plan, (ii) 1,035,834 shares have been issued upon the exercise of options granted under the Plan and remain outstanding as of the date of this Agreement, and (iii) 2,059,500 shares remain available for future grant as of the date of this Agreement. Each Company Option was originally granted with an exercise price that the Board of Directors of the Company in good faith, based on a reasonable valuation method utilized at the time of grant, determined to be at least equal to the fair market value of a share of Company Common Stock on the date of grant.

(d) **Section 2.5(d)** of the Disclosure Schedule sets forth for each outstanding Company Option as of the date of this Agreement, the name of the holder, whether such holder is an employee of the Company, the number of shares of Company Capital Stock issuable upon the exercise of such option, the date of grant, the exercise price, the vesting schedule, including the extent vested to date and whether such vesting is subject to acceleration as a result of the Transactions or any other events, and, for any option, whether such option is a nonstatutory option or qualifies as an incentive stock option as defined in Section 422 of the Code and whether (and to what extent) any such Company Option is or has ever been subject to Section 409A.

(e) No bonds, debentures, notes or other indebtedness of the Company (i) having the right to vote on any matters on which stockholders may vote (or which is convertible into, or exchangeable for, securities having such right) or (ii) the value of which is in any way based upon or derived from capital or voting stock of the Company, are issued or outstanding as of the date of this Agreement.

(f) Except for the Company Options, there are no options, warrants, calls, rights, convertible securities, commitments or agreements of any character, written or oral, to which the Company is a party or by which the Company is bound obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of the Company or obligating the Company to grant, extend, accelerate the vesting of,



change the price of, otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or other equity-compensation rights of the Company (whether payable in shares, cash or otherwise). Except as contemplated hereby, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting stock of the Company to which the Company is a party, and there are no agreements to which the Company is a party relating to the registration, sale or transfer (including agreements relating to rights of first refusal, co-sale rights or “drag-along” rights) of any Company Capital Stock.

**2.6 Company Subsidiaries.** The Company does not own, directly or indirectly, shares or interests in any other corporation, limited liability company, partnership, association, joint venture or other business entity. The Company has not agreed to, and is not obligated to, make any future investment in or capital contribution to any Person.

**2.7 Company Financial Statements; Internal Financial Controls.**

(a) **Section 2.7(a)** of the Disclosure Schedule sets forth the Company’s (i) unaudited balance sheets as of December 31, 2013 and December 31, 2014, and the related statements of income, cash flow and stockholders’ equity for the twelve (12) month periods then ended (the “**Year-End Financials**”), and (ii) unaudited balance sheet as of June 30, 2015 (the “**Balance Sheet Date**”), and the related unaudited statements of income, cash flow and stockholders’ equity for the six (6) months then ended (the “**Interim Financials**”). The Year-End Financials and the Interim Financials (collectively referred to as the “**Financials**”) have been prepared in accordance with GAAP consistently applied throughout the periods indicated and consistent with each other (except that the Current Balance Sheet (as defined below) and the Interim Financials do not contain footnotes and other presentation items that may be required by GAAP). The Financials present fairly in all material respects the Company’s consolidated financial condition, operating results and cash flows as of the dates and during the periods indicated therein, subject in the case of the Interim Financials to normal year-end adjustments, which are not material in amount in any individual case or in the aggregate. The Company’s unaudited consolidated balance sheet as of the Balance Sheet Date is referred to hereinafter as the “**Current Balance Sheet**.” The Books and Records of the Company have been, and are being, maintained in accordance with applicable legal and accounting requirements and the Financials are consistent with such Books and Records.

(b) The systems of internal accounting controls maintained by the Company are sufficient to provide reasonable assurance that transactions are recorded, and assets are maintained, as necessary to permit preparation of financial statements in conformity with GAAP.

(c) The Company (including any Employee thereof) has not identified or been made aware of (i) any significant deficiency or material weakness in the system of internal accounting controls utilized by the Company, (ii) any fraud, whether or not material, that involves the Company’s management or other Employees who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company or (iii) any claim or allegation regarding any of the foregoing.

**2.8 No Undisclosed Liabilities.** The Company has no Indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or other liability (which is required to be reflected in financial statements prepared in accordance with GAAP), except for those which (a) have been reflected in the Current Balance Sheet, (b) have arisen in the ordinary course of business consistent with past practices since the Balance Sheet

Date and prior to the date of this Agreement, (c) performance obligations under Contracts to which the Company is a party; or (d) incurred as a result of the Transactions.

**2.9 No Changes.** Since the Balance Sheet Date through the date of this Agreement, (a) no Company Material Adverse Effect has occurred, and (b) the Company has not taken any action that would require the consent of Parent under **Section 4.2** if proposed to be taken after the date of this Agreement.

#### **2.10 Tax Matters.**

(a) **Tax Returns and Payments.** Each return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Entity in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax, including any amendment thereof or attachment thereto (each, a “**Tax Return**”) required to be filed by or on behalf of the Company with any Governmental Entity with respect to any taxable period ending on or before the Closing Date or any taxable event occurring prior to or on the Closing Date (the “**Company Returns**”): (i) have been filed on or before the applicable due date (including any extensions of such due date); and (ii) have been accurately and completely prepared in all material respects in compliance with all applicable Legal Requirements. All Taxes required to be paid on or before the Closing Date by the Company have been or will be timely paid. The Company has delivered or made available to Parent accurate and complete copies of all Company Returns filed since its incorporation, other than immaterial information Tax Returns (e.g., Forms W-2 and 1099) unless requested by Parent.

(b) **Reserves for Payment of Taxes.** The Financials fully accrue all liabilities for Taxes with respect to all periods through the dates thereof in accordance with GAAP. The Company will establish, in the ordinary course of business and consistent with its past practices, reserves adequate for the payment of all Taxes for the period from the Balance Sheet Date through the Closing Date, and the Company will disclose the dollar amount of such reserves to Parent on or prior to the Closing Date. The Company has not incurred any liability for Taxes since the Balance Sheet Date outside of the ordinary course of business.

(c) **Audits; Claims.** No Company Return has ever been examined or audited by any Governmental Entity. The Company has not received from any Governmental Entity any: (i) written notice indicating an intent to open an audit or other review; (ii) request for information related to Tax matters; or (iii) notice of deficiency or proposed Tax adjustment. No extension or waiver of the limitation period applicable to any Company Returns has been granted by or requested from the Company. No claim or legal proceeding is pending, or to the Knowledge of the Company, threatened against the Company in respect of any Tax. There are no Liens for Taxes upon any of the assets of the Company except Liens for current Taxes not yet due and payable (and for which there are adequate accruals, in accordance with GAAP).

(d) **Legal Proceedings; Etc.** There are no unsatisfied liabilities for Taxes with respect to any notice of deficiency or similar document received by the Company with respect to any Tax (other than liabilities for Taxes asserted under any such notice of deficiency or similar document which are being contested in good faith by the Company and with respect to which adequate reserves for payment have been established).

(e) ***Distributed Stock.*** The Company has not distributed stock of another Person, and the Company has not had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code.

(f) ***Adjustment in Taxable Income.*** The Company is not currently, and the Company for any period for which a Company Return has not been filed will not be, required to include any adjustment in taxable income for any taxable period (or portion thereof) pursuant to Section 481 or 263A of the Code (or any comparable provision under state, local or foreign Tax laws) as a result of transactions, events or accounting methods employed prior to the Merger.

(g) ***280G.*** There is (i) no agreement, plan, arrangement or other Contract covering any Employee that, considered individually or considered collectively with any other such Contracts, will, or would reasonably be expected to, give rise directly or indirectly to the payment of any amount that would not be deductible pursuant to Section 280G or Section 404 of the Code or that would be characterized as a “parachute payment” within the meaning of Section 280G(b)(1) of the Code or (ii) agreement, plan, arrangement or other Contract by which the Company is bound to compensate any Employee for excise taxes paid pursuant to Section 4999 of the Code. The Company currently is not, and has never been, a party to or bound by any tax indemnity agreement, tax sharing agreement, tax allocation agreement or similar Contract.

(h) ***No Other Jurisdictions for Filing Tax Returns.*** There are no jurisdictions in which the Company is required to file a Tax Return other than the jurisdictions in which the Company has filed Tax Returns. The Company is not subject to net income Tax in any country other than its country of incorporation or formation by virtue of having a permanent establishment or other place of business in that country. No claim has ever been made by a Governmental Entity in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction.

(i) ***Transfer Pricing.*** The Company is in compliance in all respects with all applicable transfer pricing laws, including the execution and maintenance of contemporaneous documentation substantiating the transfer pricing practice and methodology. All intercompany agreements have been adequately documented, and such documents have been duly executed in a timely manner. The prices for any property or services (or for the use of any property), including interest and other prices for financial services, provided by or to the Company are arm’s-length prices for purposes of the relevant transfer pricing laws, including Treasury Regulations promulgated under Section 482 of the Code.

(j) ***Tax Shelters; Listed Transactions; Etc.*** The Company has not consummated or participated in, nor is the Company currently participating in, any transaction which was or is a “tax shelter” transaction as defined in Sections 6662 or 6111 of the Code or the Treasury Regulations promulgated thereunder. The Company has not ever participated in, nor is currently participating in, a “Listed Transaction” or a “Reportable Transaction” within the meaning of Section 6707A(c) of the Code or Treasury Regulation Section 1.6011-4(b), or any transaction requiring disclosure under a corresponding or similar provision of state, local, or foreign Legal Requirements. The Company has disclosed on its Tax Returns any Tax reporting position taken in any Tax Return which could result in the imposition of penalties under Section 6662 of the Code (or any comparable provisions of state, local or foreign law).

(k) ***Section 83(b).*** No Person holds shares of Company Common Stock that are non-transferable and subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code with respect to which a valid election under Section 83(b) of the Code has not been made.

(l) **Withholding.** The Company: (i) has complied with all applicable Legal Requirements relating to the payment, reporting and withholding of Taxes (including withholding of Taxes pursuant to Sections 1441, 1442, 1445 and 1446 of the Code or similar provisions under any foreign Legal Requirement); (ii) has, within the time and in the manner prescribed by applicable Legal Requirements, withheld from employee wages or consulting compensation and timely paid over to the proper Governmental Entities (or is properly holding for such timely payment) all amounts required to be so withheld and paid over under all applicable Legal Requirements, including federal and state income and employment Taxes, Federal Insurance Contribution Act, Medicare, Federal Unemployment Tax Act, and relevant non-U.S. income and employment Tax withholding Legal Requirements; and (iii) has timely filed all withholding Tax Returns, for all periods.

(m) **Change in Accounting Methods; Closing Agreements; Etc.** The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Effective Time as a result of any: (i) change in method of accounting made prior to the Effective Time; (ii) closing agreement as described in Section 7121 (or any corresponding or similar provision of state, local, or foreign Tax law) executed prior to the Effective Time; (iii) intercompany transactions or excess loss accounts described in Treasury Regulations under Section 1502 of the Code (or any similar provision of state, local, or foreign Tax Legal Requirement); (iv) installment sale or open transaction disposition made on or prior to the Effective Time; or (v) prepaid amount received on or prior to the Effective Time.

(n) **Consolidated Groups.** The Company has not ever been a member of an affiliated, combined, consolidated or unifying group (including within the meaning of Code §1504(a)) filing a consolidated federal income Tax Return (other than a group, the common parent of which was the Company) and has never been a party to any joint venture, partnership, or, to the Knowledge of the Company, other agreement that reasonably could be treated as a partnership or tax purposes.

(o) **Section 1503.** The Company has not incurred a dual consolidated loss within the meaning of Section 1503 of the Code (or any similar provision of U.S. (state, local) or non-U.S. Tax Legal Requirement).

(p) **Section 897.** The Company: (i) is not and has never been a “United States real property holding corporation” within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code; and (ii) has not made the election provided under section 897(i) of the Code.

(q) **Tax Incentives.** The Company is in compliance with all terms and conditions of any Tax exemption, Tax holiday or other Tax reduction agreement or order (each, a “**Tax Incentive**”) and the consummation of the transactions contemplated by this Agreement will not have any adverse effect on the continued validity and effectiveness of any such Tax Incentive.

(r) **Section 409A.**

(i) **Each** “nonqualified deferred compensation plan” (as such term is defined in Section 409A(d)(1) of the Code) subject to Section 409A of the Code (or any state law equivalent) and the regulations and guidance thereunder (“**Section 409A**”) is in operational and documentary compliance with Section 409A. No nonqualified deferred compensation plan that was originally exempt from application of Section 409A has been “materially modified” (within the meaning of IRS Notice 2005-1) at any time since the Company’s incorporation. No compensation shall be includable in the gross income of any Employee as a result of the operation of Section 409A with respect to any Company Employee Plan or other arrangements or agreements which is or has been in effect at any

time prior to the Effective Time. To the extent required, the Company has properly reported and/or withheld and remitted on amounts deferred under any Company nonqualified deferred compensation plan subject to Section 409A. There is no Contract, agreement, plan or arrangement to which the Company or any of its ERISA Affiliates is a party, including the provisions of this Agreement, covering any Employee of the Company, which individually or collectively could require the Company or any of its Affiliates to pay a Tax gross up payment to, or otherwise indemnify or reimburse, any Employee for Tax-related payments under Section 409A. There is no contract, agreement, plan or arrangement to which the Company is a party, including the provisions of this Agreement, which, individually or collectively, could give rise to a Parent, Company, Surviving Corporation, or Subsidiary Tax under Section 409A or that would give rise to an Employee Tax and/or Parent, Company, Surviving Corporation or Subsidiary reporting obligations under Section 409A.

(ii) No Company Option or other stock right (as defined in U.S. Treasury Department regulation 1.409A-1(l)) (w) has an exercise price that was less than the fair market value of the underlying equity as of the date such option or right was granted, (x) has any feature for the deferral of compensation other than the deferral of recognition of income until the later of exercise or disposition of such option or rights, (y) has been granted after the Company's incorporation, with respect to any class of stock of the Company that is not "service recipient stock" (within the meaning of applicable regulations under Section 409A), or (z) has ever been accounted for other than fully in accordance with GAAP in the Company's financial statements provided to Parent.

(s) **Tax Attributes.** The Company makes no representations or warranties regarding the amount or availability of any net operating losses of the Company, or the ability of Parent or any of its Affiliates (including the Surviving Corporation) to utilize such net operating losses or other Tax attributes after the Closing.

**2.11 Real Property.** The Company does not own any real property, nor has the Company ever owned any real property. **Section 2.11** of the Disclosure Schedule sets forth a list of all leases, lease guaranties, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in or relating to the Leased Real Property (collectively, the "**Lease Agreements**"). The Company currently occupies all of the Leased Real Property for the operation of its business. There are no other parties occupying, or with a right to occupy, the Leased Real Property. The Company does not owe brokerage commissions or finders' fees with respect to any such Leased Real Property.

**2.12 Tangible Property.** As of the date of this Agreement, the Company has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its tangible properties and assets, real, personal and mixed, in each case, that is shown on the Current Balance Sheet, free and clear of any Liens, except Permitted Liens and such imperfections of title and encumbrances, if any, which do not materially detract from the value or materially interfere with the present use of the property subject thereto or affected thereby. The material items of equipment owned or leased by the Company (i) are adequate for the conduct of the business of the Company as currently conducted, and (ii) are, in all material respects, in good operating condition, regularly and properly maintained, subject to normal wear and tear.

### **2.13 Intellectual Property.**

(a) **Company Products.** **Section 2.13(a)** of the Disclosure Schedule accurately identifies and describes each Company Product. The Company has Made Available to Parent a complete and accurate bill of materials for each Company Product.

(b) **Company IP. Section 2.13(b)** of the Disclosure Schedule accurately identifies: (A) each item of Company IP that is Registered IP (“**Company Registered IP**”); and (B) the jurisdiction in which such item of Company Registered IP has been registered or filed and the applicable application, registration or serial number. With respect to any patentable inventions that are Company IP, the Company has made a decision, in accordance with reasonable business practices, to either maintain such invention as a Trade Secret, in which case the Company has maintained such invention as a Trade Secret, or has filed a Patent on such invention in a timely manner, and continued to prosecute and maintain such Patent in accordance with all Legal Requirements, except where the Company has decided in accordance with reasonable business practices to cease prosecution or maintenance of or to otherwise abandon such Patent.

(c) **IP Licenses. Section 2.13(c)(i)** of the Disclosure Schedule sets forth: (A) each Contract pursuant to which Company has licensed or is obligated to license any Company IP or Company Products to a third party (the “**Out-Licenses**”), and (B) each Contract pursuant to which a third party has licensed any Intellectual Property Rights to Company (the “**In-Licenses**”) other than (1) Open Source Software, and (2) Shrink-Wrap Code; excluding, for the purpose of (A) and (B), employee and consultant agreements, and non-disclosure agreements. **Section 2.13(c)(ii)** of the Disclosure Schedule sets forth (A) all Third Party Components (other than Software subject to Open Source Licenses), (B) the In-License related to such Third Party Component, (C) whether the license or licenses so granted to the Company are exclusive or nonexclusive, and (D) each Company Product in which such Third Party Component is incorporated or for which it is material to the development of or used to deliver, host, provide or distribute such Company Product.

(d) **Standard Form IP Agreements.** The Company has Made Available a true, correct and complete copy of each Standard Form IP Contract.

(e) **Ownership Free and Clear.** The Company owns all right, title and interest to the Company IP, including, without limitation, all right, title and interest to sue for infringement of Intellectual Property Rights that are Company IP, or, with respect to exclusively licensed Company IP, has a valid and enforceable license thereto, in each case, free and clear of all Liens other than non-exclusive end user licenses of Intellectual Property Rights granted in the ordinary course of business. There are no actions, suits, investigations, claims, or proceedings threatened, pending, or in progress relating in any way to the Company IP. Without limiting the generality of the foregoing:

(i) all documents and instruments necessary to perfect the rights of the Company in the Company Registered IP have been validly executed, delivered, recorded and filed in a timely manner with the applicable Governmental Entity;

(ii) each Person who is or was an employee or independent contractor of the Company and who is or was involved in the creation or development of any Intellectual Property or Intellectual Property Rights for the Company has signed a valid and enforceable agreement sufficient to irrevocably assign such Intellectual Property Rights to the Company, and containing a waiver of moral rights to the extent not prohibited under applicable Legal Requirements, and containing confidentiality provisions protecting the Company IP, with each such agreement substantially in the Company’s Standard Form IP Contract for employees (a copy of which is attached to **Section 2.13(e)-A** of the Disclosure Schedule (the “**Employee Proprietary Information Agreement**”)) or substantially in the Company’s Standard Form IP Contract for consultants or independent contractors (a copy of which is attached to **Section 2.13(e)-B** of the Disclosure Schedule (the “**Consultant Proprietary Information Agreement**”)), as the case may be;

(iii) no Employee or former employer of any Employee has any claim, right or interest to or in any Company IP;

(iv) neither any employee or independent contractor of the Company is in breach of any Contract with any former employer or other Person concerning Intellectual Property Rights or confidentiality;

(v) no funding, facilities or personnel of any Governmental Entity, university, or research facility were used to develop or create any Company IP in a manner such that such Governmental Entity, university or research facility has any claim, right or interest to or in any Company IP;

(vi) the Company has taken reasonable steps to maintain the confidentiality of all proprietary information held by the Company, or purported to be held by the Company, as a Trade Secret, as well as any confidential information or Trade Secrets provided to the Company under an obligation of confidentiality;

(vii) the Company has not assigned or otherwise transferred ownership of, or agreed to assign or otherwise transfer ownership of, any Intellectual Property Right to any other Person and there are no existing contracts, agreements, options, commitments, or rights with, to, or in any person to acquire ownership of any of the Company IP or rights therein;

(viii) neither Parent nor any of its Affiliates will be subject to any covenant not to sue or, other than pursuant to an Out-License that is disclosed and described in **Section 2.13(e)(viii)** of the Disclosure Schedule, similar restrictions on its enforcement or enjoyment of the Company IP as a result of any prior transaction related to the Company IP;

(ix) the Company is not currently and has never been a member or promoter of, or a contributor to, any industry standards body or similar organization that could require or obligate the Company to grant or offer to any other Person any license or right to any Company IP;

(x) no third party that has licensed Intellectual Property Rights that are included in or used for the provision of Company Products or provided any Intellectual Property that is included in or used for the provision of Company Products, has retained sole ownership of or has retained exclusive license to rights under any Intellectual Property Rights in any improvements or derivative works made solely or jointly by the Company under such license;

(xi) the Company owns or otherwise has, and after the Closing will continue to have, all Intellectual Property Rights and Intellectual Property needed to conduct the business of such entity as currently conducted, except to the extent any In-Licenses are terminated or permitted to lapse or not renew by or at the direction of Parent, in accordance with their terms, after the Closing, provided that the foregoing representations and warranties are made solely as to the Company's Knowledge with respect to third-party Patents other than those Patents licensed pursuant to In-Licenses; and

(xii) except pursuant to a Contract set forth in **Section 2.13(e)(xii)** of the Disclosure Schedule, the Company has no obligations to pay any amounts or to provide other consideration to any other person (including any Employee of the Company) in consideration for the Company's use or practice of any Company IP or manufacture, use, or distribution of Company Products, as such activities are currently conducted by or on behalf of the Company.

(f) ***Valid and Enforceable.***

(i) Each item of Company Registered IP is and at all times has been in compliance with all Legal Requirements, and all filings, payments and other actions required to be made or taken to maintain such item of Company Registered IP in full force and effect have been made by the applicable deadline. To the Knowledge of the Company, there is no reasonable basis for a claim that any Company Registered IP is invalid or unenforceable, except as disclosed in the applicable file wrapper therefor. The Company has not received any notice or information of any kind from any source suggesting that the Company Registered IP may be invalid, unpatentable (or otherwise not registrable), or unenforceable, other than official notices from national or regional patent or trademark offices in the ordinary course of Patent or Trademark prosecution (“**Registered IP Notices**”). None of the Company or its respective agents or representatives have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate any of the Company Registered IP or hinder its enforcement, including, without limitation, misrepresenting the Patents within the Company IP to a standard-setting organization, but excluding, for clarity, where the Company has decided in accordance with reasonable business practices to cease prosecution or maintenance or to otherwise abandon Company Registered IP.

(ii) *Patents.* (A) All Patents that are Company Registered IP are valid and enforceable (except with respect to any pending Patents that are not currently valid and enforceable), and there are no actions, fees or taxes, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates for the purposes of perfecting, maintaining or renewing any Patents that are Company Registered IP due within ninety (90) days after the Closing Date that have not already been paid or responded to by the Company. (B) No Patent within the Company Registered IP has been challenged in any way, other than in connection with Registered IP Notices. There is no threatened or pending litigation, interference, opposition, reexamination, inter partes, or other proceeding involving such Patents. (C) If any of the Patents listed in **Section 2.13(b)** of the Disclosure Schedule are terminally disclaimed to another Patent, all Patents subject to such terminal disclaimer are within the Company Registered IP. (D) To the extent “small entity” fees were paid to the United States Patent and Trademark Office for any Patent within the Company Registered IP, such reduced fees were then appropriate because the payor qualified to pay “small entity” fees at the time of such payment and specifically had not licensed rights in any of the Patents to an entity that was not a “small entity,” in each case, to the extent then-required by applicable law in order to claim “small entity” status. (E) To the extent “small entity” fees were paid to the United States Patent and Trademark Office for any Patent within the Company IP where the payor did not qualify to pay “small entity” fees, such “small entity” fees were paid in good faith and such error was later corrected pursuant to 37 CFR 1.28(c). (F) Notwithstanding anything to the contrary in this Agreement, all representations made by the Company in **Sections 2.13(f)(i)** and **2.13(f)(ii)** regarding the Jointly Owned Patents (as defined in the Disclosure Schedule) are made solely to the Knowledge of the Company.

(iii) *Trademarks.* (A) All Trademarks that are Company IP are valid and enforceable and are not subject to any maintenance fees or taxes or registration, maintenance or renewal actions falling due within ninety (90) days after the Closing Date that have not already been paid or responded to by the Company. (B) No Trademark within the Company IP has been or is now involved in any opposition, invalidation or cancellation, and no such action is threatened with respect to any Trademark within the Company IP. (C) All services, products and materials bearing or identified by a Trademark within the Company IP, as applicable, bear the proper registration notice where necessary or required by law for the ownership, validity, or enforceability of the Trademark. (D) No Trademark (whether registered or unregistered) or otherwise protected designation (e.g. worktitle) owned or applied for by the Company, or used by or on behalf of the Company as a Trademark of the Company, other than those Trademarks licensed to the Company pursuant to In-Licenses, conflicts or interferes with any Trademark (whether registered or unregistered) owned, used or applied for by any other Person. The Company has taken reasonable steps to properly use and establish and preserve its rights in and to any



Trademark (whether registered or unregistered) in which the Company has or purports to have an ownership interest.

(iv) *Copyrights.* (A) All of the Copyrights that are Company Registered IP or that are Company IP and otherwise material to the Company's business are valid and enforceable (or, with respect to unregistered copyrights, will be enforceable to the extent hereafter registered), and are not subject to any maintenance fees or taxes or registration, maintenance or renewal actions falling due within ninety (90) days after the date of Closing that have not already been paid or responded to by the Company. (B) No Copyright owned by the Company is, to the Knowledge of the Company, infringed or has been challenged or threatened in any way. (C) All material works released by or on behalf of the Company encompassed by the Copyrights that are Company IP have been marked with the proper copyright notice where necessary or required by law for the validity or enforceability of the Copyright.

(v) *Trade Secrets.* (A) All of the Trade Secrets that are Company IP are valid and enforceable; provided that no representation is made as to enforceability of confidential business information that is not protectable under applicable trade secret law by no act or omission of the Company. (B) With respect to all source code (including algorithms) within the Company IP, the documentation maintained by the Company relating to such source code (including algorithms) is reasonably current, materially accurate and reasonably sufficient in detail and content to identify and explain it and to allow its full and proper use by a reasonably skilled programmer without reliance on the knowledge or memory of any particular individual. (C) The Company has taken commercially reasonable precautions to protect the secrecy, confidentiality and value of its Trade Secrets and the Company has not disclosed any of its Trade Secrets to any entity other than pursuant to a confidentiality agreement or other agreement that prohibits the use and disclosure of the Trade Secret other than for the benefit of the Company, other than in connection with the filing of a Patent. (D) The Company has good title to its Trade Secrets. (E) The Company has an absolute right to use its Trade Secrets as such have been used by or on behalf of the Company, provided that the foregoing representations and warranties are made solely as to the Company's Knowledge with respect to third-party Patents. (F) To the Knowledge of the Company, the Trade Secrets that are Company IP have not been used by or appropriated for the benefit of any Person (other than the Company), or to the detriment of the business of the Company. No Trade Secret within the Company IP is subject to any adverse claim or has been challenged or threatened in any way. The Company uses reasonable measures to maintain its proprietary algorithms as Trade Secrets. Without limiting the foregoing, the Company has not disclosed, distributed, or licensed any Intellectual Property that (I) contains or embodies any of its proprietary algorithms or source code to any person or (II) describes in detail any of its proprietary algorithms to any person (other than to any individual who is or was, at the time, an employee or consultant of the Company involved in the development of Company IP, pursuant to an Employee Proprietary Information Agreement or Consultant Proprietary Information Agreement).

(g) *Effects of the Merger.* Neither the execution, delivery or performance of this Agreement or any other agreements referred to in this Agreement nor the consummation of the Merger or any of the other Transactions will, with or without notice or the lapse of time, result in or give any other Person the right or option to cause or declare, other than pursuant to any Contract to which Parent or any of its Affiliates is bound and the Company is not bound: (i) a loss of, or Lien on, any Company IP or rights thereto; (ii) a breach of any Contract listed or required to be listed in **Section 2.13(c)** of the Disclosure Schedule; (iii) the release, disclosure or delivery of any Company IP by or to any escrow agent or other Person; (iv) the grant, assignment or transfer to any other Person of any license or other right or interest under, to or in any of the Company IP or any Intellectual Property Rights owned by, or licensed to, Parent or any of its Affiliates; or (v) payment of any royalties or other license fees with respect to Intellectual Property Rights of any third party in excess of those payable by the Company in the absence of this Agreement or the Transactions.

(h) **No Third Party Infringement of Company IP.** To the Knowledge of the Company, no Person has infringed, misappropriated, or otherwise violated, and no Person is currently infringing, misappropriating or otherwise violating, any Company IP. **Section 2.13(h)** of the Disclosure Schedule accurately identifies (and the Company has Made Available a true, correct and complete copy of) each letter or other written or electronic communication or correspondence that has been sent or otherwise delivered by or to the Company or any of its representatives regarding any actual, alleged or suspected infringement or misappropriation of any Company IP. The Company has not: (i) put a third party on notice of actual or potential infringement of any of the Company IP; (ii) invited any third party to enter into a license under any of the Company IP; and/or (iii) initiated any enforcement action with respect to any of the Company IP.

(i) **Use of Licensed IP.** The Company has valid written licenses in respect of all Licensed IP of sufficient scope to permit the Company to conduct its businesses without infringing or violating the rights of third parties, provided that the foregoing representations and warranties are made solely as to the Company's Knowledge with respect to third-party Patents other than those Patents licensed to the Company pursuant to written licenses, and all such licenses will survive the Closing and continue in full force and effect thereafter, so as to preserve all rights of, and benefits to, the Company under such licenses from and after the Closing (except to the extent any such licenses are terminated or permitted to lapse or not renew by or at the direction of Parent, in accordance with their terms, after the Closing). To the Knowledge of the Company, no claim or proceeding relating to the ownership of Licensed IP is pending or has been threatened, except for any such claim or proceeding that, if adversely determined, would not adversely affect (A) the use or exploitation of such Licensed IP or (B) the distribution, hosting, provision, delivery or sale of any Company Product.

(j) **No Infringement of Third Party IP Rights.** The Company is not infringing, misappropriating or otherwise violating, and has never infringed, misappropriated or otherwise violated, any Intellectual Property Right of any other Person, and the conduct of the business of the Company when conducted in substantially the same manner after the date of this Agreement by the Company and after the Closing Date, by the Company, will not infringe, misappropriate or otherwise violate any Intellectual Property Right (or any right to privacy or publicity) of any other Person, or constitute unfair competition or trade practices under any Legal Requirement, provided that the foregoing representations and warranties are made solely as to the Company's Knowledge with respect to third-party Patents; provided, further, that the foregoing representations and warranties do not extend to infringement or misappropriation occurring after the Closing Date that would not have occurred but for a change made by or at the direction of Parent to the Company Products or the conduct of the business of the Company, after the Closing Date. Without limiting the generality of the foregoing: (i) no infringement, misappropriation or similar claim or legal proceeding is pending or has been threatened against the Company or, to the Knowledge of the Company, against any other Person who may be entitled to be indemnified, defended, held harmless or reimbursed by the Company with respect to such claim or legal proceeding; (ii) the Company has not received any notice or other communication (in writing or otherwise) (A) relating to any actual, alleged or suspected infringement, misappropriation or violation of any Intellectual Property Right of another Person, (B) inviting the Company to license any Intellectual Property Rights of another Person, or (C) claiming that the Company Product or the operation of the business of the Company constitutes unfair competition or trade practices under any Legal Requirements; and (iii) the Company is not bound by any Contract to indemnify, defend, hold harmless or reimburse any other Person with respect to any infringement, misappropriation or violation of any Intellectual Property Right (other than pursuant to (I) the Standard Form of IP Contracts or (II) any industry-standard indemnification provision, not pertaining to the Company Products or any Intellectual Property Rights therein, in any license for Shrink-Wrap Code). Notwithstanding anything to the contrary in this Agreement, **Section 2.13** contains the only representations or warranties made by the Company with respect to the infringement, misappropriation, or violation by the Company of Intellectual Property Rights of any other Person.

(k) **Company IP Contracts.** None of the Company IP Contracts expressly requires the Company to return or refund any amounts paid to it (other than any prepaid, unused amounts), or grant any credit to any third party, or pay any liquidated damages or penalties in the event of any breach of any warranty or any failure of the Company to perform under such Company IP Contract.

(l) **Bugs.** None of the currently commercially available or used Company Software: (i) contains any bug, defect or error that materially and adversely affects the use, functionality or performance of such Company Software or any product or system containing or used in conjunction with such Company Software; or (ii) fails to materially comply with any applicable warranty or other contractual commitment of the Company relating to the use, functionality or performance of such Company Software or any product or system containing or used in conjunction with such Company Software. The Company has Made Available a true, correct and complete list of all known priority 1, priority 2 and major bugs, defects and errors in each currently commercially available or used version and component of the Company Software.

(m) **No Harmful Code.** None of the Company Software contains any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus,” or “worm” (as such terms are commonly understood in the software industry) or any other code designed or intended to have, any of the following functions: (i) disrupting, disabling, harming or otherwise materially impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (ii) damaging or destroying any data or file without the user’s consent (collectively, “**Harmful Code**”).

(n) **Security Measures.** The Company has taken reasonable steps and implemented reasonable procedures designed to ensure that the information technology systems used in connection with the operation of the Company are free from any Harmful Code. The Company has reasonable disaster recovery and security plans, procedures and facilities for the business of the Company, and has taken reasonable steps to safeguard the information technology systems utilized in the operation of the business of the Company as such is currently conducted. To the Knowledge of the Company, there have been no material unauthorized intrusions or breaches of the security of such information technology systems.

(o) **No Spyware or Malware.** None of the Company Software is designed to collect Personal Data stored on the computer system or device without the knowledge and consent of the owner or authorized user of a computer system or device. None of the Company Software performs or is designed to perform the following functions, without the knowledge and consent of the owner or authorized user of a computer system or device: (i) interfere with the owner’s or an authorized user’s control of the computer system or device; (ii) change or interfere with settings, preferences or commands already installed or stored on the computer system or device; (iii) change or interfere with data that is stored, accessed or accessible on any computer system or device in a manner that obstructs, interrupts or interferes with lawful access to or use of that data by the owner or an authorized user of the computer system or device; (iv) cause the computer system or device to communicate with another computer system or device; or (v) install a computer program that may be activated by a Person other than the owner or an authorized user of the computer system or device.

(p) **Use of Open Source Code.**

(i) **Section 2.13(p)(i)** of the Disclosure Schedule accurately identifies and describes: (A) each item of Company Software that is subject (in whole or in part) to the GNU General Public License, the Affero General Public License, the GNU Lesser General Public License, the Eclipse Public License, the Common Public License, the Mozilla Public License, the MIT License, the BSD

License, the Apache License, the Eclipse Public License, any other license identified as an open source license by the Open Source Initiative (www.opensource.org), or any other license requiring disclosure, licensing or distribution of source code as a condition of distribution or use (collectively, “**Open Source Software**”); (B) the applicable license governing the use of such Open Source Software (an “**Open Source License**”); (C) the manner in which such Open Source Software was incorporated into, linked with, or distributed with any Company Product; and (D) whether (and, if so, how) the Open Source Software was modified and/or distributed by the Company.

(ii) The Company has not used, modified, or distributed any Open Source Software in a manner that: (A) could or does require (or could or does condition the use or distribution of such Software on) the disclosure, licensing or distribution of any source code for any Company IP or any portion of any Company Product other than such Open Source Software; (B) could or does require the licensing or disclosure of any Company IP, or any portion of any Company Product other than such Open Source Software, for the purpose of making derivative works; (C) could or does otherwise impose any limitation, restriction or condition on the right or ability of the Company to use or distribute any Company IP, including restrictions on the consideration to be charged for the distribution of any Company Product; (D) creates obligations for the Company with respect to Company IP or grants to any third party any rights or immunities under Company IP; (E) requires the Company to indemnify or defend claims of any sort asserted against third parties relating to the Open Source Software; or (F) imposes any other limitation, restriction or condition on the right of the Company to use or distribute any Company Product, other than requirements of attribution, copyright notices or warranty disclaimers. The Company has complied with all of the applicable terms and conditions of each applicable Open Source License, including all applicable requirements pertaining to attribution and copyright notices. The Company has not made any Company Product that is Software available as Open Source Software.

(q) **No License of Source Code.** No source code for any Company IP has been licensed to any escrow agent or other Person, including under any Open Source License. No source code for any Company IP has been delivered or made available to any escrow agent or other Person, other than to any individual who is or was, at the time, an employee or consultant of the Company involved in the development of Company IP, pursuant to an Employee Proprietary Information Agreement or Consultant Proprietary Information Agreement. The Company has no duty or obligation (whether present, contingent or otherwise) to deliver, license or make available the source code for any Company Software to any escrow agent or other Person. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or could reasonably be expected to, result in the (i) delivery or disclosure of any source code for any Company Software to any other Person (other than to any individual who is or was, at the time, an employee or consultant of the Company involved in the development of Company IP, pursuant to an Employee Proprietary Information Agreement or Consultant Proprietary Information Agreement) or (ii) license of any source code for any Company Software to any other Person.

#### **2.14 Privacy Matters.**

(a) **Personal Data. Privacy Policies.** Section 2.14(a)(i) of the Disclosure Schedule identifies each distinct electronic or other database containing (in whole or in part) Personal Data or Company Product Data maintained by or for the Company at any time, the types of Personal Data or Company Product Data, to the Knowledge of the Company, in each such database, and the means by which such Personal Data and Company Product Data were collected. Section 2.14(a)(ii) of the Disclosure Schedule identifies each publicly-available privacy policy that is a Company Privacy Policy in effect at any time since the inception of the Company and identifies the period of time during which such Company Privacy Policy was or has been in effect. Copies of all Company Privacy Policies have been Made Available.

(b) **Privacy Compliance.** The Company, the Company Products and all third parties who have performed services for the Company and have had access to Personal Data or Company Product Data in connection with the performance of such services comply, and have at all times complied, with all applicable Company Privacy Policies and all applicable Privacy Legal Requirements. The execution, delivery and performance of this Agreement, the consummation of the Transactions by the Company, and the continued direct or indirect possession or control, as applicable, by the Company of all Company Product Data and Personal Data, in the Company's direct or indirect possession or control, will not result in a breach or violation of any Privacy Legal Requirement (*provided, however*, that this representation is made solely to the Knowledge of the Company with respect to any Personal Data uploaded to the Company Products by Parent). The Company has full rights, without obtaining any new consent, continue to directly or indirectly possess or control, as applicable, all Company Product Data and Personal Data, to the Knowledge of the Company, in the Company's direct or indirect possession or control without materially violating any Company Privacy Policy or Privacy Legal Requirement (*provided, however*, that this representation is made solely to the Knowledge of the Company with respect to any Personal Data uploaded to the Company Products by Parent). There is not and has not been any written complaint to, or any audit, proceeding, investigation (formal or informal) or claim against, the Company or any of its customers (in the case of customers, to the extent relating to the Company Products or the practices of the Company) by any private party (other than with respect to investigations), data protection authority, the Federal Trade Commission, any state attorney general or similar state official or any other Governmental Entity with respect to the collection, use, storage, hosting, disclosure, transmission, transfer, disposal, retention, interception, or other processing of, or security of, any Personal Data or Company Product Data.

(c) **Data Protection Practices.** With respect to the Company Products (including their underlying systems, networks and technology) and all Personal Data and Company Product Data collected, stored, used, or maintained by or for the Company, the Company has taken all steps reasonably necessary (including implementing and monitoring compliance with adequate measures with respect to technical and physical security) to ensure that the Company Products and such Personal Data and Company Product Data are protected against unauthorized access, use, modification, disclosure or other misuse, and no unauthorized access to or unauthorized use, modification, disclosure, or other misuse of such Company Products, Personal Data or Company Product Data has occurred. The Company maintains a written information security program covering the Company, the Company Products, and their respective networks and systems that includes appropriate controls that have been regularly tested and reviewed.

## **2.15 Material Contracts.**

(a) **Section 2.15(a)** of the Disclosure Schedule identifies, in each subpart that corresponds to the subsection listed below, any Contract in effect as of the date of this Agreement, (x) to which the Company is a party, or (y) under which the Company has any right or interest (the Contracts described below, whether or not set forth in **Section 2.15(a)** of the Disclosure Schedule, being referred to herein as the "**Material Contracts**");

- (i) that is with (A) a Top Customer or (B) with a Top Supplier;
- (ii) pursuant to which the Company has been appointed a partner, reseller or distributor;
- (iii) pursuant to which the Company has appointed another party as a partner, reseller, or distributor;

(iv) pursuant to which the Company is bound to or has committed to provide any Company Product to any third party on a most favored pricing basis or similar term, is otherwise bound by any “most favored nations” terms and conditions or grants any right of first refusal, right of first offer, right of first negation or other similar right;

(v) pursuant to which the Company is bound to, or has committed to provide or license, any Company Product, Intellectual Property, Intellectual Property Rights or other rights to any third party on an exclusive basis or to acquire or license any product, service, Intellectual Property, Intellectual Property Rights or other rights on an exclusive basis from a third party;

(vi) imposing any material restriction on the right or ability of the Company (or that would purport to limit the freedom of Parent or any of its Affiliates): (A) to engage in any business practices that are currently conducted by the Company, (B) to compete with any other Person or to engage in any line of business, market or geographic area, or to sell, license, manufacture or otherwise distribute any of its technology or products, or from providing services, to customers or potential customers or any class of customers, in any geographic area, during any period of time, or in any segment of the market; (C) to solicit the employment of, or hire, any potential employees, consultants or independent contractors; (D) to acquire any product, property or other asset (tangible or intangible), or any services, from any other Person, to sell any product or other asset to or perform any services for any other Person or to transact business or deal in any other manner with any other Person; or (E) to develop or distribute any technology, other than pursuant to any industry-standard inbound license restriction included in any In-License, Open Source License or license for Shrink-Wrap Code;

(vii) set forth or required to be set forth in **Sections 2.13(c)(i) or 2.13(c)(ii)** of the Disclosure Schedule;

(viii) that is a collectively bargained agreement or similar Contract, including any Contract with any union, works council, personnel delegates or similar labor entity, or specifically authorized employees;

(ix) (A) any employment, contractor or consulting agreement, contract with any current Employee; (B) any agreement, contract or commitment to grant any severance or termination pay (in cash or otherwise) to any current Employee; or (C) any agreement, contract or commitment that guarantees any current Employee compensation beyond Employee’s base compensation;

(x) that is with insurance companies covering healthcare, disability and pension plans in force in the Company or under which the Company has any liability, together with any existing documents supporting these plans within the Company, including internal information notices;

(xi) that is a Lease Agreement;

(xii) relating to capital expenditures and involving future payments in excess of \$25,000 individually or \$100,000 in the aggregate;

(xiii) relating to the settlement of any Action;

(xiv) relating to the ownership of, or investment in, any business or enterprise of another Person (including investments in joint ventures and minority equity investments);

(xv) relating to any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other Contracts or instruments relating to Indebtedness or extension of credit or the creation of any Lien with respect to any asset of the Company;

(xvi) involving or incorporating any guaranty, pledge, performance or completion bond, indemnity or surety arrangement, other than any industry-standard indemnification provision included in any license for Shrink-Wrap Code;

(xvii) creating or relating to any partnership or joint venture or any sharing of revenues, profits, losses, costs or liabilities, including any Contract involving the payment of royalties or other amounts calculated based upon the revenue or income of the Company;

(xviii) relating to the purchase or sale of any product or other asset by or to, or the performance of any services by or for, any Interested Party;

(xix) relating to the research, development (other than any Employee Proprietary Information Agreement or Consultant Proprietary Information Agreement), distribution, supply, manufacturing, marketing, promotion or co-promotion of any Company Product.

(xx) that is a business associate agreement as defined by HIPAA;

(xxi) constituting or relating to any (A) prime contract, subcontract, letter contract, purchase order or delivery order executed or submitted to or on behalf of any Governmental Entity or any prime contractor or higher-tier subcontractor, or under which any Governmental Entity or any such prime contractor or subcontractor otherwise has or may acquire any right or interest, or (B) quotation, bid or proposal submitted to any Governmental Entity or any proposed prime contractor or higher-tier subcontractor of any Governmental Entity;

(xxii) that has a term of more than sixty (60) days and that may not be terminated by the Company (without penalty or any post-termination support, maintenance, engineering or similar obligations) within sixty (60) days after the delivery of a termination notice by the Company; and

(xxiii) that contemplates or involves: (A) the payment or delivery of cash or other consideration in an amount or having a value in excess of \$100,000 in the aggregate; or (B) the performance of services having a value in excess of \$100,000 in the aggregate.

(b) The Company has Made Available true, correct and complete copies of all written Material Contracts, including all amendments thereto. **Section 2.15(b)** of the Disclosure Schedule provides an accurate description of the terms of each Material Contract that is not in written form as of the date of this Agreement. Each Material Contract is valid and in full force and effect and is enforceable against the Company and by the Company in accordance with its terms, subject to the Enforceability Limitations. The Company has not, in any material respect, violated or breached, or committed any default under, any Material Contract, and, to the Knowledge of the Company, no other Person has, in any material respect, violated or breached, or committed any default under, any such Material Contract. To the Knowledge of the Company, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or would reasonably be expected to: (i) result in a violation or breach of any of the provisions of any Material Contract; (ii) give any Person the right to declare a default or exercise any remedy under any Material Contract; (iii) give any Person the right to accelerate the maturity or performance of any Material Contract; or (iv) give any Person the right to cancel, terminate or modify any Material Contract. The Company has not received any notice regarding any

actual or possible violation or breach of, or default under, any Material Contract. No Person has threatened to terminate or refuse to perform its obligations under any Material Contract (regardless of whether such Person has the right to do so under such Contract).

## **2.16 Employee Benefit Plans.**

(a) **Schedule.** **Section 2.16(a)(i)** of the Disclosure Schedule contains an accurate and complete list of each Company Employee Plan and each Employee Agreement, including any specific Employee Agreement providing ex-gratia severance or post-termination payments and/or benefits and any specific Employee Agreement providing any specific obligations in case of change of control of the Company. No Person, other than an employee who is not listed on **Section 2.16(a)(ii)** of the Disclosure Schedule, is or was a member or former member of any Company Employee Plan. Neither the Company nor any ERISA Affiliate has made any plan or commitment to establish any new Company Employee Plan or Employee Agreement, to modify any Company Employee Plan or Employee Agreement (except to the extent required by law or to conform any such Company Employee Plan or Employee Agreement to the requirements of any applicable law, in each case as previously disclosed to Parent in writing, or as required by this Agreement), or to enter into any Company Employee Plan or Employee Agreement. **Section 2.16(a)(iii)** of the Disclosure Schedule sets forth a table including the name, hiring date, title, supervisor, annual salary or base wages, commissions, bonus (target, maximum and any amounts paid for the current year), classification pursuant to the applicable industry-wide collective bargaining agreement (if any), organization of working time, overtime hours and accrued but unpaid vacation or paid time off (PTO) balances of each current employee of the Company as of the date of this Agreement, including with respect to any Employees on a leave of absence, the date the leave commenced, the reason for the leave and the expected date of return to work of such Employee. To the Knowledge of the Company, no employee listed on **Section 2.16(a)(iii)** of the Disclosure Schedule intends to terminate his or her employment for any reason, other than in accordance with any employment arrangements as may be provided for in this Agreement. **Section 2.16(a)(iv)** of the Disclosure Schedule contains an accurate and complete list of all Persons that have a consulting or independent contractor relationship with the Company.

(b) **Documents.** The Company has Made Available (i) correct and complete copies of all documents embodying each Company Employee Plan and each Employee Agreement including all amendments thereto and all related trust documents and all related management and/or monitoring and/or information documents and/or records required by Legal Requirements, (ii) the three (3) most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Company Employee Plan, (iii) if the Company Employee Plan is funded, the most recent annual and periodic accounting of Company Employee Plan assets, (iv) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA with respect to each Company Employee Plan, (v) all written agreements and contracts currently in force relating to each Company Employee Plan, including administrative service agreements and group or other insurance contracts, (vi) all communications within the past three (3) years to any Employee or Employees relating to any Company Employee Plan and any proposed Company Employee Plan, in each case, relating to any amendments, terminations, establishments, increases or decreases in compensation benefits, acceleration of payments or vesting schedules or other events which would result in any liability to the Company, (vii) all correspondence and/or notifications within the past three (3) years to or from any governmental agency or administrative service relating to any Company Employee Plan, (viii) all current model COBRA forms and related notices, (ix) all policies pertaining to fiduciary liability insurance covering the fiduciaries for each Company Employee Plan, (x) all discrimination tests for each Company Employee Plan for the three (3) most recent plan years, and (xi) the most recent IRS determination, opinion, notification or advisory letters issued with respect to each Company Employee Plan that is a tax-qualified retirement plan. There



is no fact, condition, or circumstance since the date the documents were provided in accordance with this paragraph (b), which would materially affect the information contained therein and, in particular, and without limiting the generality of the foregoing, no promises or commitments have been made to amend any Company Employee Plan or Employee Agreement or to provide increased or improved benefits thereunder or accelerate vesting or funding thereunder. No verbal promises or representations have been made to any Employees to increase their compensation or to continue their employment for any specific duration.

(c) **Bonus Plan Compliance.** The Company is in compliance with all of its bonus, commission and other compensation plans and has paid any and all amounts required to be paid under such plans, including any and all bonuses and commissions (or pro rata portion thereof) that may have accrued or been earned through the calendar quarter preceding the Closing Date, and is not liable for any payments, taxes or penalties for failure to comply with any of the terms or conditions of such plans or the laws governing such plans.

(d) **No Pension Plan.** Neither the Company nor any ERISA Affiliate has ever maintained, established, sponsored, participated in, contributed to, or has any liability with respect to any Pension Plan subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of the Code.

(e) **No Self-Insured Plan.** Neither the Company nor any ERISA Affiliate has ever maintained, established, sponsored, participated in, contributed to or has any liability with respect to any self-insured health and welfare plan that provides benefits to employees (including any such plan pursuant to which a stop-loss policy or contract applies).

(f) **Multiemployer and Multiple-Employer Plan, Funded Welfare Plans and MEWAs.** At no time has the Company or any ERISA Affiliate contributed to or been obligated to contribute to any multiemployer plan (as defined in Section 3(37) of ERISA). Neither the Company nor any ERISA Affiliate has at any time ever maintained, established, sponsored, participated in or contributed to any multiple employer plan or to any plan described in Section 413 of the Code, a “funded welfare plan” within the meaning of Section 419 of the Code, or a Multiple Employer Welfare Arrangement, as defined under Section 3(40)(A) of ERISA (without regard to Section 514(b)(6)(B) of ERISA).

(g) **Employer Shared Responsibility.** The Company is not an “applicable large employer” (as defined in Section 4980H of the Code).

(h) **No International Employee Plans.** Neither the Company or ERISA Affiliate currently has, nor has it ever had, the obligation to maintain, establish, sponsor, participate in or contribute to any International Employee Plan.

(i) **No Post-Employment Obligations.** No Company Employee Plan or Employee Agreement provides, or reflects or represents any liability to provide, post-termination or retiree or post-employment life insurance, health or other employee welfare benefits to any person for any reason, except as may be required by COBRA or other applicable Legal Requirements, and the Company has not ever represented, promised or contracted (whether in oral or written form) to any Employee (either individually or to Employees as a group) or any other person that such Employee(s) or other person would be provided with life insurance, health or other employee welfare benefits, except to the extent required by statute or other applicable Legal Requirements. **Section 2.16(i)** of the Disclosure Schedule accurately: (i) identifies each former Employee who is receiving or is scheduled to receive (or whose spouse or other dependent is receiving or is scheduled to receive) any compensation or benefits (whether

from the Company or otherwise) relating to such former Employee's service with the Company; and (ii) briefly describes such benefits.

(j) **Effect of Merger.** Neither the execution and delivery of this Agreement nor the consummation of the Merger or the other Transactions (alone or in connection with additional or subsequent events) or any termination of employment or service in connection therewith will (i) result in any payment or benefit (including severance, golden parachute, bonus or otherwise) becoming due to any Employee, (ii) result in any forgiveness of Indebtedness, (iii) increase any payments or benefits otherwise payable or to be provided by the Company or (iv) result in the acceleration of the time of payment or vesting of any such payments or benefits except as required under Section 411(d)(3) of the Code.

## **2.17 Employment Matters.**

(a) **Compliance with Employment Laws.** The Company is in material compliance with all applicable foreign, federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment, worker classification, tax withholding, social security contributions withholding, prohibited discrimination, working time, employee representation, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation and hours of work, and in each case, with respect to Employees: (i) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to Employees, (ii) is not liable for any arrears of wages, severance pay or any Taxes or social security contributions or any penalty for failure to comply with any of the foregoing, and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees (other than routine payments to be made in the normal course of business and consistent with past practice). There are no material actions, suits, claims or administrative matters pending, threatened or reasonably anticipated against the Company or any of its Employees relating to any Employee, Employee Agreement or Company Employee Plan. There are no pending or threatened or reasonably anticipated claims or actions against the Company or any Company trustee under any worker's compensation policy or long-term disability policy. The Company is not party to a conciliation agreement, consent decree or other agreement or order with any federal, state, or local agency or Governmental Entity with respect to employment practices. The services provided by each of the Company's and its ERISA Affiliates' Employees are terminable at the will of the Company and its ERISA Affiliates and any such termination would result in no liability to the Company or any ERISA Affiliate (other than ordinary administration expenses or with respect to benefits, other than bonuses, commissions or amounts under other compensation plans, that were previously earned, vested or accrued under Company Employee Plans prior to the Effective Time). **Section 2.17(a)** of the Disclosure Schedule lists all liabilities of the Company to any Employee, that would result from the termination by the Company or Parent of such Employee's employment or provision of services, other than those disclosed in **Section 2.16(d)**. Neither the Company nor any ERISA Affiliate has direct or indirect liability with respect to any misclassification of any person as an independent contractor, intern and/or temporary worker rather than as an employee, with respect to any employee leased from another employer or with respect to any employee currently or formerly classified as exempt from overtime wages.

(b) **Labor.** No strike, labor dispute, slowdown, concerted refusal to work overtime, or work stoppage or labor strike against the Company is pending, or to the Knowledge of the Company, threatened, or reasonably anticipated. The Company has no Knowledge of any activities or proceedings of any labor union to organize any Employees. There are no Actions, labor disputes or grievances pending or threatened or reasonably anticipated relating to any labor matters involving any Employee, including charges of unfair labor practices. The Company has not engaged in any unfair labor practices

within the meaning of the National Labor Relations Act or similar Legal Requirement. The Company is not presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement, works council, union or similar contract with respect to Employees and no such agreement is being negotiated by the Company.

(c) **No Interference or Conflict.** To the Knowledge of the Company, no stockholder, director, officer, Employee or consultant of the Company is obligated under any contract or agreement, subject to any judgment, decree, or order of any court or administrative agency that would interfere with such person's efforts to carry out his/her functions to promote the interests of the Company or that would interfere with the Company's business. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business as presently conducted by the Company nor any activity of such officers, directors, Employees or consultants in connection with the carrying on of the Company's business as presently conducted by the Company will, to the Knowledge of the Company, conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract or agreement under which any of such officers, directors, Employees, or consultants is bound.

**2.18 Governmental Authorizations.** Each notification, consent, license, permit, grant or other authorization, including those from Governmental Entities, (a) pursuant to which the Company currently operates or holds any interest in any of its properties, or (b) which is required for the operation of the Company's business as currently conducted or the holding of any such interest (collectively, "**Company Authorizations**") has been issued or granted to the Company, as the case may be, except as is not material in any case or in the aggregate. The Company Authorizations are in full force and effect and constitute all Company Authorizations required to permit the Company to operate or conduct its businesses or hold any interest in its properties or assets, in each case in all material respects, and none of the Company Authorizations is subject to any term, provision, condition or limitation which may adversely change or terminate such Company Authorizations by virtue of the completion of the Merger. The Company has been and is in compliance with the terms and conditions of the Company Authorizations.

**2.19 Litigation.** There is no Action of any nature pending, or to the Knowledge of the Company, threatened, against the Company, its properties or assets (tangible or intangible) or any of its officers or directors (in their capacities as such). To the Knowledge of the Company, no Governmental Entity has at any time challenged or questioned the legal right of the Company to conduct its operations as presently conducted or previously conducted. There is no Action of any nature pending or, to the Knowledge of the Company, overtly threatened, against any Person who has a contractual right or a right pursuant to applicable Legal Requirements to indemnification from the Company related to facts and circumstances existing prior to the Effective Time.

**2.20 Insurance.** Section 2.20 of the Disclosure Schedule lists all insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company or any ERISA Affiliate, including the type of coverage, the carrier, the amount of coverage, the term and the annual premiums of such policies. There is no claim by the Company or any ERISA Affiliate pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed or that the Company or any ERISA Affiliate has a reason to believe will be denied or disputed by the underwriters of such policies or bonds. In addition, there is no pending claim of which its total value (inclusive of defense expenses) would reasonably be expected to exceed the policy limits. All premiums due and payable under all such policies and bonds have been paid, (or if installment payments are due, will be paid if incurred prior to the Closing Date) and the Company and its ERISA Affiliates are otherwise in material compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage). Such policies and bonds (or other

policies and bonds providing substantially similar coverage) are in full force and effect. The Company does not have any Knowledge of threatened termination of, or premium increase with respect to, any of such policies. Neither the Company nor any Affiliate has ever maintained, established, sponsored, participated in or contributed to any self-insurance plan.

## **2.21 Compliance with Legal Requirements.**

(a) **General.** Except as is not material in any case or in the aggregate, the Company has complied with all Legal Requirements and is not in violation of any Legal Requirement. The Company has not received any notices of suspected, potential or actual violation with respect to, any Legal Requirement.

(b) **Export Control Laws.** The Company has at all times conducted its export and re-export transactions in accordance with (x) all applicable U.S. export and re-export control Legal Requirements, including the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations maintained by the Department of State and (y) all other applicable import/export controls in other countries in which the Company conducts business. Without limiting the foregoing, (i) the Company has obtained all material export and import licenses, license exceptions and other consents, notices, waivers, approvals, Orders, authorizations, registrations, declarations and filings with any Governmental Entity required for (A) the export, import and re-export of products, services, software and technologies and (B) releases of technologies and software to foreign nationals located in the United States and abroad ("**Export Approvals**"); (ii) the Company is in compliance in all material respects with the terms of all applicable Export Approvals; (iii) there are no pending or, to the Company's Knowledge, overtly threatened claims against the Company with respect to such Export Approvals or export or re-export transactions; (iv) no Export Approvals for the transfer of export licenses to Parent or the Surviving Corporation are required, or if required, such Export Approvals can be obtained expeditiously without material cost; and (v) **Section 2.21(b)** of the Disclosure Schedule sets forth the true, correct and complete export control classifications applicable to the Company's products, services, software and technologies.

(c) **Anticorruption Laws.** Neither the Company nor any director, officer, employee, distributor, reseller, consultant, agent or other third party acting on behalf of the Company, has provided, attempted to provide, or authorized the provision of anything of value (including but not limited to payments, meals, entertainment, travel expenses or accommodations, or gifts), directly or indirectly, to any person, including a "foreign official", as defined by the Foreign Corrupt Practices Act ("**FCPA**"), which includes employees or officials working for state-owned or controlled entities, a foreign political party or candidate, any individual employed by or working on behalf of a public international organization, or any other person, for the purpose of (i) obtaining or retaining business; (ii) influencing any act or decision of a foreign government official in their official capacity; (iii) inducing a foreign government official to do or omit to do any act in violation of their lawful duties; (iv) directing business to another; or (v) securing any advantage in violation of the FCPA or United Kingdom Bribery Act of 2010 ("**UKBA**") or any applicable local, domestic, or international anticorruption laws. Neither the Company, nor any director, officer, employee or agents has used any corporate funds to maintain any off-the-books funds or engage in any off-the-books transactions nor has any of the before stated parties falsified any Company documents. The Company has not made any provisions to any person (including foreign government officials) that would constitute an improper rebate, commercial bribe, influence payment, extortion, kickback, or other improper payment in violation of the FCPA, UKBA, or any other applicable anticorruption law. The Company maintain sufficient internal controls and compliance programs to detect and prevent violations of anticorruption laws (including the FCPA and UKBA), ensure its Books and Records are accurately maintained, and track any payments made to third parties and

foreign government officials. The Company has not conducted any internal or government-initiated investigation, or made a voluntary, directed, or involuntary disclosure to any governmental body or similar agency with respect to any alleged act or omission arising under or relating to any noncompliance with any anticorruption law, including the FCPA and UKBA. Upon request, the Company agrees to provide Parent with anticorruption law certifications and agree to permit access to its Books and Records.

(d) **Environmental Laws.** The Company has not released any amount of any Hazardous Material. No Hazardous Materials are present in, on or under any property, including the land and the improvements, ground water and surface water thereof, that the Company has at any time owned, operated, occupied or leased. The Company has not transported, stored, used, manufactured, disposed of, released or exposed its employees or others to Hazardous Materials in violation of any Legal Requirement, nor has the Company disposed of, transported, sold, or manufactured any product containing a Hazardous Material (any or all of the foregoing being collectively referred to herein as “**Hazardous Materials Activities**”) in violation of any rule, regulation, treaty or statute promulgated by any Governmental Entity to prohibit, regulate or control Hazardous Materials or any Hazardous Materials Activity.

(e) **Healthcare Laws.** To its Knowledge, the Company is in compliance in all material respects with all healthcare laws applicable to the operation of its business as currently conducted, including (i) any and all federal, state and local fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), the civil False Claims Act (31 U.S.C. § 3729 et seq.) and the regulations promulgated pursuant to such statutes, and (ii) requirements of law relating to the billing or submission of claims, collection of accounts receivable, underwriting the cost of, or provision of management or administrative services in connection with the Company Products, in each case to the extent applicable to the Company.

## **2.22 FDA Compliance.**

(a) As to each product subject to the FDCA and the regulations of the FDA promulgated thereunder or any comparable foreign laws, rules and regulations (such laws and regulations, “**Medical Regulations**”) that has been developed, manufactured, tested, distributed and/or marketed by or on behalf of the Company or any of its Subsidiaries (each such product, a “**Medical Device**”), each such Medical Device has been developed, manufactured, tested, distributed and marketed in compliance in all material respects with all applicable requirements under the Medical Regulations, including those relating to registration and listing, good manufacturing practice requirements, quality systems regulations, labeling, advertising, record keeping and filing of required reports and security. Each Medical Device in commercial distribution is a Class I device under 21 U.S.C.360c(a)(1)(A), and applicable rules and regulations thereunder.

(b) The Company has not received any notice or written communication with respect to the Company’s business from any Governmental Entity regarding, and, there are no facts or circumstances that are likely to give rise to, (i) any material violation of applicable Legal Requirements or material adverse change in any Permit, or any failure to materially comply with any applicable Legal Requirement or any term or requirement of any Permits or (ii) any revocation, withdrawal, suspension, cancellation, limitation, termination or modification of any Permits. No Permit will be terminated or impaired, or will become terminable, in whole or in part, as a result of the consummation of the transactions contemplated by this Agreement.

(c) There is no actual or, to the knowledge of the Company, threatened material action or investigation in respect of the Company’s business by the FDA or any other Governmental Entity which has jurisdiction over the operations, properties, products or processes of the Company, or, to

the knowledge of the Company, by any third parties acting on their behalf. The Company has no knowledge that any Governmental Entity is considering such action or of any facts or circumstances that are likely to give rise to any such action or investigation.

(d) During the three (3) year period ending on the Closing Date, the Company has not had any product or manufacturing site subject to a Governmental Entity (including FDA) shutdown or import or export prohibition, nor received any FDA Form 483 or other Governmental Entity notice of inspectional observations, “warning letters,” “untitled letters” or, to the knowledge of the Company, requests or requirements to make changes to the operations of the Company’s business or the Company Products that if not complied with would reasonably be expected to materially affect the operations of the Company’s business, or similar correspondence or written notice from the FDA or other Governmental Entity in respect of the Company’s business and alleging or asserting noncompliance with any applicable Legal Requirements, Permits or such requests or requirements of a Governmental Entity, and, to the knowledge of the Company, neither the FDA nor any Governmental Entity is considering such action. No medical device or other safety report with respect to the Company or the Company Products has been reported by the Company, and to the knowledge of the Company, no medical device or other safety report is under investigation by any Governmental Entity with respect to the Company Products or Company’s business.

(e) The manufacture of Company Products by, or on behalf of, the Company is being conducted in compliance in all material respects with all applicable Legal Requirements including the FDA’s Quality System Regulation at 21 C.F.R. Part 820 for products sold in the United States. The Company, and, to the knowledge of the Company, any third party assembler, sterilizer or manufacturer of Company Products, is in material compliance with all applicable Legal Requirements and certifications currently held by the Company governing quality systems and manufacturing processes and registration and listing requirements governing those third parties’ activities, including those set forth in 21 C.F.R. Part 807 and 21 C.F.R. Part 820.

**2.23 Interested Party Transactions.** No officer, director or, to the Knowledge of the Company, any other stockholder of the Company (nor any immediate family member of any of such Persons, or any trust, partnership or corporation in which any of such Persons has or has had an interest) (each, an “**Interested Party**”), has, directly or indirectly, (i) any interest in any Person which furnished or sold, or furnishes or sells, services, products, technology or Intellectual Property Rights that the Company furnishes or sells, or proposes to furnish or sell, or (ii) any interest in any Person that purchases from or sells or furnishes to the Company, any goods or services, or (iii) any interest in, or is a party to, any Contract to which the Company is a party (other than in such Interested Party’s capacity as an officer, director, employee, consultant or securityholder of the Company); *provided, however*, that ownership of no more than one percent (1%) of the outstanding voting stock of a publicly traded corporation shall not be deemed to be an “interest in any Person” for purposes of this **Section 2.23**.

**2.24 Books and Records.** The minute books of the Company have been Made Available, are complete in all material respects and up-to-date, and have been maintained in accordance with reasonably sound and prudent business practice. The minutes of the Company contain true, correct and complete, in all material respects, records of all actions taken, by the respective stockholders and the Board of Directors of the Company (and any committees thereof) since the time of incorporation of the Company, as the case may be. The Company has Made Available its business records, financial books and records, personnel records, ledgers, sales accounting records, tax records and related work papers and other books and records (collectively, the “**Books and Records**”). At the Closing, the minute books and other Books and Records will be in the possession of the Company.

**2.25 Third Party Expenses.** The Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions, fees related to investment banking or similar advisory services or any similar charges in connection with the Agreement or any transaction contemplated hereby, nor will Parent, the Surviving Corporation or the Surviving Corporation incur, directly or indirectly, any such liability based on arrangements made by or on behalf of the Company. **Section 2.25** of the Disclosure Schedule sets forth the principal terms and conditions of any agreement, written or oral, with respect to such fees.

**2.26 Top Customers and Top Suppliers.**

(a) **Section 2.26(a)** of the Disclosure Schedule contains a true and correct list of the top five (5) currently active distributors, licensees or other customers of Company Products by revenues generated in connection with such customers for the calendar year ending December 31, 2014 and the six months ended June 30, 2015 (each such customer, a "**Top Customer**"). The Company has not received written notice that any Top Customer (i) intends to cancel, or otherwise materially and adversely modify its relationship with the Company (whether related to payment, price or otherwise) on account of the transactions contemplated by this Agreement or otherwise, or (ii) has filed for bankruptcy or is subject to insolvency administration or is otherwise unable to purchase goods or services from the Company materially consistent with past custom and practice.

(b) **Section 2.26(b)** of the Disclosure Schedule contains a true and correct list of the top five (5) currently active suppliers of the Company, whether of products, services, Intellectual Property Rights or otherwise, by dollar volume of sales and purchases, respectively, for the calendar year ending December 31, 2014 and the six months ended June 30, 2015 (each such supplier, a "**Top Supplier**"). The Company has not received written notice that any Top Supplier (i) intends to cancel, or otherwise materially and adversely modify its relationship with the Company (whether related to payment, price or otherwise) on account of the transactions contemplated by this Agreement or otherwise, or (ii) has filed for bankruptcy or is subject to insolvency administration or is otherwise unable to supply goods or services to the Company materially consistent with past custom and practice.

**2.27 Representations Complete.** As of the date of this Agreement, none of the representations or warranties made by the Company (as modified by the Disclosure Schedule) in this Agreement contains any untrue statement of a material fact, or omits to state any material fact necessary in order to make the statements contained herein, in the light of the circumstances under which made, not misleading.

**2.28 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE II, NEITHER THE COMPANY NOR ANY INDEMNIFYING PARTY MAKES AND HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, RELATING TO THE COMPANY OR THE COMPANY'S BUSINESSES, INCLUDING ANY REPRESENTATIONS OR WARRANTIES AS TO THE FUTURE REVENUES OR PROFITABILITY OF THE COMPANY'S BUSINESS OR AS TO THE MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF ANY OF THE ASSETS OF THE COMPANY OR REPRESENTATIONS OR WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW FROM A COURSE OF DEALING OR USAGE OF TRADE. ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED BY THE COMPANY AND THE INDEMNIFYING PARTIES.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES  
OF PARENT AND MERGER SUB**

Each of Parent and Merger Sub hereby represents and warrants to the Company as follows:

**3.1 Organization and Standing.** Parent is a corporation duly organized, validly existing and in good standing under the laws of Minnesota. Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Parent owns beneficially and of record all outstanding capital stock of Merger Sub, free and clear of any Liens, and no other Person holds any capital stock of Merger Sub nor has any rights to acquire any interest in Merger Sub.

**3.2 Authority and Enforceability.** Each of Parent and Merger Sub has all requisite corporate power and authority to enter into this Agreement and any Related Agreements to which it is a party and to consummate the Merger and the other Transactions. The execution and delivery by each of Parent and Merger Sub of this Agreement and any Related Agreements to which it is a party and the consummation of the Merger and the other Transactions have been duly authorized by all necessary corporate and other action on the part of Parent and Merger Sub. This Agreement and any Related Agreements to which Parent and/or Merger Sub is a party have been duly executed and delivered by Parent and Merger Sub and constitute the valid and binding obligations of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with their terms, subject to the Enforceability Limitations.

**3.3 Governmental Approvals and Consents.** No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to Parent or Merger Sub in connection with the execution and delivery of this Agreement and any Related Agreements to which Parent or Merger Sub is a party or the consummation of the Merger and the other Transactions, except for (a) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable securities laws and state “blue sky” laws, (b) the filing of the Certificates of Merger with the Secretary of State of the State of Delaware, and (c) such other consents, waivers, approvals, orders, authorizations, registrations, declarations and filings which, if not obtained or made, would not materially impair Parent’s ability to consummate the Merger.

**3.4 Cash Resources.** Parent has sufficient cash resources available to pay the Total Consideration pursuant to this Agreement.

**ARTICLE IV  
CONDUCT OF COMPANY BUSINESS  
DURING PENDENCY OF TRANSACTION**

**4.1 Affirmative Obligations of the Company.** During the period from the date of this Agreement and continuing until the earlier of the valid termination of this Agreement pursuant to **Section 8.1** or the Effective Time, except as required or permitted by this Agreement or to the extent that Parent shall otherwise consent in writing (which consent will not be unreasonably conditioned, withheld or delayed), the Company shall conduct its business in the usual, regular and ordinary course and in substantially the same manner as heretofore conducted, pay all Taxes of the Company when due (subject to any applicable review and consent rights that Parent may have under **Section 4.2(p)**), pay or perform all other obligations of the Company when due, pay all accounts payable timely and without delay, and, to the extent consistent with such business, use its commercially reasonable efforts to preserve intact the present business organizations of the Company, keep available the services of the present officers and



Employees of the Company, preserve the assets (including intangible assets) and properties of the Company and preserve the relationships of the Company with customers, suppliers, distributors, licensors, licensees and others having business dealings with them, all with the goal of preserving unimpaired the goodwill and ongoing businesses of the Company at the Effective Time.

**4.2 Forbearance of the Company.** In furtherance and not in limitation of **Section 4.1**, during the period from the date of this Agreement and continuing until the earlier of the valid termination of this Agreement pursuant to **Section 8.1** or the Effective Time, except as permitted or expressly contemplated by this Agreement, except as expressly set forth in **Section 4.2** of the Disclosure Schedule or to the extent that Parent shall otherwise consent in writing (which consent will not be unreasonably conditioned, withheld or delayed), the Company shall not:

- (a) cause or permit any modifications, amendments or changes to the Charter Documents;
- (b) declare, set aside, or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any Company Capital Stock, or split, combine or reclassify any Company Capital Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock, or directly or indirectly repurchase, redeem or otherwise acquire any shares of Company Capital Stock (or options, warrants or other rights convertible into, exercisable or exchangeable for Company Common Stock), except at their original purchase price from employees or consultants to the Company in connection with the termination of services to the Company;
- (c) issue, grant, deliver or sell or authorize or propose the issuance, grant, delivery or sale of, or purchase or propose the purchase of, any Company Capital Stock or equity-based awards (whether payable in cash, stock or otherwise) or any securities convertible into, exercisable or exchangeable for, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating any of them to issue or purchase any such shares or other convertible securities, except for the issuance of Company Capital Stock pursuant to the exercise of Company Options outstanding as of the date of this Agreement in accordance with their terms as in effect on the date of this Agreement;
- (d) form, or enter into any commitment to form, a subsidiary, or acquire, or enter into any commitment to acquire, an interest in any corporation, association, joint venture, partnership or other business entity or division thereof;
- (e) make or agree to make any capital expenditure or commitment exceeding \$10,000 individually or \$50,000 in the aggregate;
- (f) acquire or agree to acquire or dispose or agree to dispose of any assets of the Company or any business enterprise or division thereof outside the ordinary course of the business of the Company, and consistent with past practice;
- (g) modify or remove any Company Privacy Policy, or publish or make available any new Company Privacy Policy;
- (h) enter into any agreement, contract or commitment for the (i) sale, lease, license or transfer of any Company IP or any agreement, contract or commitment or modification or amendment to any agreement with respect to Company IP with any Person, or (ii) purchase or license of any

Intellectual Property or Intellectual Property Rights or execution, modification or amendment of any agreement with respect to the Intellectual Property or Intellectual Property Rights of any Person;

(i) propose or adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company;

(j) incur any Indebtedness (other than the obligation to reimburse employees for travel and business expenses or indebtedness incurred in connection with the purchase of goods and services, each in the ordinary course of the Company's business consistent with past practices), issue or sell any debt securities, create a Lien over any asset of the Company or amend the terms of any outstanding loan agreement;

(k) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person;

(l) make any loan to any Person (except for accounts receivable incurred in the outside the ordinary course of the business of the Company and advances to employees for reasonable business travel and expenses in the ordinary course of business consistent with past practice);

(m) commence or settle any Action or threat of any Action by or against the Company or relating to any of its businesses, properties or assets;

(n) pay, discharge, release, waive or satisfy any claims, rights or liabilities, other than the payment, discharge or satisfaction in the ordinary course of business of liabilities reflected on the Current Balance Sheet or incurred in the ordinary course of business after the Balance Sheet Date;

(o) adopt or change accounting methods or practices (including any change in depreciation or amortization policies or rates or any change to practices that would impact the methodology for recognizing revenue) other than as required by GAAP;

(p) make or change any material election in respect of Taxes, adopt or change any accounting method in respect of Taxes, enter into any agreement in respect of Taxes, settle any claim or assessment in respect of Taxes, consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes, make or request any Tax ruling, enter into any Tax sharing or similar agreement or arrangement, enter into any transactions, other than in the ordinary course of business, giving rise to deferred gain or loss, amend any Tax Return unless a copy of such Tax Return has been submitted to Parent for review a reasonable period of time prior to filing;

(q) other than with respect to the Transaction Bonuses, any other Third Party Expense or any Non-Continuing Employees Severance Amounts in accordance with this Agreement, adopt, amend or terminate, or start a termination process of, any Company Employee Plan or any Employee Agreement, including any indemnification agreement, enter into or amend any Employee Agreement or otherwise hire or engage any Person as an Employee;

(r) other than with respect to the Transaction Bonuses, any other Third Party Expense or any Non-Continuing Employees Severance Amounts in accordance with this Agreement, increase or make any other change that would result in increased cost to the Company to the salary, wage rate, incentive compensation opportunity, employment status, title or other compensation (including equity based compensation) payable or to become payable by the Company to any Employee;

(s) other than with respect to the Transaction Bonuses, any other Third Party Expense or any Non-Continuing Employees Severance Amounts in accordance with this Agreement, make any declaration, payment, commitment or obligation of any kind for the payment (whether in cash, equity or otherwise) of a severance payment or other change in control payment, termination payment, bonus, special remuneration or other additional salary or compensation (including equity based compensation) to any Employee, except payments made pursuant to written agreements existing on the date of this Agreement and disclosed in **Section 4.2(s)** of the Disclosure Schedule;

(t) hire employees at the executive level or higher or, other than in the ordinary course of business consistent with past practice, any other employees;

(u) other than pursuant to **Section 5.9(b)**, terminate any employees of the Company or otherwise cause any employees of the Company to resign, in each case other than (x) in the ordinary course of business consistent with past practice or (y) for cause or poor performance (documented in accordance with the Company's past practices);

(v) take any action to accelerate the vesting or payment of, or otherwise modify the terms of any of the outstanding Company Options or accelerate the vesting or payment of, any other compensation to any Employee;

(w) cancel, amend (other than in connection with the addition of customers and suppliers to such insurance policies from time to time in the ordinary course of business consistent with past practices) or fail to renew (on substantially similar terms) any insurance policy of the Company;

(x) (i) terminate, amend, waive, or modify in any material manner relative to such Contract or the Company's businesses or operations, or violate, the terms of any Material Contract or (ii) enter into any Contract other than in the ordinary course of business consistent with past practice;

(y) except as required by applicable Legal Requirements, convene any regular or special meeting (or any adjournment or postponement thereof) of the Stockholders other than the Company Shareholder Meeting;

(z) accelerate the collection of any accounts receivable or delay the payment of any accounts payable, other than outside the ordinary course of business consistent with past practices; or

(aa) take, commit, or agree in writing or otherwise to take, any of the actions described in the foregoing clauses of this **Section 4.2**, or any other action that would (i) prevent the Company from performing, or cause the Company not to perform, its covenants or agreements hereunder or (ii) cause or result in any of its representations and warranties set forth herein being untrue or incorrect.

## ARTICLE V ADDITIONAL AGREEMENTS

### **5.1 Non-Solicitation of Competing Acquisition Proposals.**

(a) **Non-Solicitation of Competing Acquisition Proposals.** Commencing on the date of this Agreement and continuing at all times until the earlier to occur of the Effective Time and the valid termination of this Agreement pursuant to the provisions of **Section 8.1**, the Company shall not, through any of its directors, officers or other employees, stockholders, Affiliates, representatives, or other agents including its financial, legal or accounting advisors (together, "**Representatives**"), directly or indirectly (i) solicit, initiate, seek, knowingly encourage, promote, formally approve or support any inquiry,

proposal or offer from, (ii) furnish any non-public information regarding the Company (other than in connection with the sale of products and services in the ordinary course of business consistent with past practice or license of Intellectual Property in connection therewith) to, (iii) participate in any discussions or negotiations with, in each case any corporation, limited liability company, general or limited partnership, business trust, unincorporated association or other entity, person or group of any of the foregoing (other than Parent and its Representatives acting in their capacities as such) (each, a “**Third Party**”) regarding (A) any acquisition of all or any part of the Company (including by way of any merger or consolidation with or involving the Company) or any acquisition, issuance, grant, sale or transfer of any of the securities, business, properties or assets of the Company (other than the sale of products and services in the ordinary course of business consistent with past practice or license of Intellectual Property in connection therewith), (B) any joint venture or other strategic investment in or involving the Company (other than a commercial or strategic relationship in the ordinary course of business), including any new financing, investment round or recapitalization of the Company, (C) the employment of all or substantially all of the Employees or (D) any other similar transaction involving the Company that is not in the ordinary course of business (each, an “**Alternative Transaction**”); or (iv) enter into any Contract, whether binding or non-binding, with any Third Party providing for an Alternative Transaction (including a letter of intent or exclusivity agreement).

(b) **Notice of Competing Acquisition Proposals.** In the event that the Company or any of its Representatives shall receive, prior to the Effective Time or the termination of this Agreement in accordance with **Section 8.1**, any inquiry offer, proposal or indication of interest regarding a potential Alternative Transaction, or any request for disclosure of information or access of the type referenced in clause (b) (ii) above, the Company or such Affiliate or Representative shall immediately notify Parent thereof, which notice shall include the identity of the party making any such inquiry, offer, proposal, indication of interest or request, and the specific terms of such inquiry, offer, proposal, indication or request, as the case may be (including a copy of any written material and electronic communications received from such third party), and such other information related thereto as Parent may reasonably request.

(c) **Actions of Representatives.** The parties hereto understand and agree that any violation of the restrictions set forth above by any Representative of the Company shall be deemed to be a breach of this Agreement by the Company.

(d) **Specific Performance.** The parties hereto agree that irreparable damage would occur in the event that the provisions of this **Article V** were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed by the parties hereto that Parent shall be entitled to an immediate injunction or injunctions, without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting any bond or other security, to prevent breaches of the provisions of this **Article V** and to enforce specifically the terms and provisions of this Agreement in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which Parent may be entitled at law or in equity.

## **5.2 Stockholder Approval.**

(a) **Requisite Stockholder Approval.** Immediately following the execution of this Agreement, the Company shall solicit written consent from all of its Stockholders in the form attached hereto as **Exhibit C** (the “**Stockholder Written Consent**”). The Company shall promptly deliver to Parent a copy of each executed Stockholder Written Consent upon receipt thereof from any Stockholder pursuant to such solicitation. It is anticipated that, promptly after the execution of this Agreement, the Company will receive Stockholder Written Consents from Stockholders pursuant to the preceding solicitation that are sufficient to fully and irrevocably deliver the Requisite Stockholder Approval.

Promptly upon obtaining the Requisite Stockholder Approval, the Company shall prepare and, as soon as reasonably practicable, send to all Company Stockholders on the record date for the Stockholder Written Consents who did not execute a Stockholder Written Consent the notices required pursuant to Delaware Law. Such materials submitted to the Company Stockholders in connection with such Stockholder Written Consents shall be subject to review and comment by Parent and shall include an information statement regarding the Company, the terms of this Agreement and the Merger and the unanimous recommendation of the Company's Board of Directors that the Company Stockholders not exercise their dissenters' or appraisal rights under Delaware Law or the CGCL in connection with the Merger (the "**Information Statement**"). Each party agrees that information supplied by such party for inclusion in the Information Statement will not, on the date the Information Statement is first sent or furnished to the Company Stockholders, contain any statement which, at such time, is false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they are made, not false or misleading. The parties shall update, amend and supplement the Information Statement from time to time as may be required by applicable Legal Requirements. The Board of Directors of the Company shall not alter, modify, change or revoke the Company Recommendation.

(b) **Joinder Agreements.** Immediately following the execution of this Agreement, the Company shall use commercially reasonable efforts to cause Stockholders and Vested Company Optionholders (other than Parent) to execute and deliver to Parent Joinder Agreements, in the form attached hereto as **Exhibit D**.

(c) **280G Approvals.** The Company shall submit to the Stockholders for approval (in a form and manner reasonably satisfactory to Parent), by such number of Stockholders as is required by the terms of Section 280G(b)(5)(B) of the Code, any payments and/or benefits that the Company determines may separately or in the aggregate, constitute "parachute payments" (within the meaning of Section 280G of the Code and the regulations promulgated thereunder), such that such payments and benefits shall not be deemed to be "parachute payments" under Section 280G of the Code. Prior to the Closing, the Company shall deliver to Parent evidence satisfactory to Parent that a Stockholder vote was solicited in conformance with Section 280G and the regulations promulgated thereunder and that (i) the requisite Stockholder approval was obtained with respect to any payments and/or benefits that were subject to the Stockholder vote (the "**280G Approval**"), or (ii) that the 280G Approval was not obtained and as a consequence, that such "parachute payments" shall not be made or provided, pursuant to the 280G Waivers, which were executed by the affected individuals on the date of this Agreement.

### **5.3 Governmental Approvals.**

(a) Subject to the terms of **Section 5.3(b)**, each of the Company and Parent shall promptly execute and file, or join in the execution and filing of, any application, notification or other document that may be necessary in order to obtain the authorization, approval or consent of any Governmental Entity that may be reasonably required to consummate, or that Parent may reasonably request in connection with the consummation of, the Merger and other Transactions as promptly as possible after the execution of this Agreement. Each of the Company and Parent shall use its commercially reasonable best efforts to obtain all such authorizations, approvals and consents. To the extent permitted by applicable Legal Requirements, each of the Company and Parent shall promptly inform the other of any material communication between the Company or Parent (as applicable) and any Governmental Entity regarding the Merger and the other Transactions. If the Company or Parent or any Affiliate thereof shall receive any formal or informal request for supplemental information or documentary material from any Governmental Entity with respect to the Merger or any other transaction contemplated by this Agreement, then the Company or Parent (as applicable) shall make, or cause to be made, as soon as reasonably practicable, a response in compliance with such request. Each of the

Company and Parent shall direct, in its sole discretion, the making of such response, but shall consider in good faith the views of the other.

(b) Notwithstanding anything in this **Section 5.3** or in **Section 5.4**, Parent shall not be required to agree to (i) any license, sale or other disposition or holding separate (through establishment of a trust or otherwise) of any shares of capital stock or of any business, assets or properties of Parent, its Subsidiaries or Affiliates or of the Company, (ii) the imposition of any limitation on the ability of Parent, its Subsidiaries or Affiliates or the Company to conduct their respective businesses or own any capital stock or assets or to acquire, hold or exercise full rights of ownership of their respective businesses and, in the case of Parent, the businesses of the Company, or (iii) the imposition of any impediment on Parent, its Subsidiaries or Affiliates or the Company under any Legal Requirement governing competition, monopolies or restrictive trade practices (any such action described in (i), (ii) or (iii), an “**Action of Divestiture**”). Nothing set forth in this Agreement shall require Parent to litigate with any Governmental Entity.

(c) Parent shall, in consultation with the Company and subject to **Section 5.3(b)**, determine strategy, lead all proceedings and coordinate all activities with respect to seeking any actions, consents, approvals or waivers of any Governmental Entity as contemplated hereby, and the Company will take such actions as reasonably requested by Parent in connection with obtaining such consents, approvals or waivers. Notwithstanding Parent’s rights to lead all proceedings as provided in the prior sentence, Parent shall not require the Company to, and the Company shall not be required to, take any action with respect to any applicable antitrust or anti-competition Legal Requirement which would bind the Company irrespective of whether the Merger occurs.

**5.4 General Efforts to Close.** Subject to the terms and conditions provided in this Agreement, each of the parties hereto (other than the Stockholder Representative) shall use reasonable best efforts to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, all things necessary, proper or advisable under applicable Legal Requirements to consummate and make effective the Merger and the other Transactions as promptly as practicable, including by using reasonable best efforts to take all action necessary to satisfy all of the conditions to the obligations of the other party or parties hereto to effect the Merger set forth in **Article VI**, to obtain all necessary waivers, consents, approvals, including an Action of Divestiture, and other documents required to be delivered hereunder and to effect all necessary registrations and filings and to remove any injunctions or other impediments or delays, legal or otherwise, in each case in order to consummate and make effective the Merger and the other Transactions for the purpose of securing to the parties hereto the benefits contemplated by this Agreement. Each party hereto, at the request of another party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the Merger and the other Transactions.

**5.5 Access to Information.** During the period from the date of this Agreement and continuing until the earlier of the valid termination of this Agreement pursuant to **Section 8.1** or the Effective Time, the Company shall afford Parent and its Representatives reasonable access to (i) all of the properties, Books and Records and Contracts of the Company, including all Company IP, (ii) all other information concerning the business, properties and personnel (subject to restrictions imposed by applicable law) of the Company as Parent may reasonably request, and (iii) all Employees of the Company as identified by Parent. The Company agrees to provide to Parent and its accountants, counsel and other Representatives copies of internal financial statements (including Tax Returns and supporting documentation) promptly upon request. No information or knowledge obtained in any investigation pursuant to this **Section 5.5** or otherwise shall affect or be deemed to modify, amend or supplement any representation or warranty set forth herein or in the Disclosure Schedule or the conditions to the

obligations of the parties to consummate the Merger in accordance with the terms and provisions of this Agreement, restrict, impair or otherwise affect any Indemnified Parties' right to indemnification hereunder or otherwise prevent or cure any misrepresentations, breach of warranty or breach of covenant.

**5.6 Notification of Certain Matters.** The Company shall give prompt notice to Parent of: (a) the occurrence or non-occurrence of any event, the occurrence or non-occurrence of which would cause any representation or warranty of the Company set forth in this Agreement to be untrue or inaccurate at or prior to the Effective Time and that would cause any condition set forth in **Article VI** not to be met, and (b) any failure of the Company to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder that would cause any condition set forth in **Article VI** not to be met; *provided, however*, that the delivery of any notice pursuant to this **Section 5.6** shall not (i) limit or otherwise affect any remedies available to the party receiving such notice, or (ii) constitute an acknowledgment or admission of a breach of this Agreement; *and provided, further* that the failure to deliver a notice pursuant to this **Section 5.6** shall not be considered in determining whether the condition set forth in **Section 6.2(a)** or **Section 6.2(b)** has been satisfied.

**5.7 Indemnification of Directors and Officers(a)** . If the Merger is consummated, then until the sixth (6th) anniversary of the Closing Date, Parent will cause the Surviving Corporation to fulfill and honor in all respects the obligations of the Company to its present and former directors and officers (the "**Company Indemnified Parties**") pursuant to indemnification agreements with the Company in effect on the Closing Date and pursuant to the Company's organizational documents, in each case, in effect as of the date of this Agreement, with respect to claims arising out of acts or omissions occurring at or prior to the Effective Time which are asserted after the Effective Time. Any claims for indemnification made under this **Section 5.7(a)** on or prior to the sixth (6th) anniversary of the Effective Time shall survive such anniversary until the final resolution thereof.

(b) Prior to Closing Date, the Company shall have purchased and fully paid, at its own expense, premium for directors and officers (D&O), which by its terms shall survive the Closing and shall provide runoff coverage for not less than six (6) years following the Closing Date, having limits, terms and conditions no less favorable in all material respects than the terms of the D&O liability insurance policies currently maintained by the Company (the "**Tail Policy**"). Such insurance shall be bound not later than the Closing Date. The Company shall complete reasonable applications and provide reasonable and customary representations and warranties to applicable insurance carriers for the purpose of obtaining such insurance.

(c) This **Section 5.7** shall survive the consummation of the Merger, is intended to benefit each Company Indemnified Party, shall be binding on all successors and assigns of the Surviving Corporation and Parent, and shall be enforceable by the Company Indemnified Parties, who are express third party beneficiaries of this **Section 5.7**; provided, however, that recourse shall first be against the Tail Policy until it is exhausted before recovery against Parent or the Surviving Corporation shall take place.

(d) Notwithstanding anything to the contrary herein, the obligations under this **Section 5.7** shall not be terminated or modified in a manner as to adversely affect any Company Indemnified Party without the consent of such affected Company Indemnified Party.

(e) In the event that following the Effective Time, Parent, the Surviving Corporation or any of their respective heirs, successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, (ii) transfers or conveys all or substantially all of its properties and assets to any Person or (iii) commences a dissolution, liquidation, assignment for the benefit of creditors or similar action, then, and in each such case, to the extent necessary, proper provision shall be made so that the heirs, successors and assigns of

Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this **Section 5.7**.

### **5.8 Contracts.**

(a) The Company shall use commercially reasonable efforts to obtain all necessary consents, waivers and approvals of any third parties to any Contract (including all of the Contracts set forth in **Section 2.4** of the Disclosure Schedule) as are required thereunder in connection with the Merger in order for such Contract to remain in full force and effect following the Merger. Such consents, modifications, waivers and approvals shall be in a form acceptable to Parent. In the event the Merger does not close for any reason, neither Parent nor Merger Sub shall have any liability to the Company, the Stockholders or any other Person for any costs, claims, liabilities or damages resulting from the Company seeking to obtain such consents, modifications, waivers and approvals.

(b) The Company shall terminate all Contracts listed on **Schedule 5.8(b)** and shall have sent all required notices under such Contracts on or prior to the Closing, such that each such Contract listed on **Schedule 5.8(b)** shall be of no further force or effect following the Closing, in each case, without any remaining liability of any kind to the Company, its Subsidiaries or Parent as a result of or in connection with such termination or such Contract.

### **5.9 Employee Matters.**

(a) **Termination of Employee Plans.** Unless instructed otherwise by Parent, effective as of no later than the day immediately preceding the Closing Date, the Company shall terminate any and all Company Employee Plans intended to include group severance pay or benefits and any Code Section 401(k) arrangement (each, a “**401(k) Plan**”) (unless Parent provides written notice to the Company that such 401(k) plans shall not be terminated). The Company shall provide Parent with evidence that any such 401(k) Plan has been terminated pursuant to resolutions of the board of directors (or similar body) of the Company or its ERISA Affiliates, as the case may be. The form and substance of such resolutions shall be subject to review and approval of Parent. The Company also shall take such other actions in furtherance of terminating any such Company Employee Plan as Parent may require.

(b) **Termination of Company Employment Arrangements.** Prior to the Closing Date, Parent shall extend offers of employment to all employees of the Company to become Continuing Employees (the “**Offered Employees**”). Prior to the Closing, the Company shall terminate the employment of each Non-Continuing Employee, effective as of no later than immediately prior to the Closing, and the Company shall provide separation and release agreements and pay all severance, accrued vacation or other benefits (including but not limited to any acceleration of vesting) to such Non-Continuing Employees prior to the Closing (such amounts “**Non-Continuing Employees Severance Amounts**”).

(c) **No Employment Commitment or Plan Amendments.** No provision of this Agreement is intended, or shall be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind or nature whatsoever in any stockholder, Employee, or any other Person, including any rights of employment for any specified period and/or any employee benefits, in favor of any union, association, Continuing Employee, Key Employee, Employee, consultant, contractor or any other Person, other than the parties hereto and their respective successors and permitted assigns, and all provisions of this Agreement will be personal solely among the parties to this Agreement. In addition, no



provision of this Agreement is intended, or shall be interpreted, to amend any term or condition of the Plan or any other employee related plan, program or policy of Parent, any subsidiary of Parent, or the Company.

(d) **Key Employees and Continuing Employees.**

(i) Subsequent to the Closing and for one (1) year thereafter, Parent shall ensure that all compensation and benefits awarded by Parent or an Affiliate thereof to each of the Key Employees pursuant to the Key Employee Offer Letters and the other Continuing Employees pursuant to the Continuing Employee Offer Letters (which Key Employee Offer Letters and Continuing Employee Offer Letters shall set forth the terms of an incentive program to be adopted and funded by Parent) are at least as generous as the compensation and benefits provided by the Company to such Key Employees and other Continuing Employees immediately following the Closing.

(ii) In the event that less than 80% of the Key Employees shall have executed and delivered their Key Employee Offer Letters contemporaneously with the execution of this Agreement, Parent and the Company shall use commercially reasonable efforts to obtain executed and delivered Key Employee Offer Letters from the remaining Key Employees such that 80% of such Key Employees have executed and delivered such Key Employee Offer Letters.

(e) **Transaction Bonuses.** At the Closing, the Company shall pay the Transaction Bonuses to the individuals and in the respective amounts set forth on **Schedule A-3**.

**5.10 Third Party Expenses.**

(a) Except as otherwise expressly set forth herein, each party shall be responsible for its own expenses and costs that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement and the Related Agreements; *provided, however*, that all Third Party Expenses that are incurred by the Company prior to or as of the Closing and that remain unpaid as of the Closing shall be deducted from the Total Consideration payable hereunder in respect of the outstanding shares of Company Capital Stock pursuant to the adjustments contemplated by the definition of Total Consideration.

(b) At least three (3) Business Days prior to the Closing, the Company shall have provided Parent with a statement, in a form reasonably satisfactory to Parent, setting forth all paid and unpaid Third Party Expenses incurred by or on behalf of the Company as of the Closing Date, or anticipated to be incurred or payable by or on behalf of the Company after the Closing (the “**Statement of Expenses**”). The Company shall take all necessary action to ensure that Third Party Expenses shall not be incurred by the Company after the Closing Date without the express prior written consent of Parent.

**5.11 Closing Date Balance Sheet.** Not less than three (3) Business Days prior to the Closing, the Company shall deliver to Parent an estimated consolidated balance sheet and income statement of the Company as of the Closing Date (the “**Closing Date Balance Sheet**”), that has been prepared in accordance with GAAP consistently applied on a basis consistent with the Financials.

**5.12 Spreadsheet.** Not less than three (3) Business Days prior to the Closing, the Company shall deliver to Parent a spreadsheet setting forth the following information, in form and substance reasonably satisfactory to Parent and accompanied by documentation reasonably satisfactory to Parent in support of the calculation of the information set forth therein, certified as true, correct and complete as of the Closing Date by the Chief Executive Officer and Chief Financial Officer of the Company (the “**Spreadsheet**” and the related certificate, the “**Spreadsheet Certificate**”):

(a) calculation of the Total Consideration and all components thereof, including Closing Cash, the Aggregate Strike Price Amount, Closing Indebtedness and Third Party Expenses;

(b) calculation of the applicable Per Share Consideration for each class or series of Company Capital Stock;

(c) with respect to each Stockholder: (i) the name of such holder, and, if available, the e-mail address of such holder, (ii) whether such holder is a current or former employee of the Company, (iii) the number, class and series of shares of Company Capital Stock held by such holder and the respective certificate numbers, (iv) the date of acquisition of such shares, (v) the initial purchase price of any such shares that constitute a “covered security” within the meaning of Treasury Regulations Section 1.6045-1(a)(15), (vi) whether any Taxes are to be withheld in accordance with **Section 1.8** from the consideration that such holder is entitled to receive pursuant to **Section 1.6(b)(i)**, (vii) the Pro Rata Portion of such holder, (viii) the amount of cash to be deposited into the Escrow Fund and the Expense Fund on behalf of such holder pursuant to this Agreement, and (ix) such other additional information which Parent may reasonably request; and

(d) with respect to each Company Option: (i) the name of the holder thereof, and, if available, the e-mail address of such holder, (ii) whether such holder is an employee, consultant, director or officer of the Company, (iii) the grant date and expiration date thereof, (iv) whether such Company Option was granted pursuant to the Plan, (v) the extent to which such Company Option is vested as of immediately prior to the Effective Time (taking into account any Company Option (or portion thereof) that, as a result of the Merger will accelerate in full and no longer be subject to any further vesting, right of repurchase, risk of forfeiture or other such conditions), (vi) the exercise price per share and the number, class and series of shares of Company Capital Stock underlying such Company Option immediately prior to the Closing, (vii) whether such holder is a Continuing Employee or a Non-Continuing Employee (it being understood that such information may be updated at any time prior to the Closing), (viii) the exercise price per share of such Company Option following the Closing in accordance with **Section 1.6(c)**, (ix) the cash consideration that such holder is entitled to receive in accordance with **Section 1.6(c)**, and (x) such other information which Parent may reasonably request.

### **5.13 Tax Matters.**

(a) **Preparation and Filing of Tax Returns.** Parent shall timely prepare and file, or shall cause to be prepared and filed, all Company Returns with respect to any taxable year or period that ends on or before the Closing Date and any taxable year or period beginning before and ending after the Closing Date that are due after the Closing Date. Parent shall prepare such Company Returns consistently with the past practices of the Company, except as otherwise required by applicable Legal Requirements, and shall provide the Stockholder Representative the right to review any Company Returns that reflect a material amount of Tax for which the Indemnifying Parties could reasonably be expected to be liable for no later than twenty (20) days prior to the due date for filing such Company Returns.

(b) **Cooperation on Tax Matters.** Parent, its Affiliates and the Stockholder Representative shall cooperate fully, as and to the extent reasonably requested by any of them, in

connection with the filing of Company Returns, any Tax audits, Tax proceedings or other Tax-related claims. Such cooperation shall include, upon the other party's request, providing records and information that are reasonably relevant to any such matters, making employees available on a mutually convenient basis during normal business hours to provide additional information, and explaining any materials provided pursuant to this **Section 5.13(d)**. Parent and its Affiliates shall not destroy or dispose of any Tax workpapers, schedules or other materials and documents supporting Company Returns until the seventh (7<sup>th</sup>) anniversary of the Closing Date, without the prior written consent of Stockholder Representative.

(c) **Tax Contests.** Parent and its Affiliates agree to give prompt written notice to the Stockholder Representative of the receipt of any written notice by Parent or any of its Affiliates Company which involves the assertion of any Tax matter for which the Stockholders may be liable for indemnification under this Agreement (a "**Contest**"). Parent shall be entitled to control the defense of such Contest, provided that the Stockholder Representative shall be permitted to participate at the expense of the Indemnifying Parties in such defense, and provided, further, if Parent settles such Contest without the prior consent of the Stockholder Representative, such consent not to be unreasonably withheld, such settlement shall not be determinative of the amount of indemnifiable Losses. To the extent the terms of this **Section 5.13(c)** conflict with any other provision of this Agreement, this **Section 5.13(c)** shall control.

## **ARTICLE VI CONDITIONS TO THE MERGER**

**6.1 Conditions to Obligations of Each Party.** The respective obligations of Parent, Merger Sub and the Company to effect the Merger shall be subject to the satisfaction, at or prior to the Effective Time, of the following conditions (any of which may be waived only with the written mutual consent of Parent, Merger Sub and the Company):

(a) **Board and Stockholder Approval.** The Requisite Board Approval and the Requisite Stockholder Approval shall have been obtained.

(b) **Regulatory Approvals.** All approvals of Governmental Entities required to be obtained prior to the Effective Time in connection with the Merger and the other Transactions shall have been obtained.

(c) **No Legal Impediments.** No Legal Requirement (whether temporary, preliminary or permanent) shall be in effect which has the effect of making the Merger or any other Transactions illegal or otherwise prohibiting or preventing consummation of the Merger or any other Transactions.

**6.2 Additional Conditions to the Obligations of Parent and Merger Sub.** The obligations of Parent and Merger Sub to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of each of the following additional conditions (any of which may be waived, in writing, exclusively by Parent and Merger Sub):

(a) **Representations and Warranties.** The representations and warranties of the Company that are not qualified by materiality shall have been true and correct in all material respects on the date they were made and shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such date (other than the representations and warranties of the Company made only as of a specified date, which shall be true and correct in all material respects as of such date). The representations and warranties of the Company that are qualified by materiality shall have been true and correct in all respects on the date they were made

and shall be true and correct in all respects on and as of the Closing Date as though such representations and warranties were made on and as of such date (other than any such representations and warranties of the Company made only as of a specified date, which shall be true and correct in all respects as of such date).

(b) **Covenants.** The Company shall have performed and complied in all material respects with all covenants and obligations under this Agreement required to be performed and complied with by the Company prior to the Closing.

(c) **No Material Adverse Effect.** Since the Balance Sheet Date, there shall not have occurred and be continuing a Company Material Adverse Effect.

(d) **No Litigation.** There shall be no Action instituted by a Governmental Entity pending or overtly threatened against Parent or any of its Affiliates, or against the Company or any of its Affiliates seeking to restrain, enjoin, prevent, prohibit or make illegal the consummation of the Merger.

(e) **Joinder Agreements.** Stockholders and Vested Company Optionholders holding 70% of the aggregate shares of Company Capital Stock outstanding immediately prior to the Effective Time on an as converted to Company Common Stock basis, including all shares of Company Common Stock issuable upon exercise of all Vested Company Options, but excluding for all purposes all shares of Company Capital Stock held by Parent as of immediately prior to the Effective Time, shall have executed and delivered to Parent Joinder Agreements, in the form attached hereto as **Exhibit D** (the “**Joinder Agreements**”), and all such Joinder Agreements shall be in full force and effect.

(f) **Escrow Agreement.** The Stockholder Representative shall have executed and delivered the Escrow Agreement in a form reasonably acceptable to the parties thereto.

(g) **New Employment Arrangements.**

(i) Each of the Non-Competition and Non-Solicitation Agreements executed concurrently with this Agreement by the Founders shall be in full force and effect shall not have been revoked, rescinded or otherwise repudiated by the Founders.

(ii) Each of the Non-Solicitation Agreements executed concurrently with this Agreement by the individuals listed on **Schedule A-2** shall be in full force and effect shall not have been revoked, rescinded or otherwise repudiated by the individuals listed on **Schedule A-2**.

(iii) At least eighty percent (80%) of the Key Employees shall have executed and delivered their Key Employee Offer Letters prior to or concurrently with the execution of this Agreement, which Key Employee Offer Letters shall be in full force and effect and shall not have been revoked, rescinded or otherwise repudiated by such Key Employees, and no more than twenty percent (20%) of the Key Employees shall have terminated his or her employment with the Company or expressed an intention or interest in terminating his or her employment with the Company at or prior to the Closing, or with the Surviving Corporation or Parent immediately following the Closing.

(h) **Officer's Certificate.** Parent shall have received a certificate from the Company (the “**Officer's Certificate**”), validly executed by the Chief Executive Officer of the Company for and on the Company's behalf, to the effect that, as of the Closing the conditions set forth in **Sections 6.2(a), 6.2(b)** and **6.2(c)** have been satisfied.

(i) **FIRPTA Certificate.** Parent shall have received a copy of a statement, prepared in accordance with the requirements of Treasury Regulations Section 1.897-2(g) and Treasury Regulations Section 1.1445-2(c)(3), certifying that the Company is not a U.S. real property holding corporation within the meaning of Code Section 897(c)(2), validly executed by a duly authorized officer of the Company.

(j) **Documentary Deliverables.** The Company shall have delivered to the Parent the Spreadsheet and the Spreadsheet Certificate in compliance with **Section 5.12**, the Closing Date Balance Sheet and the Statement of Expenses.

**6.3 Additional Conditions to Obligations of the Company.** The obligations of the Company to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following additional conditions (any of which may be waived, in writing, exclusively by the Company):

(a) **Representations and Warranties.** The representations and warranties of Parent that are not qualified by materiality shall have been true and correct in all material respects on the date they were made and shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such date (other than the representations and warranties of Parent made only as of a specified date, which shall be true and correct in all material respects as of such date). The representations and warranties of Parent that are qualified by materiality shall have been true and correct in all respects on the date they were made and shall be true and correct in all respects on and as of the Closing Date as though such representations and warranties were made on and as of such date (other than any such representations and warranties of Parent made only as of a specified date, which shall be true and correct in all respects as of such date).

(b) **Covenants.** Parent and Merger Sub shall have performed and complied in all material respects with all covenants and obligations under this Agreement required to be performed and complied with by them prior to the Closing.

## ARTICLE VII POST-CLOSING INDEMNIFICATION

**7.1 Survival of Representations and Warranties.** The representations and warranties of the Company set forth in this Agreement or in the Officer's Certificate shall survive until 11:59 p.m. California time on the date that is twelve (12) months following the Closing Date (the date of expiration of such period, the "**Expiration Date**"); *provided, however*, (i) the representations and warranties of the Company as set forth in **Section 2.1(a)** (Organization and Good Standing), **Section 2.2** (Authority and Enforceability), **Section 2.5** (Company Capital Structure) and the Spreadsheet Certificate (collectively, the "**Fundamental Representations**"), and **Section 2.10** (Tax Matters) (together with the Fundamental Representations, the "**Special Representations**") shall survive until the expiration of all applicable statutes of limitations in respect of the matters addressed by such representations and warranties (including all periods of extension, whether automatic or permissive), and (ii) the representations and warranties of the Company set forth in **Section 2.13** (Intellectual Property) (the "**IP Representations**") shall survive for a period of twenty-four (24) months from the Closing; and *provided, further*, that all representations and warranties of the Company shall survive beyond the Expiration Date or other survival periods specified above with respect to any inaccuracy therein or breach thereof if a claim is made hereunder prior to the expiration of the survival period for such representation and warranty, in which case such representation and warranty shall survive as to such claim until such claim has been finally resolved. The representations and warranties of Parent and Merger Sub set forth in **Article III** of this Agreement, the Related Agreements or in any certificate or other instrument delivered pursuant to this Agreement shall terminate at the Closing. For the avoidance of doubt, it is the intention of the parties

hereto that the foregoing respective survival periods and termination dates supersede any applicable statutes of limitations that would otherwise apply to such representations and warranties.

## **7.2 Indemnification.**

(a) From and after and by virtue of the Merger, subject to the terms of this **Article VII**, the Stockholders (with the exception of Parent) and the Vested Company Optionholders (each, an “**Indemnifying Party**” and collectively, the “**Indemnifying Parties**”) agree to severally (based on such Indemnifying Party’s Pro Rata Portion), but not jointly, indemnify and hold harmless Parent and its officers, directors, affiliates and employees, including the Surviving Corporation (each, an “**Indemnified Party**” and collectively, the “**Indemnified Parties**”), from and against all claims, losses, liabilities, damages, costs, interest, awards, judgments, penalties and expenses, including reasonable attorneys’ and consultants’ fees and expenses and including any such reasonable expenses incurred in connection with investigating, defending against or settling any of the foregoing (hereinafter individually a “**Loss**” and collectively “**Losses**”) paid, incurred, suffered or sustained by the Indemnified Parties, or any of them (including the Surviving Corporation) (regardless of whether or not such Losses relate to any third party claims), directly or indirectly, resulting from, arising out of, or relating to any of the following:

(i) any breach of or inaccuracy in, as of the date of this Agreement or as of the Effective Time, a representation or warranty of the Company set forth in this Agreement or the Officer’s Certificate, without giving effect to any update of or modification to the Disclosure Schedule made or purported to have been made on or after the date of this Agreement;

(ii) any failure by the Company to perform or comply with any of its covenants or agreements set forth in this Agreement;

(iii) any payment in respect of any Dissenting Shares in excess of the consideration that otherwise would have been payable in respect of such shares in accordance with this Agreement; and

(iv) any inaccuracy or omission in the Spreadsheet, including any amounts set forth therein that are paid to a Person in excess of the amounts that such Person is entitled to receive pursuant to the terms of this Agreement and any amounts that a Person was entitled to receive pursuant to the terms of this Agreement that were omitted from the Spreadsheet, including any failure to properly calculate Closing Cash, Closing Indebtedness, Third Party Expenses, the Per Share Consideration, the Per Option Consideration or the Total Consideration.

(b) The Indemnifying Parties (including any officer or director of the Company) shall not have any right of contribution, indemnification or right of advancement from the Surviving Corporation or Parent with respect to any Loss claimed by an Indemnified Party.

(c) Any payments made to an Indemnified Party pursuant to any indemnification obligations under this **Article VII** will be treated as adjustments to the Total Consideration for Tax purposes and such agreed treatment will govern for purposes of this Agreement, unless otherwise required by applicable Legal Requirements.

(d) The indemnification rights set forth in this **Article VII** shall be the sole and exclusive remedy of the Indemnified Parties from and after the Effective Time for any claims relating to this Agreement or any matters relating to the transactions contemplated herein; provided, however, that nothing in this Agreement shall limit any Person’s rights or obligations under any other agreement entered into in connection with this Agreement, including claims of any inaccuracy in or breach of any

representation, warranty or covenant in this Agreement; *provided, however*, that (i) this **Section 7.2(d)** shall not be deemed a waiver by any party of any right to specific performance or injunctive relief and (ii) nothing in this Agreement shall limit the liability of an Indemnifying Party (and this **Article VII** shall not be the sole and exclusive remedy in respect of such Indemnifying Party) in connection with claims based on fraud committed by such Indemnifying Party regardless of the capacity in which such Indemnifying Party committed such fraud.

(e) Nothing in this Agreement shall limit the right of Parent or any other Indemnified Party to pursue remedies under any Related Agreement against the parties thereto.

(f) Parent and Merger Sub each hereby acknowledges and agrees that, except to the extent set forth in **Article II**, neither the Company nor any Indemnifying Party has made any representations or warranties with respect to the Company or its business and neither Parent nor Merger Sub has relied or will rely upon any information, representation or warranty, except those representations and warranties set forth in **Article II** hereof in executing, delivering and performing this Agreement and the transactions contemplated hereby.

### **7.3 Limitations on Indemnification.**

(a) **Threshold.** Subject to Section 9.10(d), the Indemnified Parties, as a group, may not recover any Losses pursuant to an indemnification claim under **Section 7.2** unless and until the Indemnified Parties, as a group, shall have paid, incurred, suffered or sustained at least \$500,000 in Losses in the aggregate (the “**Threshold Amount**”), in which case the Indemnified Parties shall be entitled to recover all such Losses, including such amounts as comprised any portion of such Threshold Amount.

(b) **Recovery from Escrow Fund.**

(i) Subject to Section 9.10(d) and except in the case of claims for breaches of or inaccuracies in the Special Representations or the IP Representations, and indemnification claims under **Section 7.2(a)(iii)** and **7.2(a)(iv)**, until the Expiration Date, the Indemnified Parties’ sole and exclusive source of recovery for indemnification claims under this Agreement shall be recourse against the Escrow Fund.

(ii) Subject to Section 9.10(d), the Indemnified Parties’ first source of recovery for indemnification claims under this Agreement shall be recourse against the Escrow Fund, but if the Escrow Fund is insufficient to satisfy the Indemnifying Parties’ Pro Rata Portion of any Loss for which an Indemnified Party is entitled to indemnification under this Article VII, subject to the limitation of this Article VII, the Indemnified Parties shall be entitled to recover the Indemnifying Parties’ Pro Rata Portion of such Losses in respect of such indemnification claims directly from the Indemnifying Parties (the Indemnifying Parties’ Pro Rata Portion of any Loss for which indemnification is not satisfied by the Escrow Fund is referred to as an “**Excess Loss**”).

(c) Subject to Section 9.10(d), the maximum amount that the Indemnified Parties may recover for indemnification claims from any Indemnifying Party under **Section 7.2(a)(i)** for breaches of or inaccuracies in the IP Representations shall be limited to a dollar amount equal to 20% of the aggregate amount of cash actually received by such Indemnifying Party pursuant to **Section 1.6(b)(i)** and **Section 1.6(c)(i)(A)** in respect of the shares of Company Capital Stock and Company Options owned by such Indemnifying Party as of immediately prior to the Effective Time.

(d) Subject to Section 9.10(d), the maximum amount that the Indemnified Parties may recover for any indemnification claims from any Indemnifying Party under this Agreement shall not exceed such Indemnifying Party's Pro Rata Portion of the Losses in respect of such indemnification claim.

(e) Subject to Section 9.10(d), the maximum amount that the Indemnified Parties may recover for indemnification claims under this Agreement shall be limited to a dollar amount equal to the aggregate amount of cash actually received by such Indemnifying Party pursuant to **Section 1.6(b)(i) and Section 1.6(c)(i)(A)** in respect of the shares of Company Capital Stock and Company Options owned by such Indemnifying Party as of immediately prior to the Effective Time.

(f) Subject to Section 9.10(d), in the case of any indemnification claim under **Sections 7.2(a)** that is not limited to the recovery of funds from the Escrow Fund pursuant to **Section 7.3(b)**, subject to the limitations set forth in this Article VII, the Indemnified Parties shall be entitled to bring indemnification claims against any or all of the Indemnifying Parties for each such Indemnifying Party's Pro Rata Portion of the Excess Losses, and each Indemnifying Party shall be liable only for its, his or her Pro Rata Portion of the Excess Losses in respect of such indemnification claim.

(g) The rights of the Indemnified Parties to indemnification, compensation or reimbursement, payment of Losses or any other remedy under this Agreement shall not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any representation, warranty, covenant or agreement made by the Company or any other matter. The waiver of any condition based on the accuracy of any such representation or warranty, or on the performance of or compliance with any such covenant or agreement, will not affect the right to indemnification, compensation or reimbursement, payment of Losses, or any other remedy based on any such representation, warranty, covenant or agreement. No Indemnified Party shall be required to show reliance on any representation, warranty, certificate or other agreement in order for such Indemnified Party to be entitled to indemnification, compensation or reimbursement pursuant to **Section 7.2(a)**.

(h) If an Indemnified Party's claim under this **Article VII** may be brought under different subsections of **Section 7.2(a)**, then such Indemnified Party shall have the right to bring such claim under any applicable section it chooses in accordance with this **Article VII**. For the avoidance of doubt, if and solely to the extent the amount of any Loss is recovered by an Indemnified Party, the same amount of such Loss may not be recovered again by such Indemnified Party.

(i) Notwithstanding anything in this Agreement to the contrary: (i) all Losses shall be calculated after giving effect to any proceeds that have been recovered by Parent or any of its Affiliates (including the Surviving Corporation) from a third party or under any policy of insurance after deducting from such proceeds any increase in the future in any insurance premium due to such claim, provided that Parent and the Surviving Corporation shall only be required to use commercially reasonable efforts to obtain such payments or to obtain or maintain any such insurance policies; and (ii) no Indemnifying Party will have any liability for any Loss that: (A) is otherwise accurately accounted for in the calculation of any of the components of the Total Consideration; or (B) represents or constitutes punitive or exemplary damages (except, in each case, to the extent that a third party has obtained a final and nonappealable judgment therefor).

(j) Any indemnification hereunder for Losses with respect to a breach of the representations in **Section 2.10**, other than with respect to a breach of any representation or warranty set



forth in **Sections 2.10(e), (f), (g), (j), (k), (m), (n) and (r)**, shall be limited to Taxes arising in or attributable to a Pre-Closing Tax Period.

(k) For purpose of this **Article VII** only, solely when determining the amount of Losses suffered (but not whether a breach, inaccuracy or failure has occurred) by an Indemnified Party as a result of any breach or inaccuracy of a representation or warranty or any failure by the Company to perform or comply with any covenant or agreement applicable to it that is qualified or limited in scope as to materiality, Material Adverse Effect or Knowledge, such representation, warranty, covenant or agreement shall be deemed to be made without such qualification or limitation.

#### **7.4 Indemnification Claim Procedures.**

(a) Subject to the limitations set forth in **Section 7.1**, if an Indemnified Party wishes to make an indemnification claim under this **Article VII**, such Indemnified Party shall deliver a written notice (an “**Indemnification Claim Notice**”) to the Stockholder Representative (with a copy to the Escrow Agent) (or in the event an Indemnified Party elects to pursue such indemnification claim directly against an Indemnifying Party, to such Indemnifying Party directly) (i) stating that an Indemnified Party has paid, incurred, suffered or sustained, or reasonably anticipates that it may pay, incur, suffer or sustain Losses, and (ii) specifying in reasonable detail the individual items of such Losses, the date each such item was paid, incurred, suffered or sustained, or the basis for such anticipated liability, and, if applicable, the nature of the misrepresentation, breach of warranty or covenant to which such item is related. Parent may update an Indemnification Claim Notice from time to time to reflect any new information discovered with respect to the claim set forth in such Indemnification Claim Notice.

(b) If the Stockholder Representative on behalf of the Indemnifying Parties (or the Indemnifying Party in the event that indemnification is being sought hereunder directly from such Indemnifying Party) shall not object in writing within the 30-day period after receipt of an Indemnification Claim Notice by delivery of a written notice of objection containing a reasonably detailed description of the facts and circumstances supporting an objection to the applicable indemnification claim (an “**Indemnification Claim Objection Notice**”), such failure to so object shall be an irrevocable acknowledgment by the Stockholder Representative on behalf of the Indemnifying Parties (or the applicable Indemnifying Party) that the Indemnified Party is entitled to the full amount of the claim for Losses set forth in such Indemnification Claim Notice. In such event, the Escrow Agent shall promptly release from the Escrow Fund cash equal to the Losses set forth in such Indemnification Claim Notice.

(c) In the event that the Stockholder Representative (or in the event that indemnification is being sought hereunder directly from an Indemnifying Party, such Indemnifying Party) shall deliver an Indemnification Claim Objection Notice in accordance with **Section 7.4(b)** within thirty (30) days after delivery of such Indemnification Claim Notice, the Stockholder Representative (or such objecting Indemnifying Party) and Parent shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims. If the Stockholder Representative (or such objecting Indemnifying Party) and Parent should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and, in the case of an indemnification claim to be recovered from the Escrow Fund, shall be furnished to the Escrow Agent. The Escrow Agent shall be entitled to rely on any such memorandum and make distributions from the Escrow Fund in accordance with the terms thereof. In such event, the Escrow Agent shall promptly release from the Escrow Fund an amount of cash equal to the Losses set forth in such Indemnification Claim Notice. Should the amount held in the Escrow Fund, if any, be insufficient to satisfy in whole the amount owed to an Indemnified Party in accordance with such memorandum and this Agreement, then subject to the limitations in this **Article VII**, each Indemnifying Party shall, within ten (10) Business Days following the date of such

memorandum, pay to the Indemnified Party such Indemnifying Party's Pro Rata Portion of such shortfall in cash.

(d) If no such agreement can be reached after good faith negotiation and prior to thirty (30) days after delivery of an Indemnification Claim Objection Notice, either Parent or the Stockholder Representative (or the objecting Indemnifying Party) shall be settled by arbitration conducted in accordance with the provisions of **Section 9.15**.

### **7.5 Third Party Claims.**

(a) If a claim, action, suit or proceeding by a Person who is not a party or an Affiliate thereof (a "**Third Party Claim**") is made against any Indemnified Party, and if such Indemnified Party intends to seek indemnity with respect thereto under this **Article VII**, such Indemnified Party shall promptly notify the Stockholder Representative of such claims; provided that the failure to so notify the Stockholder Representative shall not relieve the Indemnifying Parties of its obligations hereunder, except to the extent that the Indemnifying Parties is materially prejudiced thereby. Such notice shall identify specifically the basis under which indemnification is sought under this Agreement and enclose true and correct copies of any written document furnished to the Indemnified Party by the Person that instituted the Third Party Claim. The Indemnified Party shall assume the defense of such Third Party Claim with counsel of reputable standing and the Indemnified Party's reasonable fees and expenses (including reasonable fees and expenses of counsel) in connection with such defense will be borne by the Indemnifying Parties subject to the limitations in this **Article VII**; provided that the Stockholder Representative shall be entitled to consult with the Indemnified Party in such settlement or defense. The Indemnified Party shall have the right to pay or settle any Third Party Claim, provided that the Indemnified Party shall consult with the Stockholder Representative prior to making any such payment or settlement; provided, further, that any such payment or settlement shall not be determinative of the existence, or amount, of any Losses recoverable by the Indemnified Parties from the Indemnifying Parties under this Agreement. If the Indemnified Party fails to assume the defense of any such Third Party Claim in accordance with the foregoing, then the Stockholder Representative shall have the right to assume the defense thereof upon written notice to the Indemnified Party. If the Stockholder Representative shall have assumed the defense of any Third Party Claim, the Stockholder Representative shall not, except with the consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), enter into any settlement that does not include as an unconditional term thereof the giving by the Person(s) asserting such Third Party Claim to all Indemnified Parties of an unconditional release from all liability with respect to such Third Party Claim or consent to entry of any judgment.

(b) All of the parties shall reasonably cooperate in the defense or prosecution of any Third Party Claim in respect of which indemnity may be sought hereunder and each of Parent and the Surviving Corporation (or a duly authorized representative of such party) shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

### **7.6 Stockholder Representative.**

(a) By virtue of the execution and delivery of a Joinder Agreement, and the adoption of this Agreement and approval of the Merger by the Stockholders, each of the Indemnifying Parties shall be deemed to have agreed to appoint Shareholder Representative Services LLC as its agent and attorney-in-fact, as the Stockholder Representative for and on behalf of the Indemnifying Parties for all purposes in connection with this Agreement and the agreements ancillary hereto, including without limitation to give and receive notices and communications in respect of indemnification claims under this Agreement to be

recovered against the Escrow Fund, to authorize payment to any Indemnified Party from the Escrow Fund in satisfaction of any indemnification claims hereunder by any Indemnified Party, to object to such payments, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to any such indemnification claims, to assert, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to, any such indemnification claim by any Indemnified Party hereunder against any Indemnifying Party or by any such Indemnifying Party against any Indemnified Party or any dispute between any Indemnified Party and any such Indemnifying Party, in each case relating to this Agreement or the Transactions, and to take all other actions that are either (i) necessary or appropriate in the judgment of the Stockholder Representative for the accomplishment of the foregoing or (ii) specifically mandated or permitted by the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Stockholder Representative shall not have the authority to enter into any settlement or compromise or otherwise agree to any claims to the extent that such claim involves Excess Loss (the “**Authority Limitation**”). Such agency may be changed by the Stockholders from time to time upon not less than 30 days prior written notice to Parent; *provided, however*, that the Stockholder Representative may not be removed unless holders of a majority in interest of the Escrow Fund agree to such removal and to the identity of the substituted agent. Notwithstanding the foregoing, in the event of a resignation of the Stockholder Representative or other vacancy in the position of Stockholder Representative, such vacancy may be filled by the holders of a majority in interest of the Escrow Fund. No bond shall be required of the Stockholder Representative. After the Closing, notices or communications to or from the Stockholder Representative shall constitute notice to or from the Indemnifying Parties.

(b) The Stockholder Representative shall not be liable for any act done or omitted hereunder as Stockholder Representative while acting in good faith and without gross negligence or willful misconduct. The Indemnifying Parties on whose behalf the Escrow Amount was contributed to the Escrow Fund shall indemnify the Stockholder Representative and hold the Stockholder Representative harmless against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses arising out of or in connection with the acceptance or administration of the Stockholder Representative’s duties hereunder, including the reasonable fees and expenses of any legal counsel retained by the Stockholder Representative and any amounts required to be paid by the Stockholder Representative to the Escrow Agent pursuant to the Escrow Agreement (“**Stockholder Representative Expenses**”). If not paid directly to the Stockholder Representative by the Indemnifying Parties, any such Stockholder Representative Expenses may be recovered by the Stockholder Representative from (i) first, the funds in the Expense Fund and (ii) then, to the extent the funds in the Expense Fund are insufficient, the amounts in the Escrow Fund at such time as remaining amounts would otherwise be distributable to the Indemnifying Parties. For the avoidance of doubt, while this **Section 7.6(b)** allows the Stockholder Representative to be paid from the Expense Fund and the Escrow Fund following the Expiration Date and the resolution of all indemnification claims made under this Agreement and the satisfaction of all such indemnification claims, this **Section 7.6(b)** shall not limit the obligation of any Indemnifying Party to promptly pay such Stockholder Representative Expenses as they are incurred. In no event will the Stockholder Representative be required to advance its own funds on behalf of the Indemnifying Parties or otherwise. The Indemnifying Parties acknowledge and agree that the foregoing indemnities will survive the resignation or removal of the Stockholder Representative or the termination of this Agreement. A decision, act, consent or instruction of the Stockholder Representative, including an amendment, extension or waiver of this Agreement pursuant to **Section 9.2** or **Section 9.3**, shall constitute a decision of the Indemnifying Parties and shall be final, conclusive and binding upon the Indemnifying Parties; and the Escrow Agent and Parent may rely upon any such decision, act, consent or instruction of the Stockholder Representative as being the decision, act, consent or instruction of the Indemnifying Parties. The Escrow Agent and Parent are hereby relieved from any liability to any person

for any acts done by them in accordance with such decision, act, consent or instruction of the Stockholder Representative.

(c) Upon the Closing, Parent shall wire to a segregated client bank account maintained by the Stockholder Representative, an amount equal to US\$250,000 (the “**Expense Fund**”), and each Indemnifying Party shall be deemed to have contributed his Pro Rata Portion of the Expense Fund. The Stockholder Representative shall hold the Expense Fund in accordance with this Agreement on behalf of the Indemnifying Parties as a fund which will be used for the purposes of paying directly, or reimbursing the Stockholder Representative for, any third party expenses pursuant to this Agreement. The Indemnifying Parties shall not receive any interest or earnings on the Expense Fund and irrevocably transfer and assign to the Stockholder Representative any ownership right that they may otherwise have had in any such interest or earnings. The Stockholder Representative will not be liable for any loss of principal of the Expense Fund other than as a result of its gross negligence, willful misconduct or bad faith. The Stockholder Representative will hold these funds separate from its corporate funds, will not use these funds for its operating expenses or any other corporate purposes and will not voluntarily make these funds available to its creditors in the event of bankruptcy. Contemporaneously with or as soon as practicable following the release in full of the Escrow Fund, the Stockholder Representative shall deliver the balance of the Expense Fund to the Paying Agent for further distribution to the Indemnifying Parties in accordance with their respective Pro Rata Portions. For tax purposes, the Expense Fund will be treated as having been received and voluntarily set aside by the Indemnifying Parties at the time of Closing.

(d) The Escrow Fund shall be held and disposed of in accordance with the terms and conditions of this Agreement and the Escrow Agreement, in a form reasonably acceptable to the parties thereto (the “**Escrow Agreement**”), and shall be entered into at the Effective Time, by and among Parent, the Stockholder Representative and the Escrow Agent. The Escrow Fund shall be deemed deducted on a pro rata basis from the consideration each of the Stockholders would otherwise have been entitled to receive as part of the consideration for their shares of Company Capital Stock at the Effective Time pursuant to **Section 1.6(b)(i)**, and, subject to the provisions of this Agreement and the Escrow Agreement. The Escrow Fund shall be held in trust and shall not be subject to any Lien, attachment, trustee process or any other judicial process of any creditor of any party. Approval of this Agreement and the Merger by the Stockholders shall constitute approval of the Escrow Agreement and of all of the arrangements relating thereto, including without limitation the placement of the Escrow Fund in escrow, and the approval of the appointment of the Stockholder Representative.

## **ARTICLE VIII PRE-CLOSING TERMINATION OF AGREEMENT**

**8.1 Termination.** Except as provided in **Section 8.2**, this Agreement may be terminated and the Merger abandoned at any time prior to the Closing:

(a) by mutual agreement of the Company and Parent;

(b) by Parent if the Requisite Stockholder Approval shall not have been obtained by the Company and delivered to Parent within one (1) day after the execution and delivery of this Agreement by Parent and the Company;

(c) by Parent or the Company if the Closing Date shall not have occurred by September 30, 2015 (the “**End Date**”); *provided, however*, that the right to terminate this Agreement under this **Section 8.1(c)** shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement;

(d) by Parent or the Company if any Legal Requirement shall be in effect which has the effect of making the Merger illegal or otherwise prohibits prevents consummation of the Merger, provided that in the case of any such Legal Requirement that is an Order, such Order has become final and non-appealable;

(e) by Parent if there has been a breach of or inaccuracy in any representation, warranty, covenant or agreement of the Company set forth in this Agreement such that the conditions set forth in **Sections 6.2(a)** and **6.2(b)** would not be satisfied as of the time of such breach or inaccuracy and such breach or inaccuracy has not been cured within ten (10) calendar days after written notice thereof to the Company; *provided, however*, that no cure period shall be required (i) for a breach or inaccuracy which by its nature cannot be cured or (ii) if any of the conditions to Closing in **Article VI** for the benefit of Parent are incapable of being satisfied on or before the End Date; or

(f) by the Company if there has been a breach of or inaccuracy in any representation, warranty, covenant or agreement of Parent set forth in this Agreement such that the conditions set forth in **Sections 6.3(a)** and **6.3(b)** would not be satisfied as of the time of such breach or inaccuracy and such breach or inaccuracy has not been cured within ten (10) calendar days after written notice thereof to Parent; *provided, however*, that no cure period shall be required (i) for a breach or inaccuracy which by its nature cannot be cured or (ii) if any of the conditions to Closing in **Article VI** for the benefit of the Company are incapable of being satisfied on or before the End Date.

**8.2 Effect of Termination.** In the event of termination of this Agreement as provided in **Section 8.1**, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent, Merger Sub or the Company, or their respective officers, directors or stockholders, if applicable; *provided, however*, that each party hereto and each Person shall remain liable for any willful and intentional breaches of this Agreement; and *provided further, however*, that, the provisions of **Section 5.10** (Third Party Expenses), **Article IX** (General Provisions) and this **Section 8.2** shall remain in full force and effect and survive any termination of this Agreement pursuant to the terms of this **Article VIII**.

## **ARTICLE IX GENERAL PROVISIONS**

**9.1 Certain Interpretations.** When a reference is made in this Agreement to an Annex, Exhibit or Schedule, such reference shall be to an Annex, Schedule or Exhibit to this Agreement unless otherwise indicated. When a reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or a Section of this Agreement unless otherwise indicated. The words “include,” “includes” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation.” All references in this Agreement to “\$” or dollars shall mean U.S. denominated dollars. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

**9.2 Amendment.** This Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of the party against whom enforcement is sought. For purposes of this **Section 9.2**, the Indemnifying Parties are deemed to have agreed that any amendment of this Agreement signed by the Stockholder Representative shall be binding upon and effective against the Indemnifying Parties whether or not they have signed such amendment; provided, however that after this Agreement is approved by Stockholders representing the Requisite Stockholder Approval, this Agreement may only be amended with the written consent of Stockholders representing the Requisite

Stockholder Approval if such amendment: (x) changes any material term of this Agreement adversely with respect to the Stockholders; or (y) would otherwise require Stockholder approval under applicable Legal Requirements. Notwithstanding the foregoing, **Section 5.7** may not be amended without the prior written consent of the Company Indemnified Parties.

**9.3 Waiver.** At any time prior to the Closing, Parent, on the one hand, and the Company and the Stockholder Representative, on the other hand, may, to the extent permitted under any applicable Legal Requirements, (a) extend the time for the performance of any of the obligations of the other party hereto, (b) waive any inaccuracies in the representations and warranties made to such party set forth herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the covenants, agreements or conditions for the benefit of such party set forth herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. For purposes of this **Section 9.3**, the Stockholders are deemed to have agreed that any extension or waiver signed by the Stockholder Representative shall be binding upon and effective against all Stockholders whether or not they have signed such extension or waiver.

**9.4 Assignment.** This Agreement shall not be assigned by operation of law or otherwise, except that Parent may assign its rights and delegate its obligations hereunder to its Affiliates as long as Parent remains ultimately liable for all of Parent's obligations hereunder.

**9.5 Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial messenger or courier service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with acknowledgment of complete transmission) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice or, if specifically provided for elsewhere in this Agreement, by email); *provided, however*, that notices sent by mail will not be deemed given until received:

(a) if to Parent or Merger Sub, to:

Select Comfort Corporation  
9800 59th Avenue North  
Minneapolis, MN 55442  
Attention: Mark Kimball  
Facsimile No.: (763) 694-3335  
Telephone No.: (763) 551-7070  
Email: mark.kimball@selectcomfort.com

with a copy (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, California 94304  
Attention: David J. Segre and Michael E. Coke  
Facsimile No.: (650) 493-6811

(b) if to the Company (prior to the Closing), to:

BAM Labs, Inc.  
111 West Saint John St., Suite 1200  
San Jose, CA 95113  
Attention: Chief Executive Officer

with a copy (which shall not constitute notice) to:

Goodwin Procter LLP  
135 Commonwealth Drive  
Menlo Park, CA 94025  
Attention: Craig Schmitz

(c) if to the Stockholder Representative, to:

Shareholder Representative Services LLC  
1614 15th Street, Suite 200  
Denver, CO 80202  
Attention: Managing Director  
Facsimile No.: (303) 623-0294  
Telephone No.: (303) 648-4085  
Email: deals@srsacquiom.com

**9.6 Confidentiality.** Each of the parties hereto (other than the Stockholder Representative) hereby agrees that the information obtained in any investigation pursuant to **Section 5.5** or any information obtained pursuant to the notice requirements of **Section 5.6**, or otherwise pursuant to the negotiation and execution of this Agreement or the effectuation of the Transactions, shall be governed by the terms of the Confidentiality Agreement dated as of June 29, 2015, between the Company and Parent.

**9.7 Public Disclosure.** Except as required by Legal Requirements, neither the Company nor any of its Representatives shall issue any statement or communication to any third party (other than its agents that are bound by confidentiality restrictions) regarding the subject matter of this Agreement or the Transactions, including, if applicable, the termination of this Agreement and the reasons therefor, without the consent of Parent. If the Company is required by any Legal Requirement to make any such statement or communication, then the Company shall provide Parent with an opportunity to review and comment on both the legal requirement to make such statement or communication and the content thereof.

**9.8 Entire Agreement.** This Agreement, Annex A hereto, the Exhibits and Schedules hereto, the Disclosure Schedule, the Related Agreements, and the documents and instruments and other agreements among the parties hereto referenced herein constitute the entire agreement among the parties hereto with respect to the subject matter of this Agreement and supersede all prior agreements and understandings both written and oral, among the parties with respect to the subject matter of this Agreement, and are not intended to confer upon any other person any rights or remedies hereunder.

**9.9 No Third Party Beneficiaries.** Nothing in this Agreement is intended to, or shall be construed to, confer upon any other person any rights or remedies hereunder, except for the Indemnified Parties under **Article VII** and the Company Indemnified Parties, who are express third party beneficiaries of **Section 5.7**.

**9.10 Specific Performance and Other Remedies.**

(a) The parties to this Agreement agree that, in the event of any breach or threatened breach by the other party or parties hereto of any covenant, obligation or other agreement set forth in this Agreement, (i) each party shall be entitled, without any proof of actual damages (and in addition to any other remedy that may be available to it), to a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other agreement and an injunction preventing or restraining such breach or threatened breach, and (ii) no party hereto shall be

required to provide or post any bond or other security or collateral in connection with any such decree, order or injunction or in connection with any related action or legal proceeding.

(b) Any and all remedies herein expressly conferred herein upon a party hereto shall be deemed to be cumulative with, and not exclusive of, any other remedy conferred hereby, or by law or in equity upon such party, and the exercise by a party hereto of any one remedy will not preclude the exercise of any other remedy.

(c) The liability of any Person under **Article VII** will be in addition to, and not exclusive of, any other liability that such Person may have at law or in equity based on such Person's fraudulent acts or omissions.

(d) Notwithstanding anything to the contrary set forth in this Agreement, none of the provisions set forth in this Agreement, including the provisions set forth in ~~Article VII~~ or **Section 2.28**, shall be deemed a waiver by any party to this Agreement of any right or remedy which such party may have at law or in equity against any other Person for such Person's fraudulent acts or omissions with respect to such Person's representations and warranties in this Agreement, nor will any such provisions limit, or be deemed to limit (i) the amounts of recovery sought or awarded in any such claim for fraud, (ii) the time period during which a claim for fraud may be brought or (iii) the recourse which any such party may seek against such Person who committed such fraudulent act or omission with respect to a claim for fraud; provided, however, that no Indemnifying Party would be liable for Losses in excess of such Indemnifying Party's Pro Rata Portion of the amount of Losses in respect of such claim or of the aggregate amount of cash actually received by such Indemnifying Party pursuant to **Section 1.6(b)(i)** and **Section 1.6(c)(i)(A)** in respect of the shares of Company Capital Stock and Company Options owned by such Indemnifying Party as of immediately prior to the Effective Time, in each case, for any action arising out of fraudulent acts or omissions committed by any Person other than such Indemnifying Party.

**9.11 Severability.** In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

**9.12 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

**9.13 Costs and Expenses.** The parties agree that each party hereto (and in the case of the Stockholder Representative, the Indemnifying Parties as provided in this Agreement) shall pay its own costs and expenses (including counsel fees) incurred in connection with the Transactions.

**9.14 Exclusive Jurisdiction.** Subject to **Section 7.4(d)** and **Section 9.15**, each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of the Courts of Santa Clara County in the State of California in connection with any matter based upon or arising out of this Agreement, the Merger and the other Transactions or any other matters contemplated herein (or, only if the Courts of Santa Clara County in the State of California declines to accept jurisdiction over a particular matter, any federal court within Santa Clara County in the State of California). Subject to **Section 7.4(d)** and **Section 9.15**, each party agrees not to commence any legal proceedings related hereto except in such Courts of Santa Clara County in the State of California (or, only if the Courts of Santa Clara County in the State of



California declines to accept jurisdiction over a particular matter, in any federal court within Santa Clara County in the State of California). By execution and delivery of this Agreement, subject to **Section 7.4(d)** and **Section 9.15**, each party hereto and the Indemnifying Parties irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and to the appellate courts therefrom solely for the purposes of disputes arising under the this Agreement and not as a general submission to such jurisdiction or with respect to any other dispute, matter or claim whatsoever. The parties hereto and the Indemnifying Parties irrevocably consent to the service of process out of any of the aforementioned courts in any such action or proceeding by the delivery of copies thereof by overnight courier to the address for such party to which notices are deliverable hereunder. Nothing herein shall affect the right to serve process in any other manner permitted by applicable law.

**9.15 Resolution of Conflicts; Arbitration.** Any claim or dispute arising out of or related to this Agreement, or the interpretation, making, performance, breach or termination thereof, shall be finally settled by binding arbitration in the County of Santa Clara, California in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the authority to grant any equitable and legal remedies that would be available in any judicial proceeding instituted to resolve a dispute.

(a) **Selection of Arbitrators.** Such arbitration shall be conducted by a single arbitrator chosen by mutual agreement of (i) if the Closing has not occurred, Parent and the Company and (ii) if the Closing has occurred, Parent and the Stockholder Representative. Alternatively, at the request of either party before the commencement of arbitration, the arbitration shall be conducted by three independent arbitrators, none of whom shall have any competitive interests with Parent, the Company, the Stockholder Representative or an Indemnifying Party. Parent and Stockholder Representative shall each select one arbitrator. The two arbitrators so selected shall select a third arbitrator.

(b) **Discovery.** In any arbitration under this **Section 9.15**, each party shall be limited to calling a total of three witnesses both for purposes of deposition and the arbitration hearing. Subject to the foregoing limitation on the number of witnesses, the arbitrator or arbitrators, as the case may be, shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the parties an opportunity, adequate in the sole judgment of the arbitrator or majority of the three arbitrators, as the case may be, to discover relevant information from the opposing parties about the subject matter of the dispute. The arbitrator, or a majority of the three arbitrators, as the case may be, shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions for discovery abuses, including attorneys' fees and costs, to the same extent as a competent court of law or equity, should the arbitrators or a majority of the three arbitrators, as the case may be, determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification.

(c) **Decision.** The decision of the arbitrator or a majority of the three arbitrators, as the case may be, as to any claim or dispute (including the validity and amount of any indemnification claim set forth in an Indemnification Claim Notice) shall be final, binding, and conclusive upon the parties to this Agreement. Such decision shall be written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment or Order awarded by the arbitrator(s). Within thirty (30) days of a decision of the arbitrator(s) requiring payment by one party to another, such party shall make the payment to such other party, including any distributions out of the Escrow Fund, as applicable.

(d) **Other Relief.** The parties to the arbitration may apply to a court of competent jurisdiction for a temporary restraining order, preliminary injunction or other interim or conservatory

relief, as necessary, without breach of this arbitration provision and without abridgement of the powers of the arbitrator(s).

(e) **Costs and Expenses.** The parties agree that each party (and in the case of the Stockholder Representative, the Indemnifying Parties as provided in this Agreement) shall pay its own costs and expenses (including counsel fees) of any such arbitration, and each party waives its right to seek an order compelling the other party to pay its portion of its costs and expenses (including counsel fees) for any arbitration.

**9.16 USA Patriot Act Compliance.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The parties each agree to provide all such information and documentation as to themselves as requested by Escrow Agent to ensure compliance with federal law.

**9.17 Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in .PDF format or by facsimile shall be sufficient to bind the parties to the terms and conditions of this Agreement.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, Parent, Merger Sub, the Company and the Stockholder Representative have caused this Agreement to be executed as of the date first written above.

**SELECT COMFORT CORPORATION**

By: /s/ Shelly R. Ibach  
Name: Shelly R. Ibach  
Title: Chief Executive Officer

**SCC SUBSIDIARY CORP.**

By: /s/ Mark Kimball      Name: Mark Kimball  
Title: President

**BAM LABS, INC.**

By: /s/ Richard Rifredi      Name: Richard Rifredi  
Title: Chief Executive Officer

**SHAREHOLDER REPRESENTATIVE  
SERVICES LLC,**  
solely in its capacity as the Stockholder  
Representative

By: /s/ W. Paul Koenig  
Name: W. Paul Koenig  
Title: Managing Director

**AGREEMENT AND PLAN OF MERGER**

## ANNEX A

### CERTAIN DEFINED TERMS

“**280G Waivers**” shall mean the 280G Waivers executed and delivered by certain Company employees prior to Closing substantially in the form attached hereto as **Exhibit E**.

“**Action**” shall mean any action, suit, claim, complaint, litigation, investigation, audit, proceeding, arbitration or other similar dispute.

“**Affiliate**” of any Person shall mean another Person that directly or indirectly through one of more intermediaries controls, is controlled by or is under common control with, such first Person.

“**Aggregate Strike Price Amount**” shall mean an amount equal to the aggregate exercise prices of all Vested Company Options outstanding and unexercised, and that are “in-the-money” relative to the Per Share Consideration payable in respect of shares of the Company’s Common Stock pursuant to **Section 1.6(b)(i)** of this Agreement, that were granted prior to August 4, 2015.

“**Business Day**” shall mean each day that is not a Saturday, Sunday or other day on which banking institutions located in Minneapolis, Minnesota are authorized or obligated by law or executive order to close.

“**Closing Cash**” shall mean the sum of: (a) the amount (expressed in United States dollars) of all cash and cash equivalents (including, without limitation, marketable securities and short term investments) of the Company as of immediately prior to the Effective Time; plus (b) the aggregate amount of all accounts receivable set forth on **Schedule A-4** by Parent to the Company under the Parent Agreement pursuant to invoices submitted by the Company at any time prior to or on the Closing Date, in each case which cash and cash equivalents and accounts receivable remain the property of the Company after the Closing.

“**Closing Indebtedness**” shall mean the aggregate amount of all outstanding Indebtedness (including principal and accrued and unpaid interest) of the Company as of immediately prior to the Effective Time, including any termination, pre-payment or balloon or similar penalties or premiums that are paid or become payable as a result of the full repayment and retirement of such Indebtedness immediately following the Effective Time.

“**COBRA**” shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Company Capital Stock**” shall mean the Company Common Stock, the Company Preferred Stock and any other shares of capital stock, if any, of the Company, taken together.

“**Company Common Stock**” shall mean shares of common stock, par value \$0.00001 per share, of the Company.

“**Company Employee Plan**” shall mean any plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, change of control, termination pay, deferred compensation, performance awards, equity or equity-related awards, welfare benefits, health benefits or

medical insurance, retirement benefits, fringe benefits or other employee benefits or remuneration of any kind, whether written, unwritten or otherwise, funded or unfunded, including each “employee benefit plan,” within the meaning of Section 3(3) of ERISA which is maintained, contributed to or required to be contributed to by the Company or any ERISA Affiliate for the benefit of any Employee, and with respect to which the Company or any ERISA Affiliate has or may have any liability or obligation, including any International Employee Plan.

“**Company IP**” shall mean any and all Intellectual Property Rights and Intellectual Property that are owned by or exclusively licensed by, or purported to be owned by or exclusively licensed by, the Company.

“**Company IP Contracts**” shall mean the Out-Licenses and the In-Licenses.

“**Company Material Adverse Effect**” shall mean any change, event, violation, inaccuracy, circumstance or effect (any such item, an “**Effect**”), individually or when taken together with all other Effects that have occurred prior to the date of determination of the occurrence of the Company Material Adverse Effect, that is or is reasonably likely to (i) materially impede the authority of the Company to consummate the Transactions in accordance with the terms of this Agreement and Legal Requirements, or (ii) be materially adverse to the business, assets (including intangible assets), liabilities, capitalization, financial condition or results of operations of the Company taken as a whole, *provided, however*, that in no event shall any Effect resulting from any of the following, either alone or in combination, be taken into account in determining whether there has been a Company Material Adverse Effect under clause (ii): (a) any change in the economic conditions of the United States or global economy or capital or financial markets generally that does not materially disproportionately affect the Company, taken as a whole, (b) any change in economic conditions generally affecting industries in which the Company conducts business, (c) any change in Legal Requirements, (d) any change in GAAP, (e) the failure of the Company to meet any financial forecast, projection, estimate, prediction or models (but not the underlying cause of such failure) or (f) any Effect primarily resulting from the announcement or pendency of the Merger, unless, in the case of clauses (a) through (d), such Effect disproportionately affects the Company relative to other companies in the Company’s industry.

“**Company Options**” shall mean all issued and outstanding options to purchase or otherwise acquire Company Common Stock (whether or not vested) held by any Person.

“**Company Preferred Stock**” shall mean the Company Seed Series A Preferred Stock, the Company Series A Preferred Stock, the Company Seed Series B Preferred Stock, the Company Series B Preferred Stock, the Company Seed Series C Preferred Stock, and the Company Series C Preferred Stock, taken together.

“**Company Privacy Policy**” shall mean each external or internal, past or present privacy policy or privacy- or security-related representation, obligation, or promise of the Company, including any such policy or representation, obligation, or promise relating to: (i) the privacy of users of any Company Product or any website or service operated by or on behalf of the Company; or (ii) the collection, use, storage, hosting, disclosure, transmission, transfer, disposal, retention, interception, or other processing of, or security of, any Personal Data.

“**Company Product**” shall mean each product (including Software, website, mobile or tablet applications, and databases) or service developed, marketed, distributed, made available, imported, or licensed or sold by or for the Company at any time since its inception, including, without limitation, the products currently known as SleepIQ® technology sold by Parent and the BAM Labs Smart Bed

Technology® Solution and other medical solutions, and any improvements or modifications thereto currently under development by or for the Company, in the form such under-development improvements and modifications exist as of the date of this Agreement.

**“Company Product Data”** shall mean (A) all data and content uploaded or otherwise provided by or for customers of the Company to, or stored by the customers of the Company on, the Company Products; (B) all data and content created, compiled, inferred, derived, or otherwise collected or obtained by or for the Company Products or by or for the Company in its provision of the Company Products or operation of the business of the Company; and (C) data and content compiled, inferred, or derived directly or indirectly from any of the data and content described in subclauses (A) and (B) above.

**“Company Seed Series A Preferred Stock”** shall mean the Seed Series A Preferred Stock, par value \$0.00001 per share, of the Company.

**“Company Seed Series B Preferred Stock”** shall mean the Seed Series B Preferred Stock, par value \$0.00001 per share, of the Company.

**“Company Seed Series C Preferred Stock”** shall mean the Seed Series C Preferred Stock, par value \$0.00001 per share, of the Company.

**“Company Series A Preferred Stock”** shall mean the Series A Preferred Stock, par value \$0.00001 per share, of the Company.

**“Company Series B Preferred Stock”** shall mean the Series B Preferred Stock, par value \$0.00001 per share, of the Company.

**“Company Series C Preferred Stock”** shall mean the Series C Preferred Stock, par value \$0.00001 per share, of the Company.

**“Company Software”** shall mean any Software (including Company IP and Licensed IP), that is embedded in, material to the development of, or used in the delivery, hosting or distribution of, any Company Products, including any such Software that is used to collect, transfer, transmit, store, host, or otherwise process Personal Data.

**“Continuing Employee”** shall mean an Employee who is employed or retained as a consultant by the Company as of the Closing Date and continues his or her employment or consulting arrangement with Parent or one of its Subsidiaries on the day following the Closing Date (including, for the avoidance of doubt, any employee who is on maternity leave, short-term disability leave, long-term disability leave, military leave or another approved leave of absence as of the Closing Date).

**“Continuing Employee Offer Letter”** shall mean an offer letter from Parent or an Affiliate thereof to a Continuing Employee.

**“Contract”** shall mean any contract, mortgage, indenture, lease, license, covenant, plan, insurance policy or other agreement, instrument, arrangement, understanding or commitment, Permit, concession, franchise or license.

**“Delaware Law”** shall mean the General Corporation Law of the State of Delaware.

**“Employee”** shall mean any current or former employee, consultant, independent contractor or director of the Company or any ERISA Affiliate.

**“Employee Agreement”** shall mean each management, employment, severance, separation, settlement, consulting, contractor, relocation, change of control, retention, bonus, repatriation, expatriation, loan, visa, work permit or other agreement, or contract (including, any offer letter or any agreement providing for acceleration of Company Options or any other agreement providing for compensation or benefits) between the Company or any ERISA Affiliate, as applicable, and any Employee with respect to which the Company or any ERISA Affiliate has or may have any liability or obligation.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended.

**“ERISA Affiliate”** shall mean any other Person under common control with the Company or that, together with the Company, could be deemed a “single employer” within the meaning of Section 4001(b)(1) of ERISA or within the meaning of Section 414(b), (c), (m) or (o) of the Code, and the regulations issued thereunder.

**“Escrow Agent”** shall mean the escrow agent designated under the Escrow Agreement or another institution acceptable to Parent and the Stockholder Representative, and any successor escrow agent appointed pursuant to the Escrow Agreement.

**“Escrow Agreement”** shall mean the Escrow Agreement executed and delivered concurrently herewith and attached hereto as **Exhibit F**.

**“Escrow Amount”** shall mean an amount in cash equal to 10% of the aggregate amount of cash payable to the Indemnifying Parties pursuant to **Section 1.6(b)(i)** and **Section 1.6(c)(i)(A)** in respect of the shares of Company Capital Stock and Company Options owned by the Indemnifying Parties as of immediately prior to the Effective Time.

**“Expense Fund”** shall have the meaning set forth in **Section 7.6(c)**.

**“Expiration Date”** shall have the meaning set forth in **Section 7.1**.

**“Founder”** shall mean each of Rich Rifredi and Steve Young.

**“GAAP”** shall mean United States generally accepted accounting principles consistently applied.

**“Governmental Entity”** shall mean any court, administrative agency or commission or other federal, state, county, local or other foreign governmental authority, instrumentality, agency or commission.

**“Hazardous Material”** shall mean any substance that has been designated by any Governmental Entity or by applicable Legal Requirement to be radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment, including PCBs, asbestos, petroleum, and urea-formaldehyde and all substances listed as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or defined as a hazardous waste pursuant to the United States Resource Conservation and Recovery Act of 1976, as amended, and the regulations promulgated pursuant to said laws.

“**HIPAA**” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended.

“**Indebtedness**” of any Person shall mean, without duplication: (i) all liabilities of such Person for borrowed money, whether secured or unsecured, all obligations evidenced by bonds, debentures, notes or similar instruments, and all liabilities in respect of mandatorily redeemable or purchasable share capital or securities convertible into share capital; (ii) all liabilities of such Person constituting capital leases under GAAP; (iv) all liabilities of such Person evidenced by any letter of credit or similar credit transaction entered into for the purpose of securing any lease deposit; (v) all liabilities of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction securing obligations of a type described in clauses (i) or (ii) above to the extent of the obligation secured; and (v) all guarantees by such Person of any liabilities of a third party of a nature similar to the types of liabilities described in clauses (i), (ii) or (iii) above, to the extent of the obligation guaranteed.

“**Intellectual Property**” shall mean algorithms, APIs, databases, data collections, diagrams, formulae, inventions (whether or not patentable), know-how, logos, designs, marks (including brand names, product names, logos, and slogans), methods, network configurations and architectures, processes, proprietary information, protocols, schematics, specifications, Software, subroutines, techniques, user interfaces, URLs, web sites, works of authorship (including written, audio and visual materials) and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing).

“**Intellectual Property Rights**” shall mean all rights of the following types, which may exist or be created under the laws of any jurisdiction in the world whether registered or unregistered: (i) rights associated with works of authorship, including exclusive exploitation rights, copyrights, copyright registrations and applications therefor, and moral rights (“**Copyrights**”); (ii) rights in trademarks, business names, trade names, logos, common law trademarks and service marks and trademark and service mark registrations, and related goodwill and applications therefor (“**Trademarks**”); (iii) trade secret rights and all other rights in confidential business or technical information (“**Trade Secrets**”); (iv) patent, invention disclosures, industrial design property rights, and applications therefor (including patents issuing on such applications), together with all continuations, continuations-in-part, reissues, renewals, reexaminations, provisionals, divisionals, substitutions, extensions or revisions thereof, any foreign counterparts or equivalents of any of the foregoing and any other patents, applications or extensions that claim priority to or through any of the foregoing (“**Patents**”); (v) domain names, uniform resource locators, other names and locators associated with the Internet, and applications or registrations therefor (“**Domain Names**”); (vi) all rights in databases and data collections; (vii) other proprietary rights in Intellectual Property; and (viii) any similar or equivalent rights to any of the foregoing.

“**International Employee Plan**” shall mean each Company Employee Plan or Employee Agreement that has been adopted or maintained by the Company or any ERISA Affiliate, whether formally or informally, or with respect to which the Company or any ERISA Affiliate will or may have any liability, with respect to Employees who perform services outside the United States.

“**IRS**” shall mean the United States Internal Revenue Service.

“**Key Employee Offer Letter**” shall mean an offer letter from Parent or an Affiliate thereof to each Founder and certain Key Employees listed on **Schedule A-1**.

“**Key Employees**” shall mean those Company Employees who will receive an offer of employment from Parent or a Subsidiary of Parent and who are listed on **Schedule A-1**.



**“Knowledge”** or **“Known”** shall mean, with respect to the Company, the actual knowledge of the Founders, the members of the Company’s board of directors and Carl Hewitt and Adam Schader.

**“Leased Real Property”** shall mean all real property leased, subleased or licensed by or from the Company or otherwise used or occupied by the Company as of the date of this Agreement.

**“Legal Requirement”** shall mean any applicable U.S. or non-U.S. federal, state, local or other constitution, law, statute, ordinance, rule, regulation, published administrative position, policy or principle of common law, or any Order, in any case issued, enacted, adopted, promulgated, implemented or otherwise put into legal effect by or under the authority of any Governmental Entity.

**“Licensed IP”** shall mean (a) all Intellectual Property Rights and Intellectual Property incorporated into, material to the development of, or used in the delivery, hosting or distribution of, the Company Products; and (b) all other Intellectual Property Rights and Intellectual Property used or held for use in the conduct of the business of the Company, in each case that are not owned by, or purported to be owned by, the Company.

**“Lien”** shall mean any lien, pledge, charge, claim, mortgage, security interest or other encumbrance of any kind or character whatsoever.

**“Made Available”** shall mean that the Company has posted such materials to the virtual data room hosted by Box, Inc. and made available to Parent and its representatives during the negotiation of this Agreement, but only if so posted and made available on or prior to the date that is one (1) Business Day prior to the date of this Agreement.

**“Non-Competition and Non-Solicitation Agreements”** shall mean the Non-Competition and Non-Solicitation Agreements executed and delivered by the Founders in substantially the form attached hereto as **Exhibit G**.

**“Non-Solicitation Agreements”** shall mean the Non-Solicitation Agreements executed and delivered by the individuals on **Schedule A-2** in substantially the form attached hereto as **Exhibit H**.

**“Non-Continuing Employees”** shall mean all Employees other than Continuing Employees, including all Offered Employees who decline to accept Parent’s offer of employment made in accordance with **Section 5.9(b)** and any other employee of the Company who are not extended an offer of employment by Parent prior to the Closing Date.

**“Order”** shall mean any order, judgment, injunction, ruling, edict, or other decree, whether temporary, preliminary or permanent, enacted, issued, promulgated, enforced or entered by any Governmental Entity or duly appointed arbitrator or panel of arbitrators.

**“Parent Agreement”** shall mean that certain License and Distribution Agreement, dated November 2, 2012, between the Company and Parent.

**“Paying Agent”** shall have the meaning set forth in **Section 1.7(a)**.

**“Pension Plan”** shall mean each Company Employee Plan that is an “employee pension benefit plan,” within the meaning of Section 3(2) of ERISA.

**“Permits”** shall mean all permits, licenses, easements, variances, exemptions, consents, certificates, authorizations, registrations, orders and other approvals from, or pursuant to laws enforced by, Governmental Entities that are material to the operation of the business of the Company and its Subsidiaries taken as a whole as currently conducted.

**“Permitted Liens”** shall mean (i) Liens for Taxes that are (A) not yet due and payable as of the Closing Date or (B) being contested in good faith through appropriate proceedings (and for which adequate accruals or reserves have been established on the Current Balance Sheet in accordance with GAAP), (ii) mechanics’, carriers’, workmen’s, repairmen’s or other statutory liens or encumbrances arising or incurred in the ordinary course of business which liens are not material in the aggregate, (iv) pledges or deposits to secure obligation under workers’ compensation laws or similar legislation or to secure public or statutory obligations, (v) non-exclusive licenses of Intellectual Property Rights granted in the ordinary course of business, and (vi) purchase money Liens arising in the ordinary course of business.

**“Per Option Consideration”** shall mean an amount in cash, without interest, equal to (x) the excess of the Per Share Consideration in respect of Company Common Stock over the per share exercise price of such Vested Company Option, multiplied by (y) the aggregate number of shares of Company Common Stock subject to such Vested Company Option.

**“Per Share Consideration”** shall mean with respect to each class or series of Company Capital Stock the applicable amount of cash (without interest) for such class or series of Company Capital Stock calculated as set forth in Article V, Section 3 of the Eighth Amended and Restated Certificate of Incorporation of the Company, which amounts shall be calculated pursuant to the formulas utilized in the Spreadsheet.

**“Person”** shall mean an individual or entity, including a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Entity (or any department, agency, or political subdivision thereof).

**“Personal Data”** shall mean: (i) a natural person’s name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver’s license number, passport number, credit card number, bank information, biometric identifier, or customer or account number, device or machine identifier, IP address or any other piece of information, that alone or in combination with other information directly or indirectly collected, held, or otherwise processed by or for the Company allows the identification or location of, or contact with, a natural person or a particular computing system or device and (ii) any information associated, directly or indirectly, with any of the foregoing.

**“Plan”** shall mean the Company’s 2006 Stock Plan, as amended.

**“Pre-Closing Taxes”** shall mean (A) any Taxes of the Company attributable to any taxable period or portion thereof that ends on or prior to the Closing Date (**“Pre-Closing Tax Period”**), excluding, for the avoidance of doubt, all Transaction Payroll Taxes (it being understood that, in the case of Taxes based upon income, sales, proceeds, profits, receipts, wages, compensation or similar items, the Taxes attributable to a Pre-Closing Tax Period ending on the Closing Date shall be determined on the basis of a closing of the books as of the close of business on the Closing Date, *provided* that exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions other than with respect to property placed into service after the Closing) shall be allocated on a per diem basis and the amount of any other Taxes of the Company attributable to such Tax period shall equal the amount of such Tax for the entire taxable period multiplied by a fraction, the numerator of

which is the number of days in the taxable period up to and including the Closing Date, and the denominator of which is the total number of days in the taxable period), (B) any Taxes as a result of the Company being (or ceasing to be) on or prior to the Closing Date (1) a member of an affiliated or combined group pursuant to Treasury Regulations Section 1.1502-6 or any similar provision of state, local or foreign law prior to the Closing Date or (2) a transferee or successor by contract or otherwise, which relate to an event occurring on or before the Closing Date, (C) any Taxes imposed on the Company as a result of an express or implied obligation arising on or prior to Closing Date to indemnify or otherwise assume or succeed to the Taxes of any other Person, or (D) any transfer or other Taxes arising directly (or indirectly) as a result of the Transactions; *provided, however*, Pre-Closing Taxes shall not include any Taxes attributable to actions by Parent or its Affiliates on the Closing Date or after the Closing outside the ordinary course of business or any election by Parent or its Affiliates under Section 338 of the Code with respect to the Company.

**“Privacy Legal Requirement”** shall mean a (i) Legal Requirement, (ii) applicable rule of a self-regulatory organization or published industry best practice or other standard (including the PCI Data Security Standard, to the extent applicable) to which the Company has declared its adherence, or (iii) contractual requirement by which the Company is or has been bound, as it may in each case be or have been amended from time to time, pertinent to (a) privacy or restrictions or obligations related to the collection, use, disclosure, transfer, transmission, storage, hosting, disposal, retention, interception or other processing of, or the security of, Personal Data or (b) consumer communications or consumer protection.

**“Pro Rata Portion”** shall mean with respect to each Stockholder or Vested Company Optionholder other than Parent, an amount equal to the quotient obtained by *dividing* (x) the aggregate amount of cash actually received by such Stockholder or Vested Company Optionholder pursuant to **Section 1.6(b)(i)** and **Section 1.6(c)(i)(A)** in respect of the shares of Company Capital Stock and Company Options owned by such Stockholder or Vested Company Optionholder as of immediately prior to the Effective Time, *by* (y) the aggregate amount of cash payable to all Stockholders other than Parent and Vested Company Optionholders pursuant to **Section 1.6(b)(i)** and **Section 1.6(c)(i)(A)**, respectively, in respect of Company Capital Stock and Company Options, respectively, outstanding as of immediately prior to the Effective Time.

**“Registered IP”** shall mean all Intellectual Property Rights that are registered, filed, or issued under the authority of, with or by any Governmental Entity, including all patents, registered copyrights, and registered trademarks, business names and Domain Names, and all applications for any of the foregoing.

**“Related Agreements”** shall mean the Escrow Agreement, the Joinder Agreements, the Non-Competition and Non-Solicitation Agreements, the 280G Waivers and all other agreements and certificates entered into by the Company or any of the Stockholders in connection with the Transactions.

**“Shrink-Wrap Code”** shall mean generally commercially available, off-the-shelf Software where available for a cost of not more than \$10,000 for a perpetual license or subscription for a single user or work station (or \$2,500 for an annual license or subscription for a single user or work station).

**“Software”** shall mean computer software, programs and databases in any form, including source code, executable or object code, operating systems and specifications, data, databases, database management code, firmware, utilities, graphical user interfaces, menus, images, icons, forms and software engines, and all related documentation, developer notes, comments and annotations.

**“Standard Form IP Contract”** shall mean each standard form of Company IP Contract used by the Company at any time, including each standard form of the following types of agreements, to the extent the Company actually utilizes such a standard form in the conduct of its business: (i) license and/or service agreement; (ii) development agreement; (iii) distributor, reseller or affiliate agreement; (iv) employee agreement containing any assignment or license of Intellectual Property or Intellectual Property Rights or any confidentiality provision; (v) professional services, outsourced development, consulting, or independent contractor agreement containing any assignment or license of Intellectual Property or Intellectual Property Rights or any confidentiality provision; and (vi) confidentiality or nondisclosure agreement.

**“Stockholder”** shall mean any holder of any Company Capital Stock as of immediately prior to the Effective Time.

**“Subsidiary”** shall mean, with respect to any Person, any corporation, limited liability company, partnership, association, joint venture or other business entity of which such Person owns, directly or indirectly, more than fifty percent (50%) of the stock or other equity interest entitled to vote on the election of the members of the board of directors or similar governing body.

**“Tax”** shall mean (i) any income, alternative or add-on minimum tax, gross income, estimated, gross receipts, sales, use, ad valorem, value added, transfer, franchise, capital stock, profits, license, registration, withholding, payroll, social security (or equivalent), employment, unemployment, disability, escheat, excise, severance, stamp, occupation, premium, property (real, tangible or intangible), environmental or windfall profit tax, custom duty or other tax, together with any interest or any penalty, addition to tax or additional amount (whether disputed or not) imposed by any Governmental Entity responsible for the imposition of any such tax (domestic or foreign), (ii) any liability for the payment of any amounts of the type described in clause (i) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary, aggregate or similar group for any taxable period, and (iii) any liability for the payment of any amounts of the type described in clause (i) or (ii) of this sentence as a result of being a transferee of or successor to any Person or as a result of any express or implied obligation to assume such Taxes or to indemnify any other Person (but excluding any such obligations arising pursuant to customary terms in commercial Contracts entered into in the ordinary course of business, the principal purpose of which is unrelated to Taxes), including by operation of law.

**“Third Party Components”** shall mean, with respect to any Company Product, Intellectual Property that is not exclusively owned by the Company and is embedded in, incorporated into, distributed with, material to the development of, or used in the hosting, or distribution of, such Company Product.

**“Third Party Expenses”** shall mean, without duplication, all fees and expenses incurred by or on behalf of the Company in connection with this Agreement, the Merger and the other Transactions, including (i) all legal, accounting, financial advisory, consulting, finders and all other fees and expenses of third parties incurred by the Company in connection with the negotiation and effectuation of the terms and conditions of this Agreement, all other agreements, instruments and other documents referenced herein or contemplated hereby, the Merger and the other Transactions, (ii) any bonus, severance, change-in-control payments or similar payment obligations of the Company that become due or payable solely as a result of the Closing, excluding, in each case: (A) the Transaction Bonuses; (B) all Non-Continuing Employee Severance Amounts; (C) any payments payable in connection with Key Employee Offer Letters and the Continuing Employee Offer Letters; or (E) that result from actions taken by Parent and excluding any acceleration of the vesting of any Company Option or other equity award, and (iii) any Transaction Payroll Taxes.

**“Total Consideration”** shall mean an amount equal to US\$70,000,000, *plus* (i) the Aggregate Strike Price Amount and (ii) the Closing Cash, *less* (iii) Closing Indebtedness, (iv) Third Party Expenses (whether or not paid prior to the Effective Time), (v) the Transaction Bonuses and (vi) the aggregate amount of the Per Share Consideration that, but for the provisions of **Section 1.6(b)(ii)**, would otherwise be payable in respect of the shares of Company Capital Stock held by Parent or its controlled Affiliates pursuant to the formulas utilized in the Spreadsheet, in each case, without duplication.

**“Transaction Bonuses”** shall mean the amounts of cash to be paid at the Closing to certain employees of the Company as set forth on **Schedule A-3**.

**“Transaction Payroll Taxes”** shall mean all employer portion payroll or employment Taxes incurred in connection with any bonuses, option cashouts or other compensatory payments paid prior to, at or immediately after the Closing in connection with the Transactions, whether payable by Parent, the Company or their respective Affiliates.

**“Unvested Company Option”** shall mean a Company Option (or portion thereof) that is outstanding and unvested as of immediately prior to the Effective Time and is not a Vested Company Option.

**“Vested Company Option”** shall mean any Company Option (or portion thereof) that is outstanding and vested as of immediately prior to the Effective Time, after taking into account any Company Option (or portion thereof) that, as a result of the Merger will accelerate in full and no longer be subject to any further vesting, right of repurchase, risk of forfeiture or other such conditions.

**“Vested Company Optionholder”** shall mean any holder of a Vested Company Option immediately prior to the Effective Time.

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease") is made and entered into as of the Effective Date by and between Truluck Industries, Inc. ("Landlord") and Select Comfort Corporation, a Minnesota corporation ("Tenant").

For and in consideration of the mutual agreement of the parties, Landlord leases and demises to Tenant, and Tenant leases, demises and rents from Landlord, the Premises on the terms and conditions set out in this Lease.

1. **Basic Lease Terms.** The Lease is subject to the following basic terms and definitions (the "Basic Lease Terms"), each of which shall be construed to incorporate all the references thereto in the Lease and shall be limited by such provisions.

**Effective Date:** September 22, 2015

**Commencement Date:** March 1, 2016

**Landlord:** Truluck Industries, Inc.

**Landlord's Address:** 1014 St. Andrews Blvd.  
Charleston, SC 29407  
Facsimile: \_\_\_\_\_

**Tenant:** Select Comfort Corporation, a Minnesota corporation

**Tenant's Address:** 9800 59<sup>th</sup> Avenue North  
Minneapolis, Minnesota 55442

With a copy to  
Select Comfort Corporation  
9800 59<sup>th</sup> Avenue North  
Minneapolis, Minnesota 55442  
Attn: Corporate Counsel Real Estate

**Premises:** Select Comfort Building, 621 Western Road, Irmo, Richland County, SC TMS # 0400-05-18 and all improvements located thereon (as further defined in Section 2 of the Lease)

**Term:** Period beginning on the Commencement Date and expiring One Hundred Twenty (120) Months after the later of (i) the Commencement Date or (ii) the Substantial Completion Date (as defined in Section 5 of the Lease)

<b>Fixed Minimum Rent:</b>	<u>Rent Period</u> (Years)	<u>\$ Per Month</u>	<u>\$ Per Annum</u>
Assuming that the full 150,191 square feed have been delivered by March 1, 2016			
	1	\$53,693.25	\$644,319.00
	2	\$60,650.00	\$727,800.00
	3	\$61,863.00	\$742,356.00
	4	\$63,100.25	\$757,203.00
	5	\$64,362.25	\$772,347.00
	6	\$65,649.50	\$787,794.00
	7	\$66,962.50	\$803,550.00
	8	\$68,301.75	\$819,621.00
	9	\$69,667.75	\$836,013.00
	10	\$71,061.17	\$852,734.00

**Guarantor:**Select Comfort Corporation, a Minnesota corporation

**Security Deposit:**N/A

**Permitted Uses:**Warehouse, distribution, and manufacturing facility and any other use permitted by law

Each reference in the Lease to any of the Basic Lease Terms shall be construed to incorporate all of the terms and conditions provided under each such Basic Lease Term.

2. **Premises.** Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the Premises. For the purposes of the Lease, "Premises" shall mean that certain real property described in Exhibit A-1 hereto (the "Land") and the approximately one hundred five thousand (105,000) square foot building located on the Land (the "Existing Building"), together with all easements and appurtenances benefiting the Land and the Existing Building, and as of the Substantial Completion Date (as defined below), an additional forty-five thousand (45,191) square foot of building on the Land (the "New Building", and together with Existing Building, the "Buildings"). The Land, the Existing Building and the to-be-constructed location of the New Building on the Land are shown on the site plan attached hereto as Exhibit B and incorporated herein (the "Site Plan"). The Property is subject to those matters set forth in Exhibit A-2. .

3. **Lease Term and Lease Year.** The Term of this Lease shall be the period specified in the Basic Lease Terms and shall begin on the Commencement Date. The Commencement Date shall be the date shown in the Basic Lease Terms. Tenant agrees to occupy the Premises and commence the operation of business therein promptly upon the Commencement Date.

The term "Lease Year" as used herein shall be the first twelve (12) full calendar months after the Commencement Date and each succeeding twelve (12) month period thereafter, or, if the Lease does not commence on the first day of the month, the term will actually commence on the first day of the full month

following the Commencement Date and the first year of the Lease will expire on the twelfth month anniversary thereafter.

So long as Tenant is not then in default of the terms of this Lease beyond the expiration of any and all applicable grace, notice and cure periods, Tenant shall have two (2) options to extend the term of this Lease for additional periods of five (5) years each (individually, an "Option Period," and collectively, "Option Periods"), each such Option Period to begin respectively upon the expiration of the term of this Lease as it may have been extended, and the same terms and conditions as set forth in this Lease will apply to each such Option Period, except for Minimum Rent (defined in Article 6 below), which shall be adjusted as set forth below. If Tenant, in its sole and absolute discretion, elects to exercise an Option Period, then Tenant shall do so by giving written notice to Landlord not less than two hundred seventy (270) days before the Expiration Date, and upon Tenant sending such written notice to Landlord, the applicable Option Period for which such written notice is sent shall be deemed properly exercised and the term of this Lease shall be extended with no further action by Tenant whatsoever. As is reflected in the definition of "Fixed Minimum Rent" in Section 1 of this Lease, commencing on the first day of the first Lease Year under the applicable Option Period, and on the first day of each Lease Year thereafter, if any, during the Term, Fixed Minimum Rent shall be increased by an amount equal to two percent (2%) of the amount of the Fixed Minimum Rent payable by Tenant during the preceding Lease Year (the "Rent Adjustments"). Fixed Minimum Rent will be paid to Landlord without notice or demand and without deduction or offset, except as set forth herein, and as an independent covenant of all other covenants of this Lease. Failure of Landlord to furnish to Tenant a statement for amounts owed by Tenant within time as herein set forth shall not affect Tenant's obligation to pay when such amounts are billed. The Fixed Minimum Rent for each Option Period shall be as follows:

First Option

11	\$72,482.39	\$869,788.68
12	\$73,932.04	\$887,184.45
13	\$75,410.68	\$904,928.14
14	\$76,918.89	\$923,026.71
15	\$78,457.27	\$941,487.24

Second Option

16	\$80,026.42	\$960,316.98
17	\$81,626.94	\$979,523.32
18	\$83,259.48	\$999,113.79
19	\$84,924.67	\$1,019,096.07
20	\$86,623.17	\$1,039,477.99

4. **Condition of Premises.** Tenant is currently in possession of the Premises, and Tenant is familiar with the condition of the Premises. Tenant shall take the Premises "as is", with no representations or warranties by Landlord. Neither the Landlord nor its agents have made any representations with respect to the Premises, the building or the land upon which it is erected, except as expressly set forth herein or as may be agreed to, in writing, by both parties, and no rights, easements, or licenses are acquired by the Tenant by implication or otherwise except as expressly set forth in the provisions of this Lease.

5. **Landlord's Work.**

(a) In order to allow Tenant to expand its use of the Premises for the Permitted Use, Tenant has requested that Landlord construct the New Building based on building plans and specifications attached hereto as Exhibit C regarding a the New Building of approximately 45,151 square feet ("Building Plans and Specifications"), which have been approved by Tenant. The location of the New Building shall be as shown on the Site Plan. Subject to the terms and conditions contained in



this Lease, Landlord hereby agrees to cause the performance of all work necessary to complete the New Building in accordance with the Building Plans and Specifications (the "Landlord Work"). Notwithstanding the foregoing, Landlord's obligations to construct the New Building shall at all time remain subject to the availability of construction financing.

(b) Tenant shall be allowed, for the purpose of construction of the Landlord Work a tenant improvement allowance in the amount of \$3,768,000.00 (\$83.38 per square foot based on 45,191 square feet of space build out) (the "Tenant Improvement Allowance") which shall be used for build out, construction and/or design of the Landlord Work. The Tenant Improvement Allowance shall be payable in accordance with the terms of the Improvement Agreement. Tenant shall be responsible, at its expense, for any and all cost above the Tenant Improvement Allowance necessary to complete the Landlord Work (the "Tenant Improvement Contribution").

(c) Tenant shall bear the cost, if any, of any modifications to the Landlord Work requested by Tenant if modifications result in an increase in construction costs and any architectural, engineering fees, or other design fees associated with any Tenant-requested changes or modifications of the Building Plans and Specifications after Tenant's written approval of such costs (collectively, "Tenant's Changes"). Landlord will invoice Tenant for all costs and expense associated with any Tenant Changes, and Tenant shall pay such any such invoice to Landlord with thirty (30) days after the receipt thereof, unless Tenant has a good faith challenge as to the amount. In the event that Tenant fails to pay any invoice received from Landlord for Tenant Changes within such 30-day period, Landlord shall have the right to amortize the amount of any invoice unpaid by Tenant plus interest at a rate of eight percent (8%) per annum and the Fixed Minimum Rent shall be increase thereby.

(d) Landlord shall use commercially reasonable efforts to cause the Landlord Work to be Substantially Completed (as defined below) on or before January 1, 2016. The New Building shall be deemed "Substantially Completed" for the purposes of the Lease when (i) Landlord has completed the Landlord Work in substantial accordance with the Building Plans and Specifications as approve by Tenant and attached hereto, excluding only minor punch list items which do not materially interfere with Tenant's ability to occupy and use the New Building for its intended purpose, as evidenced by a certificate of substantial completion provided by Landlord's architect or contractor (ii) Landlord has obtained a permanent Certificate of Occupancy for the New Building (if required for Tenant to be able to occupy all forty five thousand (45,151) square feet of space in the New Building) (iii) the New Building must be completely closed in with all glass installed and roof work complete, (iv) permanent utilities must be installed and operational (including HVAC, gas, water and electricity, as well as a fully operational electrical panel), and (v) the New Building is available for occupancy by Tenant so that Tenant can use the New Building for the intended purpose. Tenant shall, at no out-of-pocket costs to Tenant, use its best efforts to assist Landlord as necessary to obtain the Certificate of Occupancy for the New Building. Landlord or Landlord's Contractor will provide to the designated Tenant Construction Project Manager bi-weekly progress updates for the Landlord Work including but not limited to: photos, 3 week look ahead on construction schedule updates and applicable inspection progress with all applicable governing authorities.

(e) Landlord shall notify Tenant's project manager in writing at least thirty (30) days prior to the date on which Landlord anticipates that the Landlord Work will be Substantially Completed. Such notice shall state the date on which Landlord anticipates that the Landlord Work will be Substantially Completed and that the New Building will be available for occupancy by Tenant upon such date, as well as issuance of the Final Certificate of Occupancy (the "Substantial Completion Date"). Landlord will confirm the Substantial Completion Date with Tenant's project manager at least ten (10) days prior to the Substantial Completion Date.

(f) Within ten (10) business day after Landlord notifies Tenant that the Landlord Work is Substantially Complete, Landlord or Landlord's representative and Tenant's construction representative shall perform a final inspection and generate a punch list (the "Tenant Inspection Punch List"). After the inspection, Tenant shall provide Landlord with a copy of the Tenant Inspection Punch List. Landlord shall diligently proceed to correct and complete all punch list items listed on the Tenant Inspection Punch List within thirty (30) days of receipt of Tenant Inspection Punch List.

(g) On the Substantial Completion Date, Landlord shall complete a Declaration of Substantial Completion (the "Declaration") in the form attached hereto as Exhibit D, and deliver the completed Declaration to Tenant. Within twenty (20) days after Tenant receives the completed Declaration from Landlord, Tenant shall execute and return the Declaration to Landlord to confirm the Substantial Completion Date and the Term unless Tenant disputes the date of Substantial Completion. Failure to execute the Declaration shall not affect the Substantial Completion Date.

(h) Notwithstanding any provision of the Lease to the contrary, during the course of construction of the New Building and until the full and final completion of the Landlord Work (the "Construction Period"), the following shall apply:

(i) Landlord, its employees, agents and contractors, shall have the right to enter the Premises and maintain and carry on within the Premises such activities as may be reasonably required, necessary, convenient or incidental to the construction, inspection and completion of the New Building and the Landlord Work, provided, however, Landlord, its employees, agents and contractors shall at all times be required to conduct their construction activities and entries into the Premises in a manner designed to avoid any material interference with Tenant's business operations.

(ii) Provided, Landlord abides by the requirements set forth above in Section 5 (f)(i), then Landlord shall not be liable to Tenant and Tenant shall have no right to rent abatement or to terminate this Lease whatsoever based on Landlord and its employees, agents and contractors construction activities occurring on or within the Premises as long as Landlord's work does not materially interfere with Tenant's use of the Premises.

(iii) Tenant, its employees, agents and contractors will not unreasonably interfere with Landlord's employees, agents or contractors in the pursuit of Landlord's performance of Landlord Work. Landlord also agrees not to materially interfere with Tenant's operations at the Premises during construction of the New Building. Tenant hereby assumes all risks inherent in an ongoing construction site on the Premises and release Landlord from any claim or cause of action arising out of injury to person or property resulting from construction activity on the Premises except as may arise from Landlord's, Landlord's employees, agents or contractors own negligence or intentional misconduct.

(i) All work not within the scope of the Building Plans and Specifications, including but not limited to furnishing and installing of telephones, communication and computer cables, interior design services, furniture, and office equipment, shall be furnished and installed by Tenant at Tenant's expense. Notwithstanding the foregoing, if provided for in the Building Plans and Specifications, Landlord will put in the required line drops as specified by Tenant for Tenant's telephones, communication and computer cables and any other installations as agreed to by the parties. Tenant's contractors, subcontractors, and labor shall be insured and acceptable to and approved by Landlord and shall be subject to the administrative supervision of Landlord (which administrative supervision shall be at no cost to Tenant).

6. **Rent.** Tenant agrees to pay to Landlord on or before the first day of each calendar month, in advance, during the Term, the monthly installment of Fixed Minimum Rent as specified herein (as may be adjusted as set forth herein), starting on the Commencement Date and continuing on the first day of each calendar month thereafter during the Term. As is reflected in the definition of "Fixed Minimum Rent" in Section 1 of this Lease, commencing on the first day of the second (2nd) Lease Year, and on the first day of each Lease Year thereafter, if any, during the Term, Fixed Minimum Rent shall be increased by an amount equal to two percent (2%) of the amount of the Fixed Minimum Rent payable by Tenant during the preceding Lease Year (the "Rent Adjustments"). Fixed Minimum Rent will be paid to Landlord without notice or demand and without deduction or offset, except as set forth herein, and as an independent covenant of all other covenants of this Lease. Failure of Landlord to furnish to Tenant a statement for amounts owed by Tenant within time as herein set forth shall not affect Tenant's obligation to pay when such amounts are billed.

Notwithstanding the foregoing, the parties hereby agree that, in the event that the New Building has not been Substantially Completed by the Commencement Date, then beginning on the Commencement Date and continuing until the Substantial Completion Date, the Fixed Minimum Rent" attributable to the New Building in the amount of Sixteen Thousand One Hundred Fifty Five and 78/100 Dollars (\$16,155.78) per month shall be abated and Tenant shall only pay Fixed Minimum Rent in monthly installments of Thirty Seven Thousand Five Hundred Thirty Seven and 50/100 Dollars (\$37,537.50) until the Substantial Completion Date, and the parties hereby agree that on the Substantial Completion Date, the "Fixed Minimum Rent" of shall be based on the rent schedule set forth in Section 1.

Notwithstanding the foregoing, within sixty (60) days after the Substantial Completion Date, Landlord and Tenant shall each have the right to verify the square footage of the New Building. All measurements shall be from the exterior face of each exterior wall. In the event Landlord's measurement of the Premises and Tenant's measurement of the Premises is not the same, then Landlord and Tenant shall select a third, independent architect (the cost and expenses of which shall be divided equally between Landlord and Tenant) to make such determination. If the determination of the square footage is not made prior to the Substantial Completion Date, then Tenant shall commence paying Fixed Minimum Rent for the New Building based upon the square footage set forth in Article 2 above, and Landlord and Tenant shall adjust such amounts retroactively to the Fixed Minimum Rent once the actual square footage of the New Building has been finally determined. The parties hereto shall operate in good faith in determining the square footage of the New Building. In the event that Tenant fails to re-measure the New Building within sixty (60) days from the Substantial Completion Date, the New Building shall be deemed to be 45,191 rentable square feet for the purposes of this Lease.

All amounts owing by Tenant to Landlord under or arising from this Lease, including, without limitation, the Fixed Monthly Rent, shall be deemed and are hereafter referred to occasionally as "rent" or "Rent".

Should Tenant fail to pay any such rent or other monetary obligations when due, then, beginning ten (10) days after written notice that Tenant has not paid the outstanding amount owed, assuming there is no good faith challenge, Tenant shall owe a late charge equal to five (5%) percent of the amount owing to cover Landlord's extra expense involved in collecting such delinquent sums; provided, however, that no written notice shall be necessary for monthly installments of Fixed Minimum Rent, except as specifically set forth herein and after the first time in any Lease Year, Tenant shall own such 5% late charge shall if Tenant has not paid the Fixed Minimum Rent within ten (10) days after the date due date.

This Lease is intended by the parties to be a "Triple Net" Lease to the Landlord, with the Landlord having no duty or obligation to repair or replace any portion of the Premises or to expend any monies in connection therewith except as expressly stated herein. Throughout the Term, Tenant shall be solely responsible for the payment of all taxes, insurance, maintenance, repair, and any and other costs, charges

or expense, applicable to the Premises, the Tenant's personal property, or Tenant's operations of its business in the Premises. Landlord agrees to transfer any applicable warranties to Tenant.

7. **Taxes.** Tenant agrees to pay all Taxes as and when due and payable, before fine, penalty, interest or cost may be added thereto. The term "**Taxes**" shall mean all governmental imposes, levies, fees, taxes, assessments or charges of every kind and nature whatsoever which are levied, assessed or imposed against the Premises or any portion thereof or by reason of its ownership and operation of the Premises (excluding any tax dealing with and local, state, or federal income taxes, or business tax regarding Landlord's operations) and its receipt of rent therefrom including, without limitation, ad valorem taxes, real estate taxes, any other tax on rents or real estate, water or sewer and all other governmental exactions from time to time directly or indirectly assessed or imposed upon the Premises, or any portion thereof, including any interest on the same that may be incurred and/or the portion of the land upon which it is situated, including all costs and fees paid or incurred by Landlord in contesting, or in negotiating with the public authorities as to the amount of such assessments, charges or taxes or the basis upon which the same shall be assessed. Landlord may direct the taxing authority(ies) to send the statement(s) directly to Tenant. Landlord further agrees that Tenant, in the name of Landlord but at Tenant's sole expense, may protest any assessment before any taxing authority or board, and may maintain any necessary legal action in reference to said assessment or for the recovery of any taxes paid thereon. Tenant shall provide to Landlord, upon request, official receipts of the appropriate taxing authority, if available, or other evidence reasonably satisfactory to Landlord, evidencing payment of any Taxes.

8. **Tenant's Additional Taxes.** During the entire term of this Lease, Tenant shall pay promptly when due all taxes imposed upon Tenant's business and upon all personal property and improvements of Tenant used in connection therewith.

9. **Services.** Tenant shall contract directly for and pay all bills for housekeeping services, waste removal, water, gas, electricity, telephone and other utilities used by Tenant on the Premises. Excluding Landlord's, Landlord's employees, agents or contractors own negligence or intentional misconduct, the interruption or inadequacy of any of the services described above, in whole or in part, resulting from any failure or defect in the supply or character of electricity or any other utility furnishing to the Premises by reason of any requirement, act or omission of the public utility company serving the Premises or for any other reason shall not render the Landlord liable in any respect, shall not be construed as an eviction of Tenant, shall not work as an abatement of Rent, and shall not relieve Tenant from the obligation to fulfill all of Tenant's covenants and agreements contained in this Lease. Notwithstanding the foregoing, Tenant will not be responsible to pay and water or sewer access charges.

10. **Repairs.** Tenant, at Tenant's sole cost and expense, shall promptly make all repairs and restoration, perform all maintenance, and make all replacements in and to the Premises that are necessary or desirable to keep the Premises in first class condition and repair, in safe and tenantable condition, and otherwise in accordance with the requirements of this Lease. Tenant shall maintain all fixtures, furnishings and equipment located in, or exclusively serving, the Premises in clean, safe and sanitary condition, shall take good care thereof and make all required repairs and replacements thereto. Tenant shall suffer no waste or injury to any part of the Premises, and shall, at the expiration or earlier termination of the Term, surrender the Premises in an order and condition equal to their order and condition on the Commencement Date, ordinary wear and tear excepted. Without limiting the generality of the foregoing, Tenant, at Tenant's sole cost and expense, shall promptly make all repairs to (a) exterior and interior walls, roof, ceilings, exterior and interior doors and windows and related hardware, foundation and structural integrity of structure of the Premises, (b) any pipes, lines, ducts, wires or conduits contained within the Premises, (c) Tenant's signs, (d) any heating, air conditioning, electrical, ventilating or plumbing equipment installed in or serving the Premises, (e) all glass, window panes and doors, (f) any other mechanical systems serving the Premises, (g) all paved parking areas, driveways and walkways, and (h) all landscaping.

11. **Alterations.** Tenant shall effect no structural or exterior alteration to the Premises without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed and any alteration or improvement made within the Premises which results in any damage to the floor, ceiling or walls of the Premises shall be repaired by Tenant and in any event at the termination of the Lease. Except as otherwise provided, all alterations, improvements and additions to the Premises, excluding Tenant's trade fixtures or equipment, attached or not, shall remain thereon at the termination of the Lease and shall become the property of Landlord unless Landlord shall notify Tenant to remove same, in which latter event Tenant shall comply to the end that the Premises shall be restored to the same condition in which they were found prior to the commencement of work resulting in the alterations, improvements and additions.

12. **Furniture and Fixtures.** Tenant may install furniture and fixtures within the Premises at Tenant's sole expense and the same shall remain Tenant's property if Tenant removes such furniture and fixtures prior to the expiration of the Lease. If the removal or installation of such furniture and fixtures results in any damage to the Premises, Tenant shall repair same to the end that the Premises shall be restored to the condition in which they were found immediately prior to the installation, normal wear and tear excepted.

13. **Use.** Tenant shall use the Premises solely for the Permitted Uses and for no other use or purpose. Further, Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to Tenant's use and occupancy of the Premises, occupancy of the Facility and all personal property and fixtures located thereon, whether now or hereafter in effect ("Laws"), including, without limitation, including, without limitation, the Occupational Safety and Health Act, and the Americans with Disabilities Act. Landlord will deliver the New Building in compliance with all federal, state and local codes, including compliance with the Americans with Disability Act ("ADA"). If, after Substantial Completion and occupancy of the New Building by Tenant, the Premises must be modified or any other action must be undertaken in the future to comply with the Americans With Disabilities Act or any similar federal, state or local statute, law, or ordinance relating applicable to the Premises, Tenant shall be responsible for such modification or action (including the payment of all costs incurred in connection therewith). Tenant save Landlord harmless from penalties, fines, costs, expenses or damages resulting from failure to do so. Notwithstanding the foregoing, Landlord hereby certifies that all construction work completed by Landlord in connection with the Landlord Work will comply with all codes, laws and regulations including but not limited to the Occupational Safety and Health Act, and the Americans with Disabilities Act.

14. **Hazardous Waste.**

(a) **In General.** Excluding any pre-existing Hazardous Materials not caused by Tenant or any agents, contractors, employees, licensees, or invitees (provided such invitees are found within the Premises and under Tenant's direct control) of Tenant, Tenant shall not use, generate, manufacture, produce, store, transport, treat, dispose of or permit the escape or release on, under, about or from the Premises, or any part thereof, of any Hazardous Materials. As used herein, "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is defined as a hazardous substance, hazardous material or waste, or toxic substance under any Hazardous Materials Law, (b) is regulated, controlled or governed by any Hazardous Materials Law or other applicable law, (c) is petroleum or a petroleum product, or (d) is asbestos, formaldehyde, a radioactive material, as defined by federal or state law as a Hazardous Material. As used herein, "Hazardous Materials Law" means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other law or legal requirement concerning hazardous or toxic substances, and any

amendments to the foregoing. If Tenant's Permitted Use requires the use and/or storage of any Hazardous Materials on, under or about the Premises, Tenant shall provide written notice to Landlord, prior to final execution of this Lease, of the identity of such materials and Tenant's proposed plan for the use, storage and disposal thereof; such use, storage and disposal shall be subject to Landlord's approval, in Landlord's sole and absolute discretion. If Landlord approves such proposed use, storage and disposal of specific Hazardous Materials, Tenant may use and store upon the Premises only such specifically approved materials and shall comply with any conditions to such approval as Landlord may reasonably impose in its sole and absolute discretion. Tenant shall fully and promptly comply with all Hazardous Materials Laws at all times during the Lease Term, and at the expiration or earlier termination of the Lease Term, Tenant shall remove and dispose of all Hazardous Materials stored by Tenant, its agents, employees, suppliers, contractors, subtenants, successors and assigns on the Premises, and Tenant shall remove and dispose of all Hazardous Materials any other Hazardous Materials affecting the Premises resulting from the use or occupancy thereof by Tenant or its agents, employees, suppliers, contractors, subtenants, successors and assigns, in accordance with any ordered remediation plan as issued by any environmental governmental agency having jurisdiction. Notwithstanding the foregoing, Landlord consents to Tenant's above-ground use, storage, transport and off-site disposal of products containing small quantities of Hazardous Materials (e.g., cleaning solutions and materials), provided Tenant shall handle, use, store, transport and dispose of such Hazardous Materials in a safe and lawful manner and in accordance with all applicable manufacturer's recommendations and shall not allow such Hazardous Materials to contaminate the Premises.

(b) Indemnity. Tenant shall indemnify, protect, defend and hold Landlord (and its partners, joint venturers, shareholders, affiliates and property managers, and their respective officers, directors, employees and agents) and Landlord's mortgagee(s) harmless from and against any claim, demand, investigation, proceeding, action, suit, judgment, award, fine, lien, loss, damage, expense, charge or cost of any kind or character and liability (including reasonable attorneys' fees and court costs) arising out of, in connection with, or directly or indirectly arising out of the use, generation, manufacture, production, storage, treatment, release, disposal or transportation of Hazardous Materials by Tenant, or any successor, assignee or subtenant of Tenant, or their respective agents, contractors, employees, licensees, or invitees (provided such invitees are found within the Premises and under Tenant's direct control), on, under, about or from the Premises, including, but not limited to, all foreseeable and unforeseeable costs, expenses and liabilities related to any testing, repair, cleanup, removal costs, detoxification or decontamination and the preparation and implementation of any closure, remedial action, site assessment costs or other required plans in connection therewith required by any governmental authority having jurisdiction thereof, and any foreseeable or unforeseeable consequential damages. Any defense of Landlord pursuant to the foregoing indemnity shall be by counsel reasonably acceptable to Landlord. Neither the consent by Landlord to the use, generation, storage, release, disposal or transportation of Hazardous Materials nor Tenant's strict compliance with all Hazardous Materials Laws shall excuse Tenant from Tenant's indemnification obligations hereunder. The foregoing indemnity shall be in addition to and not a limitation of the other indemnification provisions of this Lease. Tenant's obligations under this Section shall survive the termination or expiration of this Lease. Notwithstanding the foregoing, Tenant will have no responsibility to indemnify Landlord for any pre-existing environmental contamination or Hazardous Materials not caused by Tenant or any agents, contractors, employees, licensees, or invitees (provided such invitees are found within the Premises and under Tenant's direct control) or Tenant.

(c) Reporting. Tenant shall notify Landlord in writing immediately after any of the following: (i) Tenant has actual knowledge, or has reasonable cause to believe, that any Hazardous Materials have been released, discharged or located on, under or about the Premises, regarding

actionable levels of Hazardous Materials, (ii) Tenant receives any written warning, notice of inspection, notice of violation or alleged violation, or Tenant receives notice or knowledge of any proceeding, investigation, order or enforcement action, under any Hazardous Materials Law concerning the Premises, or (iii) Tenant receives written notice of any claims made by any third party concerning the Premises respecting Hazardous Materials.

15. **Tenant's Signs and Advertising.** Tenant, at its expense, shall furnish and install, and maintain at an appropriate location(s) on the exterior of the Premises, an identification sign of such design, content, form and material as may be reasonably approved by Landlord in writing and as may be approved by the applicable governmental authorities.

16. **Landlord's Privileges.** In addition to the other rights and privileges of Landlord herein or by law granted, Landlord shall have the following rights and privileges:

(a) To go upon and inspect the Premises at any reasonable time that, except in the event of an emergency, does not materially interfere with Tenant's operation or during any key market sales events and at Landlord's option make repairs, alterations and additions thereto, which right, in the event of an emergency, shall include the right of Landlord to forcibly enter said Premises without rendering Landlord or Landlord's agents or employees liable therefor;

(b) To display "For Rent" or "For Sale" signs within the Premises at prominent locations at any time within the last six (6) months of the term of this Lease.

17. **Damages to Premises.**

(a) In the event of any partial damage (defined to mean damage or destruction, other than to Tenant owned alterations, the repair cost of which damage or destruction is less than fifty percent (50%) of the then replacement value of the Premises (not including the value of the Land) just prior to said damage or destruction) or loss by fire or other casualty whatsoever to the Improvements or any part or portion thereof during the Term, Tenant shall give immediate written notice thereof to Landlord if the same equals or exceeds \$50,000.00, and shall, without regard to the availability and adequacy of insurance proceeds for such purposes, with reasonable diligence at Tenant's sole cost and expense, complete all necessary Repairs. Tenant covenants and agrees to commence efforts to settle the insurance claim promptly after any event of loss or casualty and to expeditiously, diligently and continuously prosecute such efforts to settlement, or failing settlement, the commencement of litigation. In the event that settlement or collection cannot be obtained within one hundred eighty (180) days after such casualty or loss, and Tenant has failed to diligently pursue such claim, Landlord shall have the right, but not the obligation, to commence Repairs or to declare an Event of Default. If any part or portion of the Improvements is damaged or lost as a result of such fire or other casualty, Tenant shall likewise, without regard to the availability and adequacy of insurance proceeds for such purpose, repair the part or portion of the Premises so damaged or lost. Such Repairs shall be without cost, charge or expense of any kind to Landlord. Notwithstanding any other provisions hereof, if the Improvements are partially damaged during the last two (2) years of this Lease, if the cost of repair exceeds twenty-five percent (25%) of the replacement value of the Premises (not including the value of the Land), Landlord or Tenant shall have the right to terminate this Lease by written notice to the other not later than forty-five (45) days from the date of damage and all insurance proceeds (except for insurance proceeds for Tenant's personal property) resulting from such casualty shall be paid over to Landlord and Landlord shall have the right to adjust, compromise and settle any and all claims related thereto in its sole and absolute discretion without any liability to Tenant whatsoever, and Tenant shall have no further obligations under the Lease.

(b) In the event that, during the Term, any of the Improvements shall be totally destroyed (defined to mean damage or destruction, other than to Tenant owned alterations, the repair cost of which damage or destruction is fifty percent (50%) or more of the then replacement value of the Premises (not including the value of the Land) just prior to said damage or destruction), or so substantially damaged by fire or other casualty whatsoever that the Repairs would be impracticable or the use of the Premises would not be economically feasible after Repairs, as determined by Tenant in its reasonable discretion, Tenant shall give prompt written notice thereof to Landlord, and shall either (a) without regard to the availability and adequacy of insurance proceeds, proceed with reasonable diligence, to demolish and remove the ruins and complete the Repairs, or (b) within thirty (30) days of the date of the aforesaid written notice, give Landlord a further written notice electing to cancel this Lease with a termination date thirty (30) days after said further written notice. In the event that Tenant elects to cancel the Lease, all insurance proceeds (except for insurance proceeds for Tenant's personal property) resulting from such casualty shall be paid over to Landlord or the holder of any first mortgage lien on Landlord's fee interest in the Premises the "First Mortgage"), if required to do so, and Landlord or the holder of the First Mortgage shall have the right to adjust, compromise and settle any and all claims related thereto in its sole and absolute discretion without any liability to Tenant whatsoever, and Tenant shall have no further obligations under the Lease. In any event, demolition, removal and construction (in the event that Tenant does not elect to cancel this Lease) shall be without cost, charge or expense of any kind to Landlord. The replacement Improvements so to be constructed shall be as nearly as possible of a size, type and character equal to the damaged or destroyed Improvements, shall have a net rentable area which is not less than the net rentable area of such Improvements, shall be of a quality of not less than the quality of such Improvements, as the same existed immediately prior to such damage or destruction, shall include all articles necessary for the operation of such replacement Improvements, and shall be of a quality not less than the quality of the items of the Improvements which were damaged or destroyed by such fire or other casualty. Before commencing the construction of any replacement Improvements, Tenant shall submit copies of the plans and specifications therefor to Landlord for Landlord's approval, which approval shall not be unreasonably withheld or delayed.

(c) If any damage or destruction mentioned in Sections 17(a) or 17(b) hereof does not result in the termination of this Lease and the insurance proceeds are in an amount of \$50,000.00 or less and are paid under any insurance policy, such insurance proceeds shall be paid over to Tenant, and Tenant shall hold the same to be used first for the payment of the entire cost the Repairs and any part or portion thereof before using the same for any other purpose.

(d) In the event that the damage or destruction does not result in the termination of the Lease and if the aggregate insurance proceeds received by reason of any single instance of damage or destruction to the Improvements shall be greater than \$50,000.00, such insurance proceeds shall be paid over to a mutually acceptable escrow agent ("Escrow Agent") be held and disposed of as provided in Section 17(e).

(e) Escrow Agent shall hold all insurance proceeds deposited with it pursuant to Section 17(d) hereof until receipt by the Escrow Agent of:

(i) A certificate of Tenant ("Repair Certificate") dated not more than 10 days prior to the date of such receipt (A) requesting the payment of a specified amount of insurance proceeds; (B) describing in reasonable detail the work and materials applied to the Repairs since the date of the last Repair Certificate; (C) stating that such specified amount does not exceed the cost of such work and materials; and (D) stating that such work and materials have not previously been made the basis of any request for or any withdrawal of money; and



(ii) A certificate of Tenant's architect or engineer, licensed in the State of South Carolina (respectively, "Tenant's Architect" or "Tenant's Engineer"), stating (A) that the work and materials described in the accompanying Repair Certificate were satisfactorily performed and furnished and were necessary, appropriate or desirable to the Repair of the Improvements, in accordance with the plans and specifications therefor; (B) that the amount specified in such Repair Certificates is not in excess of the cost of such work and materials; and (C) the additional amount, if any, required to complete the Repairs; and

(iii) Waivers of lien from all contractors and subcontractors for work performed and materials supplied, if requested by Landlord. The parties acknowledge that such waivers may be conditioned on receipt by the contractor or subcontractor of payment for the work performed and materials supplied.

(f) Upon receipt by Escrow Agent of all the deliveries pursuant to Section 17(e) hereof, Escrow Agent shall pay to Tenant the amount of the insurance proceeds specified in the Repair Certificate; provided however, that the balance of insurance proceeds shall not be reduced below the amount specified in the certificate of Tenant's Architect or Tenant's Engineer as the amount required to complete the Repair. Each such payment shall be held by Tenant in trust and shall be used solely by Tenant for the payment of the cost of the work and materials described in the Repair Certificate, or if such cost or any part thereof has theretofore been paid by Tenant out of its own funds, then for the reimbursement to Tenant of any such cost or part thereof so paid by it. If there shall remain on deposit with Escrow Agent any balance of insurance proceeds after (a) the Repairs have been completed, as evidenced by a certificate of such Tenant's Architect or Tenant's Engineer delivered to the Escrow Agent, and (b) all work, materials, and professional services supplied in connection therewith shall have been paid for in full, as evidenced by a certificate from Tenant, such balance of insurance proceeds shall be paid to Tenant.

(g) Notwithstanding the foregoing, provided that Tenant has deposited with Escrow Agent all insurance proceeds to be deposited pursuant to Section 17(d) together with all other funds necessary to complete the Repairs, including but not limited, the applicable deductible, and provided that Tenant has waived all rights to terminate this Lease provided in this Section 17, then Landlord, upon written request from Tenant, shall undertake such Repairs on behalf of Tenant and follow the same payment process as outlined in Section 17(e)(i) through (iii) and (f). Tenant shall be responsible, at its expense, for any and all cost above insurance proceeds necessary to complete the Repairs (the "Tenant Repair Contribution"). Landlord will invoice Tenant for all costs and expense associated with any Tenant Repair Contribution, and Tenant pay such any such invoice to Landlord with thirty (30) days after the receipt thereof, unless Tenant has a good faith challenge as to the amount.

(h) Upon the expiration of this Lease however caused, any insurance proceeds then held by the Escrow Agent, if applicable will be paid to Landlord or if held by Tenant, shall be paid to Landlord.

(i) Subject to Tenant's right of termination under Sections 17(a) and 17(b), no destruction of or damage to the Improvements or any part or item thereof, by fire or other casualty whatsoever, whether such damage or destruction be partial or total or otherwise, shall entitle or permit Tenant to surrender or terminate this Lease, except as set forth herein.

(j) For the purposes of the Lease, the term "Improvements" shall mean all buildings and improvements comprising any portion of the Premises, including the Buildings, and all replacements thereof and additions thereto, all walkways, parking and road improvements of whatever nature, utility and sewage lines (to the extent to Landlord's interest therein) and all

apparatus, machinery, devices, fixtures, appurtenances and equipment necessary for the property operation and maintenance of the foregoing now owned by Landlord or hereafter acquired by Tenant pursuant hereto and attached to and used in connection with the Buildings and the Land, and the term "Repairs" shall mean all repairs, replacements, restoration, reconstruction and other work necessary to return the Premises (or any portion thereof) damaged or destroyed by fire or other casualty as nearly as possible to the condition the same were in immediately prior to such damage.

18. **Eminent Domain.** From and after the Commencement Date, Tenant shall have the following rights in the event of a taking of the entire Premises or any part thereof, by reason of any exercise of the power of eminent domain, including any transfer in lieu thereof:

(a) **Total Permanent.** In the event of a taking of the entire Premises or, in the reasonable judgment of Landlord and Tenant, a substantial portion as would render the balance of the Premises incapable of being used by Tenant for Tenant's Permitted Uses, the Lease shall terminate upon the date that possession is surrendered to the condemning authority, at which time all rights and obligations between the parties shall cease and rent and other charges payable by Tenant under the Lease shall be apportioned. Landlord shall be entitled to that portion of the award received for the taking of the real property within the Premises, including all improvements.

Tenant shall have the right to make a claim against the condemnor for Tenant's trade fixtures, furnishings, signs, fixtures and equipment and other personal property located on the Premises or any other claim as authorized by statute, whether or not such a claim reduces the sums otherwise payable by the condemnor to the Landlord. Except as to those rights of recovery or allocation expressly set forth in this Section, Tenant hereby assigns all claims against the condemnor to Landlord.

(b) **Partial Permanent.** In the event of a taking of less than the entire Premises or, in the reasonable judgment of Landlord and Tenant, less than such a substantial portion as would render the balance of the Premises incapable of being used by Tenant for Tenant's Permitted Uses, Tenant shall be entitled to a reduction of rent in such amount as shall be just and equitable.

Tenant reserves the right to make a claim for Tenant's trade fixtures, furnishings, signs, fixtures and equipment and other personal property which shall be payable to Tenant.

(c) **Total Temporary.** In the event of a taking of the entire Premises or, in the reasonable judgment of Landlord and Tenant, a substantial portion as would render the balance of the Premises incapable of being used by Tenant for Tenant's Permitted Uses for a period of six (6) months or less, the Lease shall remain in full force and effect, and Tenant shall be entitled to the entire award granted for the fee owner, Landlord and Tenant. In consideration of such entire award, Tenant shall not be entitled to any reduction of rent or other charges payable by Tenant under the Lease, all of which shall continue to accrue and be owing by Tenant during the period of such taking, provided, however, that if such taking shall extend beyond six (6) months, the taking shall, at the option of Tenant, be considered permanent and Tenant shall be entitled to all rights, damages and awards pursuant to Section 17(a) of the Lease.

(d) **Partial Temporary.** In the event of a taking of less than the entire Premises or, in the reasonable judgment of Landlord and Tenant, less than such a substantial portion as would render the balance of the Premises incapable of being used by Tenant for Tenant's Permitted Use, for a period of six months or less, Tenant shall be entitled to the entire award granted for the fee owner, Landlord and Tenant. In consideration of such entire award and assuming such

award is at least equal to six (6) month's rent and additional rent, Tenant shall not be entitled to any reduction of rent or other charges payable by Tenant under the Lease.

(e) **General.** Should Landlord and Tenant be unable to agree as to the division of any single award (if such award is to be apportioned between Landlord and Tenant under the terms of this Section) or the amount of any reduction of rents and other charges payable by Tenant under the Lease, such dispute shall be submitted for resolution to the court exercising jurisdiction of the condemnation proceedings, each party bearing its respective costs for such determination.

Landlord represents and warrants that at the Effective Date it has no actual or constructive knowledge of any proposed condemnation of any part of the Premises.

19. **Default.** Each of the following shall be deemed an "Event of Default" by Tenant and a material breach of this Lease:

(a) If Tenant shall fail to pay any Rent, or any part thereof, as and when the same shall become due and payable, and such failure shall continue for a period of ten (10) days after written notice;

(b) If Tenant shall desert or abandon the Premises or fail to operate its business therein, and such desertion, abandonment or failure to operate shall continue for a period of fifteen (15) days after written notice by Landlord, excluding damage or destruction, condemnation, re-modeling or Force Majeure;

(c) If Tenant shall default under the terms of any leasehold financing;

(d) If Tenant shall fail to keep or perform or abide by any other requirement, term, condition, covenant or agreement of this Lease or of the rules and regulations now in effect or hereafter adopted or of any notice given Tenant by Landlord pursuant to the terms of this Lease and either such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant, or, in the case of a default or a contingency with is susceptible of being cured but which cannot with due diligence be cured within such period of thirty (30) days, Tenant fails to commence with all due diligence within such period of thirty (30) days to cure the same and thereafter to continuously prosecute the curing of such default with all due diligence (it being intended that in connection with a default susceptible of being cured but which cannot with due diligence be cured within such period of thirty (30) days that the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the curing thereof continuously and with all due diligence but in no event to exceed one hundred twenty (120) days in the aggregate unless Tenant demonstrates that the default is not susceptible of a cure within one hundred twenty (120) days despite the due diligence of Tenant by reason of matters outside of Tenant's control (it being agreed that insufficient funds shall not excuse Tenant's performance), in which case the period allowed to cure such default shall be extended for a commercially reasonable time);

(e) The sale of Tenant's interest in the Premises under attachment, execution or similar legal process, or if Tenant is adjudicated as bankrupt or insolvent under any state bankruptcy or insolvency law or an order for relief is entered against Tenant under the U.S. Bankruptcy Code, 11 U.S.C. Sections 101 *et seq.* (the "Bankruptcy Code"), and such adjudication or order is not vacated within ten (10) days;

(f) The commencement of a case under any chapter of the Bankruptcy Code by or against

Tenant, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant as bankrupt or insolvent, or the reorganization of Tenant, or an arrangement by Tenant with its creditors, unless the petition is filed or case commenced by a party other than Tenant and is withdrawn or dismissed within thirty (30) days after the date of its filing;

(g) The appointment of a receiver of trustee for the business or property of Tenant, unless such appointment shall be vacated within ten (10) days of its entry;

(h) The making by Tenant of an assignment for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease shall pass to another by operation of law;

20. **Remedies.**

(a) Upon the occurrence of an Event of Default and the failure to cure same as hereinabove provided, the Landlord shall have all rights and remedies allowed at law, in equity, by statute, including, but not limited to the right of summary ejectment and otherwise, and in addition, without notice or demand, Landlord may:

(i) Terminate the Lease, in which case Tenant shall peaceably quit and surrender the Premises to Landlord.

(ii) With or without terminating the Lease, and with or without legal process, by summary proceedings, ejectment or otherwise, terminate Tenant's right to possession of the Premises, and re-enter and retake possession of the Premises; provided, however, even though Landlord may have reentered the Premises without terminating this Lease, Landlord may elect thereafter to terminate this Lease. Tenant's liability under the Lease shall survive Landlord's re-entry and repossession of the Premises, the institution of summary proceedings, and the issuance of any warrants with respect thereto. Landlord may relet the Premises on such terms and conditions (which may include concessions or free rent or alterations of the Premises) as Landlord, in its sole discretion, may determine. If the full rental reserved under this Lease and any of the costs, expenses or damages described below shall not be realized by Landlord, Tenant shall be liable for all damages sustained by Landlord, including any Rent deficiency. For purposes of the deficiency in Rent that would have been due under this Lease during any period following Landlord's election to accelerate Rent, deficiency means the excess of the future rent that would have been payable under this Lease over the rental value of the Premises for the balance of the Term. If, at the time that damages are to be determined under this section Landlord has relet the Premises in whole or in part, then the deficiency in Rent means the excess of the future rent that would have been payable under this Lease over the future rent called for in the re-lease during the remainder of the Term. Tenant also shall be liable for all of the Landlord's costs associated with Tenant's default and any attempts by Landlord to relet the Premises, including Landlord's reasonable attorney's fees, brokerage fees, construction costs, tenant allowances, and expenses incurred in taking the actions set forth in this section in order to place the Premises in first class condition and to re-let the Premises, all of which shall constitute additional Rent. Landlord, in preparing the Premises for reletting, may make alterations, repairs or replacements in the Premises as Landlord determines advisable, and the making of the alterations, repairs or replacements shall not operate to release Tenant from liability under this Lease. Landlord agrees to mitigate its damages. Tenant shall not be entitled to receive the excess or any credit with respect to the excess, if any, of net rent collected over the sums payable by Tenant to Landlord.

(iii) Accelerate all Rent owing under the Lease for the remainder of the Term and immediately collect the same from Tenant, together with all other charges due or thereafter accruing and such other damages as are caused by Tenant's default. In this regard, Tenant shall remain liable to Landlord for the total rental due hereunder (which may at Landlord's election be accelerated to be due and payable in full as of any default and recoverable as damages in a lump sum, subject to a discount rate of five percent (5%) per annum of future payments) as would have been payable by Tenant for the remainder of the term less the rentals actually received from any reletting or, at Landlord's election, less the reasonable rental value of the Premises for the remainder of the Term. Termination of Tenant's right to possession shall not relieve Tenant of its liability hereunder and the obligations created hereby shall survive any such termination.

(iv) Perform, on behalf and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord shall have given Tenant notice, the cost of which performance by Landlord, together with interest thereon at the Default Rate from the date of such expenditure, shall be deemed additional rent and shall be payable by Tenant to Landlord upon demand. Notwithstanding the provisions of this subsection and regardless of whether an Event of Default shall have occurred, Landlord may exercise the remedy described in this subsection without any notice to Tenant if Landlord, in its good faith judgment, believes it would be materially injured by failure to take rapid action or if the unperformed obligation of Tenant constitutes an emergency.

(b) Tenant shall be liable to Landlord for all costs Landlord shall incur in repossessing or reletting the Premises or collecting sums due to Landlord, including court costs and reasonable attorneys' fees. Tenant shall have no recourse against Landlord should Landlord exercise said rights in accordance with this Section.

(c) Any loss of rent and other damages sustained by Landlord may be recovered by Landlord: (i) either before or after any reletting; (ii) in one or more separate actions, from time to time in Landlord's discretion, as loss of rents or damages shall accrue; or (iii) in a single proceeding deferred until the expiration of the Term, in which event Tenant hereby agrees that the cause of action shall not be considered to have accrued until the original date of expiration of the Term. Nothing in this Lease shall be construed to require Landlord to wait until this Lease or the Term would have expired had there been no default by Tenant or no cancellation or termination. Any suit or action brought to collect any rent or damages for any portion of the Term shall not in any manner prejudice the right of Landlord to collect any rent or damages for any subsequent period by a similar proceeding. All amounts due under this section, including all reasonable attorneys' fees and other Landlord expenses, shall be considered rent and may be recovered by Landlord in the same manner as rent. Landlord shall be entitled to any deficiency in rent upon demand.

(d) Upon Landlord's reentry and repossession of the Premises, Landlord may (i) remove all property from the Premises, and may store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant without resort to legal process and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby; or (ii) sell all or any part of such property at public or private sale, except for such personal property that is exempt from sale under execution or attachment. Tenant agrees that five (5) business days' prior notice of any public or private sale shall constitute reasonable notice. The proceeds of any such sale shall be applied, first, to the payment of all costs and expenses of conducting the sale or caring for or storing such property, including all reasonable attorneys' fees; second, toward the payment of any indebtedness, including (without limitation) indebtedness for

Rent, which may be or may become due from Tenant to Landlord; and third, to pay the Tenant, on demand, any surplus remaining after all indebtedness of Tenant to Landlord has been fully paid.

21. **Landlord's Performance For Account of Tenant.** If Tenant shall continue in default in the performance of any of the covenants or agreements herein contained after the expiration of the time limit hereinabove set forth for the curing of said default(s) including written notice, then Landlord may cure said default(s) on behalf of Tenant. Any amount paid or expense or liability incurred by Landlord in the performance of any such matter for the account of Tenant shall be deemed to be additional rent. Nothing contained herein shall be construed to prevent Landlord from immediately collecting from Tenant by suit or otherwise, any such sums with interest at the Default Rate.

22. **Insurance.**

(a) Tenant, at its sole cost and expense, shall throughout the Term procure and maintain:

(i) Comprehensive (direct physical loss) extended coverage multiperil casualty insurance on the Improvements and all parts or portions thereof including coverage against loss or damage by fire, collapse, lightning, electrical short circuit, water damage, windstorm, tornado, hail, flood (if available), vandalism, sprinkler leakage, subsidence, debris removal, demolition and malicious mischief and against loss or damage by such other, further and additional risks as now are or hereafter may be embraced by the standard extended coverage forms of endorsements, in each case (i) in an amount equal to not less than 100% of their "Full Insurable Value," which for purposes of this Lease shall mean actual replacement value (exclusive in the case of the Improvements of costs of excavations, foundations and footings and shall not include the cost of the land); (ii) containing an agreed amount endorsement with respect to the Improvements or any part or portion thereof waiving all co-insurance provisions; and (iii) containing an endorsement that all covered losses will be paid on a replacement cost basis; and (iv) providing for reasonable deductibles per loss;

(ii) Comprehensive general liability insurance with a limit of not less than \$2,000,000.00 combined single limit per occurrence for bodily injury or property damage or commercial general liability insurance with a limit of not less than \$2,000,000.00 per occurrence and \$3,000,000.00 aggregate per location endorsement for bodily injury and property damage, including, in both instances, personal and advertising injury coverages with a limit of not less than \$2,000,000.00 per occurrence; provided, however that Landlord shall have the right to increase the above required minimum limits upon written notice to Tenant in the event Landlord determines such amounts to be inadequate based on the then existing economic conditions, not more often than once every five (5) years;

(iii) Boiler and pressure vessel and miscellaneous equipment insurance, including steam pipes, air conditioning systems, electric motors, air tanks, compressors and pumps, in such amounts as Landlord may reasonably require;

(iv) Business interruption insurance which shall include all of the risks set forth in this Section 21(a) and shall be in an amount not less than the aggregate of Fixed Rent payable hereunder for the twelve (12) months preceding the insured casualty;

(v) Workers' compensation insurance in an amount not less than the minimum amount required by applicable law and adequate employee's liability insurance covering all persons employed by Tenant at the Premises; and

(vi) At all times when Tenant Alterations are being made, Tenant shall have insurance providing the following coverage for its Tenant Alterations (i) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned comprehensive general public liability insurance policy; (ii) contractual liability insurance covering the indemnity contained in this Lease; and (iii) builder's risk completed value coverage (A) for 100% of the contract price; (B) on a nonreporting form; (C) deleting all co-insurance provisions; (D) against all risks insured against pursuant to Section 21(a)(i) hereof, and (E) including permission to occupy the Premises.

(vii) Such other insurance and in such amounts as may from time to time be reasonable required by Landlord or any mortgagee of the Property, with such increases not more often than one every five (5) years.

(b) All of the Comprehensive casualty and general liability insurance required of Tenant under this Lease shall name Landlord and its designee(s) as additional insureds and all insurance certificates shall be issued in the names and for the benefit of Landlord, its designee(s), and Tenant. Such policies shall be issued by one or more responsible insurance companies satisfactory to Landlord and licensed to do business in the State where the Premises is located. Further, all such insurance carried by Tenant shall provide as follows: (a) such insurance may not be canceled or amended with respect to Landlord (or its designee(s)), except upon thirty (30) days prior written notice by registered mail to Landlord (and such designee(s)), by the insurance company as required by the policies; and (b) Tenant shall be solely responsible for payment of premiums for such insurance. In the event Tenant fails to furnish such insurance, and after written notice Tenant fails to obtain such insurance coverage, Landlord may obtain such insurance, without the obligation to do so, and the premiums shall be paid by Tenant to the Landlord upon demand.

(c) Excluding Landlord's negligence or misconduct, Tenant will indemnify, save harmless, and defend Landlord promptly and diligently at Tenant's sole expense from and against any and all claims and demands in connection with any accident, injury or damage whatsoever caused to any person or property arising directly or indirectly out of Tenant's initial construction, alteration, renovation, remodeling and/or fixturing of the Premises (whether or not occurring prior to the Commencement Date hereof), or out of the business conducted in the Premises or occurring in, on or about the Premises or any part thereof, or arising directly or indirectly from any act or omission of Tenant or any of its contractors, subcontractors or concessionaires or subtenants or their respective licensees, servants, agents, employees, contractors or subcontractors, and from and against any and all costs, expenses and liability incurred in connection with any such claim or proceeding brought thereon. The comprehensive general liability insurance or commercial general liability insurance maintained by Tenant shall specifically insure the contractual obligations of Tenant as set forth herein.

(d) Notwithstanding anything to the contrary herein, Tenant expressly waives any right of recovery against Landlord it may have by virtue of any loss or damage to the Premises, or anyone claiming through or under them by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other perils insured in policies of insurance covering such property, even if such loss or damage shall have been caused by the fault or negligence of the Landlord, or anyone for whom Landlord may be responsible.

23. **Indemnity.** Except as otherwise provided herein, Tenant agrees to indemnify, defend and hold Landlord harmless of and from any and all third party claims of any kind or nature arising from Tenant's use of the Premises and Tenant hereby waives all claims against Landlord for personal injury, property damage or business loss from any cause whatsoever, except such as might result from the

gross negligence or intentional misconduct of Landlord, Landlord's employees, agents or contractors. Landlord agrees to indemnify, defend and hold Tenant harmless of and from any and all third party claims of any kind or nature arising from Landlord's negligent or intentional acts.

24. **Landlord's Defaults.**

(a) **Landlord Default.** If Landlord shall fail to keep or perform or abide by any other requirement, term, condition, covenant or agreement of this Lease or of the rules and regulations now in effect or hereafter adopted or of any notice given Tenant by Landlord pursuant to the terms of this Lease and either such default shall continue for a period of thirty (30) days after written notice thereof from Tenant to Landlord, or, in the case of a default or a contingency with is susceptible of being cured but which cannot with due diligence be cured within such period of thirty (30) days, Landlord fails to commence with all due diligence within such period of thirty (30) days to cure the same and thereafter to continuously prosecute the curing of such default with all due diligence (it being intended that in connection with a default susceptible of being cured but which cannot with due diligence be cured within such period of thirty (30) days that the time of Landlord within which to cure the same shall be extended for such period as may be necessary to complete the curing thereof continuously and with all due diligence but in no event to exceed one hundred twenty (120) days in the aggregate unless Landlord demonstrates that the default is not susceptible of a cure within one hundred twenty (120) days despite the due diligence of Landlord by reason of matters outside of Landlord's control (it being agreed that insufficient funds shall not excuse Landlord's performance), in which case the period allowed to cure such default shall be extended for a commercially reasonable time);

(b) **Tenant Remedies.** If an Event of Landlord Default shall occur and continue, Tenant shall be entitled to exercise every right and remedy now or hereafter available to Tenant at law or in equity, and the exercise or commencement of the exercise by Tenant of any one or more of the rights or remedies so existing at law or in equity shall not preclude the simultaneous or later exercise by Tenant of any other rights or remedies so existing; provided, notwithstanding anything to the contrary in this Lease, Tenant shall not be entitled to terminate this Lease where such termination right is limited by the express provisions of this Lease, nor shall Tenant be entitled to terminate this Lease solely due to an Event of Landlord Default that Tenant might reasonably cure by exercising any self-help remedies available to Tenant under this Lease and at a cost less than an amount equal to three (3) times the monthly installment of Minimum Rent in effect at the time of such default. No delay or omission of the right to exercise any power or remedy by Tenant shall impair any such right, power or remedy or be construed as a waiver of any default or non-performance of Landlord, or as Tenant's acquiescence therein.

(c) **Tenant's Self-Help.** In addition to all remedies provided at law or in equity, if Landlord shall default in the performance or observance of any covenant, agreement or condition to be performed or observed by Landlord under this Lease and Landlord shall not cure such default within any applicable cure period set forth in this Lease (the "Landlord Cure Period"), Tenant may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Landlord and any amount paid or any contractual liability incurred by Tenant in so doing shall be deemed paid or incurred for the account of Landlord and Landlord shall reimburse Tenant therefor and save Tenant harmless therefrom; provided, Tenant may cure any such default as aforesaid prior to the expiration of the applicable Landlord Cure Period with only such notice to Landlord as may reasonably be available (including without any notice to Landlord if an emergency situation exists) if the curing of such default prior to the expiration of the applicable Landlord Cure Period is reasonably necessary to protect the Premises or Tenant's interest therein or to prevent injury or damage to persons or property. If Landlord fails to reimburse Tenant for any amount paid for the account of Landlord as hereunder provided or for any expenses which Tenant shall reasonably incur in correction of any default by Landlord hereunder, within ten (10) days following Tenant's written demand therefor, Tenant may apply the amount so paid or incurred by Tenant as a credit against Tenant's next payment(s) of rent due under this Lease,



until such time as Tenant has been reimbursed in full for all costs incurred. Notwithstanding the foregoing, Tenant will be under no obligation to cure Landlord's default pursuant to the terms and conditions of Article 28 of this Lease.

25. **Personal Property.** Excluding Landlord's employees, agents or contractors own negligence or intentional misconduct, Tenant agrees that all personal property in said Premises shall be and remain at Tenant's sole risk, and Landlord shall not be liable for any damage to, or loss of such personal property arising from any acts of negligence of any persons other than Landlord's employees, or from fire, or from the leaking of the roof, or from the bursting, leaking, or overflowing of water, sewer, or steam pipes, or from malfunctions of the heating, plumbing, or electrical systems, or from any other cause whatsoever. Tenant expressly agrees to indemnify and save Landlord harmless in all such cases.

26. **Assignment or Subletting.** Tenant shall not assign, mortgage, or encumber this Lease nor sublet or permit the Premises or any part thereof to be used by others, without the prior written consent of Landlord which may be withheld for any or no reason. Tenant agrees that any change in control of Tenant shall constitute an assignment of this Lease. For this purpose, a "change in control" occurs if more than fifty percent (50%) of the ownership interests in Tenant are transferred in any twenty-four (24) month period. The prior sentence will not apply to any publicly traded company on the NYSE or the NASDAQ. If this Lease is assigned or if the Premises or any part thereof is sublet, or occupied other than by Tenant, Landlord, in the event of default by Tenant, may collect rent directly from the assignee, subtenant, or occupant and apply the amount collected to the rent due from Tenant. Such action by Landlord shall not constitute a waiver of this provision nor a release of Tenant from any obligation under this Lease. The consent of Landlord to an assignment or subletting shall not be construed to relieve Tenant from obtaining the written consent of Landlord to any further assignment or subletting and shall not relieve Tenant from liability hereunder. Any assignment or subletting under this Lease automatically cancels any options to extend the term of this Lease which may have been granted hereunder. In the event Tenant wishes to assign this Lease and Landlord consents to such assignment, Tenant shall reimburse Landlord for any and all out-of-pocket costs and expenses (including reasonable attorneys' fees, not exceeding \$1,000 if the assignment is approved) Landlord may incur in preparing, review or approving such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. Notwithstanding any provision herein to the contrary, Tenant shall have the absolute and unrestricted right to assign this Lease and any and all of its rights or entitlements hereunder or sublet all or any part of the Premises, without Landlord's consent, to: (i) to an entity which controls, is controlled by, or under common control with, Tenant (an "Affiliate"), or (ii) in connection with the merger, acquisition or reorganization of Tenant or its Affiliate, sale of substantially all of Tenant's assets, or in connection with the issuance, redemption or transfer of any portion of Tenant's stock (a "Permitted Transfer"); provided however, that (i) no Permitted Transfer shall relieve Tenant or Guarantor from obligation or liability hereunder (or under the Guaranty in the case of the Guarantor), (ii) any assignee or occupant under a Permitted Transfer, shall agree to be bound by the terms and conditions of this Lease, and (iii) Tenant shall promptly notify Landlord in writing of any such Permitted Transfer, unless prevented from doing during any "go dark period" as required by the Securities and Exchange Commission.

27. **Lien on Fixtures.** Intentionally Deleted

28. **Mechanic's Liens.**

- a. **General.** Tenant shall pay or cause to be paid all costs of labor, services and/or materials supplied in the prosecution of any work done in the Premises by or on behalf of Tenant or persons claiming under Tenant, and Tenant shall keep the Premises free and clear of all mechanics' liens and other liens arising out of any work done for Tenant or persons claiming under Tenant. Tenant shall promptly notify Landlord of any claim or lien filed against the Premises or the commencement of any action affecting the title thereto.

- b. Contest of Lien. If Tenant desires to contest the claim of any mechanics' lien, Tenant shall (i) either post a release bond issued by a responsible corporate surety as prescribed by law or furnish Landlord with adequate security for the amount of the claim plus estimated costs and interest, and (ii) promptly pay or cause to be paid any and all sums awarded to the claimant on its suit.
- c. Landlord's Right to Cure. If Tenant fails to provide security for or satisfaction of any mechanics' lien, then Landlord, in addition to any other rights or remedies it may have under this Lease or at law or in equity, may (but shall not be obligated to) discharge said lien by (i) paying the claimant an amount sufficient to settle and discharge the claim, (ii) posting a release bond, or (iii) taking such action as Landlord shall deem appropriate, and Tenant shall pay to Landlord on demand (and as additional rent hereunder) all costs incurred by Landlord in settling and discharging such lien (including reasonable attorneys' fees and bond premiums).
- d. Notice of Non-Responsibility. Landlord or its representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility or such other notices that Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall give Landlord at least ten (10) days advance written notice of its intention to commence any material work that might result in a lien.

29. **Estoppel Certificates**. At any time and from time to time upon request from Landlord, Tenant agrees to execute, acknowledge and deliver to Landlord within twenty (20) days notice by Landlord, a statement in writing certifying that (a) this Lease is unmodified and in full, force and effect (or, if there have been modifications, that this Lease is in full effect as modified, and identifying such modifications) and; (b) the dates to which the Fixed Minimum Rent has been paid; (c) that no default exists in the observance of this Lease and no Event of Default has occurred and is continuing, or specifying each such default or Event of Default of which Tenant may have knowledge; (d) the Premises has been completed on or before the date of such certificate and that all conditions precedent to the Lease taking effect have been carried out; (e) that Tenant has accepted possession of the Premises and that the Term of this Lease has commenced; and (f) the actual Commencement Date and expiration date of the Lease, it being intended that any such statement may be relied upon by Landlord's mortgagees, any prospective purchaser of the interest of Landlord or Tenant in their respective premises described herein or any assignee or subtenant of Tenant. If Tenant does not deliver such statement to Landlord within such twenty (20) day period, Tenant will be in default, and if Tenant does not deliver such statement to Landlord within such five (5) days after written notice from Landlord of such default, then in addition to any remedy Landlord may otherwise have at law or in equity, Tenant shall pay to Landlord the sum of \$100.00 per day as Additional Rent hereunder for Tenant's breach of such covenants for so long as Tenant is in breach of such covenants. Landlord's right to receive such additional rent for Tenant's breach shall be in addition to its rights and remedies set forth in this Lease, and the receipt of additional rent by Landlord hereunder shall not constitute a waiver by Landlord of its right to exercise the rights and remedies set forth in this Lease.

30. **Brokerage**. Landlord and Tenant warrant to each other that they have had no dealings with any broker or agent in connection with this Lease. To the actual knowledge of Landlord and of Tenant, no broker's fees or commissions have been paid or are due and owing to any person or entity by Landlord or Tenant. Landlord and Tenant each hereby agrees to indemnify and hold harmless the other from and against any and all claims for any compensation, commissions and charges claimed by any other broker or agent with respect to this Lease or the negotiation thereof, arising by, through or under the indemnifying party, and each further agrees to indemnify and hold harmless the other from any loss or damage resulting from an inaccuracy in the representations contained in this Section.

31. **Force Majeure.** Unless otherwise specifically provided, in the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, Act of God, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not operate to excuse Tenant from the prompt payment of Rent or Landlord or Tenant from any other payments required by the terms of this Lease.

32. **Holdover.** If Tenant holds over past the date of expiration of this Lease ("Expiration Date") and Landlord accepts Rent for such holdover period, such acceptance shall operate as a renewal of the tenancy for another month and for each additional month for which Landlord accepts Rent (the "Holdover Term"). The Rent during the Holdover Term shall be 150% of the Fixed Minimum Rent due and payable during the Lease Year prior to the Expiration Date divided by twelve. The Landlord may terminate the Holdover Term by giving the Tenant written notice of not less than thirty (30) days prior to the date on which Landlord shall retake possession of the Premises. Should Tenant wish to vacate the Premises during the Holdover Term, it shall provide Landlord with written notice of its intent to vacate not less than thirty (30) days prior to vacating the Premises, and Tenant shall be responsible for the payment of Rent through the date set forth in such written notice.

33. **Waiver.** It is understood and agreed that waiver by Landlord of any default or breach of any covenant, condition or agreement herein shall not be construed to be a waiver of that covenant, condition or agreement or of any subsequent breach thereof. The acceptance of rent by Landlord with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No delay or omission of Landlord to exercise any right or power arising from any default on part of Tenant shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence thereto.

34. **Warranty.** Landlord covenants, represents and warrants that it has the full right and authority to lease the Premises upon the terms and conditions herein set forth and that Tenant shall peacefully and quietly hold and enjoy the Premises for the full term hereof so long as it does not default, beyond any applicable cure period in the performance of any of its agreements hereunder.

35. **Transfer of Landlord's Interest.** The term "Landlord" as used in this Lease means only the owner or the mortgagee in possession for the time being of the Land and the Buildings or the owner of the lease of the Buildings or of the Land and the Buildings of which the Premises are a part so that in the event of any sale or sales of the Land and the said Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the purchaser at any such sale of the Land and the Buildings, that the purchaser has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder.

Notwithstanding anything to the contrary contained in this Lease, it is specifically understood and agreed that the liability of the Landlord hereunder shall be limited to the equity of the Landlord in the Premises in the event of a breach or the failure of Landlord to perform any of the terms, covenants, conditions and agreements of this Lease to be performed by Landlord. In furtherance of the foregoing, the Tenant hereby agrees that any judgment it may obtain against Landlord as a result of the breach of this Lease as aforesaid shall be enforceable solely against the Landlord's interest in the Premises.

Landlord's assignment, sale or transfer of the Lease or of any or all of its rights herein shall in no manner affect Tenant's obligations hereunder. Tenant shall thereafter attorn and look to such assignee, as Landlord, provided Tenant has first received written notice of such assignment of Landlord's interest and the

address such rent payments are to be made.

36. **No Joint Venture**. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, and no provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

37. **Computation of Time**. In computing any period of time prescribed or allowed by this Lease, the day of the act, event or Event of Default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a South Carolina or United States holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such a holiday.

38. **Rent Absolute**. Except as otherwise specifically provided in this Lease, no change in condition, Legal Requirements, casualty or other event shall terminate this Lease or entitle Tenant to surrender the Premises or entitle Tenant to any abatement of or reduction in the Rent, or otherwise affect the respective obligations of the Tenant and Landlord. The parties acknowledge that Tenant's obligation to pay Rent under this Lease is in consideration of the grant of the leasehold interest in the Premises and is independent of Landlord's duties under this Lease, and all Rent shall be paid when due without any offset or deduction of any kind or nature whatsoever, unless otherwise specifically permitted.

39. **Notices**. It is agreed that the legal address of the parties for all notices required or permitted to be given hereunder, or for all purposes of billing, payment of Rent or other amounts owing hereunder, process, correspondence, and any other legal purpose whatsoever, shall be deemed sufficient, if given (1) by a writing deposited in United States Mail, proper postage prepaid and certified, return receipt requested to the Landlord's Address or the Tenant's Address, as applicable; or (2) by delivery by a national overnight courier service, such as Federal Express, to the Landlord's Address or the Tenant's Address, as applicable. If written notice is made by mail, notice is deemed given three (3) days after such written notice is mailed. If written notice is made by national overnight courier service, notice is deemed given at noon of the business day next following delivery of such nationally recognized overnight delivery service. To the extent requested by a party, notices shall also be sent to a fee or leasehold mortgagee at the address supplied by the requesting party. Either party may change its address by written notice given to the other in accordance with this Section.

40. **Additional Instruments**. The parties agree to execute and deliver any instruments in writing necessary to carry out any agreement, term, condition, or assurance in this Lease whenever occasion shall arise and request for such instrument shall be made.

41. **Accord and Satisfaction**. Landlord, acting in its sole discretion, shall have the right to apply any payments made by Tenant to the satisfaction of any debt or obligations of Tenant to Landlord regardless of the instructions of Tenant as to application of any sum whether such instructions be endorsed upon Tenant's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by Landlord of a check or checks drawn by others than Tenant shall not be deemed an accord and satisfaction and shall in no way affect Tenant's liability hereunder nor shall it be deemed an approval of any assignment of this Lease by Tenant. Landlord may accept any partial payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

42. **Subordination**.

- a. Tenant accepts this Lease subject and subordinate to any First Mortgage, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such First

Mortgage to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion as long as such document does not increase Tenant financial obligations under the Lease, or materially modify the terms and conditions of the Lease. This clause shall be self-operative and no further instrument of subordination shall be required. In the event Tenant fails to execute a subordination document consistent with this Section 42 within twenty (20) days of receipt of a request by Landlord and Tenant provides no reasonable objection to Landlord's request, Tenant will be in default. If any person shall succeed to all or part of Landlord's interests in the Property whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease or otherwise, and if and as so requested or required by such successor-in-interest, Tenant shall, without charge, attorn to such successor-in-interest, provided such successor-in-interest shall agree that so long as no Default, beyond any applicable cure period, exists under the Lease, Tenant's right to quiet possession shall not be disturbed and the terms of the Lease shall remain unchanged.

- b. It shall be a condition of the subordination of this Lease to any First Mortgage that the holder thereof shall enter into a mutually agreeable subordination, non-disturbance and attornment agreement (which, if such holder is a recognized lending institution, shall be in such holder's usual form; and otherwise shall be in a form reasonably satisfactory to Tenant) with Tenant, which shall provide that Tenant's rights under this Lease shall not be disturbed in the event of foreclosure, sale or otherwise, so long as Tenant attorns to such mortgagee or transferee and there is not otherwise an Event of Default under this Lease; and Tenant shall promptly execute within twenty (20) days request, acknowledge and deliver such agreement.

43. **Time of the Essence.** It is understood and agreed between the parties hereto that time is of the essence in all of the terms and provisions of this Lease.

44. **Surrender of Premises.** At the expiration of the tenancy hereby created, Tenant shall peaceably surrender the Premises, including all alterations, additions, improvements, decorations and repairs made thereto (but excluding all trade fixtures attached or not, equipment attached or not, signs and other personal property installed by Tenant, provided that in no event shall Tenant remove any of the following materials or equipment without Landlord's prior written consent: any free standing signs, any power wiring or power panels; lighting or lighting fixtures; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; or other similar building operating equipment and decorations), broom clean and in good condition and repair, reasonable wear and tear excepted. Tenant shall remove all its property not required to be surrendered to Landlord before surrendering the Premises as aforesaid and shall repair any damage to the Premises caused thereby. Any personal property remaining in the Premises at the expiration of the Term shall be deemed abandoned by Tenant, and Landlord may claim the same and shall in no circumstances have any liability to Tenant therefor. Upon termination, Tenant shall also surrender all keys for the Premises to Landlord and, if applicable, inform Landlord of any combinations of locks or safes in the Premises. If the Premises are not surrendered at the end of the Term, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Premises, including without limitation claims made by the succeeding tenant founded on such delay. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term of this Lease.

45. **Costs of Enforcement.** In the event either party shall enforce the terms of this Lease by suit or other similar legal action, the prevailing party shall be entitled to recover from the other the costs and expenses incident to such enforcement action (including any bankruptcy or appellate proceeding), which costs and expenses shall include, without limitation, the reasonable fees and expenses of attorneys, expert witnesses or other professionals.

46. **Recording.** Landlord and Tenant hereby agree that each will cooperate with the other upon request to cause a memorandum of this Lease (without the amount of the Rent described) to be recorded in the land records office where the Premises is located. In no event shall this Lease be recorded without the written consent of Landlord.

47. **Waiver of Jury Trial.** LANDLORD AND TENANT HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST OR INVOLVING THE OTHER RELATING TO ANY MATTER CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, THE PREMISES, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR ANY CLAIM FOR INJURY OR DAMAGE.

48. **Waiver of Counterclaim.** Tenant shall not assert any permissive counterclaim in a summary proceeding or other action based on termination, ejectment or holdover, excluding any compulsory claims.

49. **Exhibits.** All exhibits, addenda, riders and schedules referenced in this Lease are incorporated into this Lease by this reference and made a part hereof.

50. **Guaranty.** Intentionally deleted

51. **Security Deposit.** Intentionally deleted

52. **Miscellaneous.** This Lease embodies the full agreement of the parties and supersedes any and all prior understandings or commitments concerning the subject matter of this Lease. Any modification or amendment must be in writing and signed by both parties. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person(s), firm(s) or corporation(s) may require. This Lease may be executed in counterparts all of which taken together shall be deemed one original when executed by both parties. This Lease and the rights of the Landlord and Tenant hereunder shall be construed and enforced in accordance with the law of the State in which the Premises are located. In the event that any part or provision of this Lease shall be determined to be invalid or unenforceable, the remaining parts and provisions of said Lease which can be separated from the invalid, unenforceable provision shall continue in full force and effect. The index, section and marginal titles, numbers and captions contained in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, modify, or describe the scope or intent of this Lease nor any provision herein. No provision of this Lease shall be construed to impose upon the parties hereto any obligation or restriction not expressly set forth herein. This Lease shall be binding upon and inure to the benefit of the parties hereto, their assigns, administrators, successors, estates, heirs and legatees respectively; provided, however, that no rights, shall inure to the benefit of any assignee or subtenant of Tenant unless the assignment or sublease has been made in accordance with the provisions set out in this Lease.

**[Remainder of Page Left Blank Intentionally]**

**IN WITNESS WHEREOF**, the parties have set their hands and seals as of the Effective Date.

LANDLORD:

Truluck Industries, Inc.

By: /s/ Charles E. Truluck  
Name: Charles E. Truluck  
Title: President

TENANT:

Select Comfort Corporation, a Minnesota corporation

By: /s/ Mark A. Kimball  
Name: Mark A. Kimball  
Title: General Counsel

## SECOND AMENDMENT TO LEASE AGREEMENT

This SECOND AMENDMENT TO LEASE AGREEMENT (this "**Amendment**") is entered into as of June 15, 2015, by and between CLPF – SLIC 8, L.P., a Delaware limited partnership ("**Landlord**"), and SELECT COMFORT CORPORATION, a Minnesota corporation ("**Tenant**").

### **RECITALS**

A. Landlord (as successor-in-interest to ProLogis North American Properties Fund I LLC and ProLogis Development Services Incorporated) and Tenant are parties to that certain Lease Agreement dated September 30, 1998 (the "**Initial Lease**"), as amended by that certain Extension Agreement dated January 9, 2009 (the "**Extension Agreement**"), and that certain First Amendment to Lease Agreement dated May 20, 2010 (the "**First Amendment**"). The Initial Lease, the Extension Agreement and the First Amendment are collectively referred to herein as the "**Original Lease**".

B. Pursuant to the Original Lease, Landlord leases to Tenant, and Tenant leases from Landlord, certain space consisting of approximately 100,800 rentable square feet (the "**Premises**") in the building located at 675 North Wright Brothers Drive, Salt Lake City, Utah and commonly known as Salt Lake International Distribution Center #8 (the "**Building**"), as more particularly described in the Original Lease.

C. Landlord and Tenant desire to further amend the Original Lease to, among other things, extend the term of the Original Lease, all in accordance with the terms and conditions set forth below.

### **AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Defined Terms**. All capitalized terms used herein but not specifically defined in this Amendment shall have the meanings ascribed to such terms in the Original Lease. The term "Lease" where used in the Original Lease and this Amendment shall hereafter refer to the Original Lease, as amended hereby.

2. **Lease Term**. The Lease Term is hereby extended for an additional period of five (5) years commencing on August 1, 2015 (the "**Second Amendment Commencement Date**") and expiring on July 31, 2020 (the "**Second Amendment Expiration Date**").

3. **Base Rent**. Commencing on the Second Amendment Commencement Date and continuing through and including the Second Amendment Expiration Date, Tenant shall pay monthly Base Rent to Landlord with respect to the Premises in accordance with the following schedule (which monthly Base Rent shall be payable in accordance with the terms of the Original Lease and in addition to all other amounts due under the Lease, including, without limitation, Operating Expenses and the Monthly Amortized Landlord's Seismic Bracing Costs, as defined below):

<b><u>Period:</u></b>	<b><u>Monthly Base Rent:</u></b>
08/01/15 – 07/31/16	\$35,280.00 per month
08/01/16 – 07/31/17	\$36,338.40 per month
08/01/17 – 07/31/18	\$37,428.55 per month
08/01/18 – 07/31/19	\$38,551.41 per month
08/01/19 – 07/31/20	\$39,707.95 per month



4. Options to Renew. Landlord and Tenant acknowledge and agree that Tenant's only rights to extend or renew the Lease Term shall be as set forth in this Paragraph 4 and, accordingly, Addendum 2 to the First Amendment, Addendum 4 to the Initial Lease and any other previously granted renewal or extension options in the Original Lease are hereby deleted in their entirety and shall be of no further force or effect. Landlord hereby grants to Tenant two (2) consecutive options to extend the Lease Term (each, an "**Option**"), each for a period of five (5) years (each 5-year period, an "**Option Term**"), with the first Option Term commencing on the date immediately following the Second Amendment Expiration Date (if the first Option is exercised by Tenant). Each Option shall be subject to all of the following conditions and terms:

(a) Tenant shall give to Landlord, and Landlord shall actually receive, on a date which is at least two hundred seventy (270) days and not more than three hundred sixty-five (365) days prior to the then scheduled expiration date of the Lease Term, a written notice of Tenant's exercise of the applicable Option (an "**Option Notice**"), time being of the essence. If an Option Notice is not timely so given and received, the Option, and any subsequent Option (if any), shall automatically expire.

(b) Tenant shall have no right to exercise an Option, notwithstanding any provision hereof to the contrary, (i) during the time commencing from the date Landlord gives to Tenant a notice of monetary or material non-monetary default pursuant to this Lease and continuing until the noncompliance alleged in said notice of default is cured, (ii) if, during the twelve (12) month period of time immediately prior to the time that Tenant attempts to exercise the Option, Landlord has delivered to Tenant two (2) or more notices of monetary or material non-monetary default under the Lease, whether or not the defaults are cured, or Tenant has been late on three (3) or more occasions in the payment of a monetary obligation to Landlord, or (iii) Tenant has committed an Event of Default under the Lease.

(c) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Option because of the provisions of Paragraph 4(b) above.

(d) At Landlord's sole election, all Option rights of Tenant under this Paragraph 4 shall terminate and be of no further force or effect, notwithstanding Tenant's due and timely exercise of an Option, if an Event of Default by Tenant occurs subsequent to the date of the exercise of the Option (provided, however, in no event shall the foregoing be interpreted to limit any rights or remedies of Landlord in connection with any such Event of Default).

(e) The Options granted to Tenant under this Paragraph 4 are personal to the specific Tenant named in this Amendment or any affiliated entity to which the Lease has been assigned as permitted by Paragraph 17 of the Initial Lease (an "**Affiliated Assignee**") and may be exercised only by such named Tenant (or such Affiliated Assignee) while occupying the entire Premises who does so without the intent of thereafter assigning the Lease or subletting the Premises or any portion thereof, and may not be exercised or be assigned, voluntarily or involuntarily, by or to any person or entity other than the Tenant named in this Amendment (or such Affiliated Assignee). The Options herein granted to Tenant are not assignable separate and apart from the Lease, nor may the Options be separated from the Lease in any manner, either by reservation or otherwise.

(f) All of the terms and conditions of the Lease except where specifically modified by this Paragraph 4 or as otherwise stated to be applicable only to earlier portions of the Lease Term shall apply during the Option Terms.

(g) The monthly Base Rent payable during each Option Term shall be equal to the greater of (i) the then-current fair market value of the Premises, or (ii) the monthly Base Rent payable during the immediately preceding month of the Lease Term. The then current fair market value of the Premises shall be determined as of the beginning of each Option Term in accordance with the remainder of this subparagraph

(g). Promptly following receipt by Landlord of an Option Notice, Landlord and Tenant (and their respective real estate brokers, if any) shall negotiate and attempt to reach agreement on the Base Rent for the Option Term, which Base Rent shall be set in accordance with the criteria described above. If Landlord and Tenant are able to agree on the Base Rent for the Option Term, Landlord and Tenant shall immediately execute an amendment to the Lease confirming the extension of the Lease Term and stating the Base Rent for the Option Term. If the parties are unable to agree on the Base Rent for the Option Term within forty-five (45) days following Landlord's receipt of an Option Notice, then Tenant's exercise of the Option shall be deemed withdrawn and the Lease Term shall terminate as of the then-scheduled expiration date (and the Option, and any subsequent Options (if any), shall automatically expire and be of no further force or effect).

5. Condition of Premises.

(a) Subject to Paragraph 5(b) and Paragraph 6 below, Tenant shall continue to lease the Premises "as-is," "with all faults," and "without any representations or warranties", except as expressly set forth herein. Tenant agrees and warrants that it has investigated and inspected the condition of the Premises and the suitability of same for Tenant's purposes, and Tenant hereby waives and disclaims any objection to, cause of action based upon, or claim that its obligations hereunder should be reduced or limited because of the condition of the Premises or the suitability of same for Tenant's purposes. Tenant acknowledges that neither Landlord nor any agent or employee of Landlord has made any representations or warranty with respect to the Premises or with respect to its suitability for the conduct of Tenant's business and Tenant expressly warrants and represents that Tenant has relied solely on its own investigation and inspection of the Premises in its decision to enter into this Amendment and to continue to let the Premises in its "as-is" condition.

(b) Landlord shall, on a one-time basis only, using Building-standard materials, specifications, guidelines and procedures (except to the extent otherwise designated by Landlord), perform the following work (collectively, the "**Second Amendment Work**"): (i) install a dock locking system on all dock doors serving the Premises in substantial accordance with that certain bid dated March 22, 2013 prepared by Arbon Equipment Corporation, a copy of which, along with clarifying email correspondence from Tenant, is attached hereto as **Exhibit A** (the "**Dock Lock Work**"); and (ii) install certain seismic bracing upgrades in substantial accordance with that certain bid dated January 22, 2013 prepared by Delta Fire Systems, Inc., a copy of which is attached hereto as **Exhibit B** (the "**Seismic Bracing Work**"). The Second Amendment Work shall be performed at Landlord's expense, except that (A) Tenant shall be solely responsible for all costs and expenses incurred by Landlord in connection with the Dock Lock Work (including, without limitation, hard and soft construction costs and construction management and oversight fees) to the extent such costs and expenses exceed One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000.00) in the aggregate, (B) Tenant shall be solely responsible for all costs and expenses incurred by Landlord in connection with the Seismic Bracing Work (including, without limitation, hard and soft construction costs and construction management and oversight fees) to the extent such costs and expenses exceed Thirty-Six Thousand Two Hundred Seventy and 00/100 Dollars (\$36,270.00) in the aggregate, and (C) Tenant shall be responsible for reimbursing Landlord for all costs incurred by Landlord for the Seismic Bracing Work up to Thirty-Six Thousand Two Hundred Seventy and 00/100 Dollars (\$36,270.00) in accordance with Paragraph 5(c) below (and Tenant shall pay any such amounts for which Tenant is responsible pursuant to items (A) or (B) above promptly upon demand, including, if requested by Landlord, prior to the commencement of the Second Amendment Work). In addition, Tenant shall be solely responsible for any increase in the cost of performing any of the Second Amendment Work resulting from any act or omission of Tenant or its agents, employees, contractors, subcontractors, licensees and invitees (and Tenant shall pay any such actual and reasonable amounts within ten (10) business days following Landlord's delivery of reasonable supporting documentation for such cost increases). Tenant shall not (and Tenant shall ensure that its agents do not) interfere with the performance of the Second Amendment Work and shall cooperate with Landlord in connection with the performance of the Second Amendment Work, including, without limitation, by moving any equipment and other property which Landlord or its contractor may request be moved. Landlord shall be permitted to perform

the Second Amendment Work during Tenant's occupancy of the Premises, during normal business hours (or any hours), without any obligation to pay overtime or other premiums. Tenant hereby agrees that the performance of the Second Amendment Work shall in no way constitute a constructive eviction of Tenant or entitle Tenant to any abatement of rent payable pursuant to the Lease. Landlord shall have no responsibility for, or for any reason be liable to, Tenant for any direct or indirect injury to or interference with Tenant's business arising from the performance of the Second Amendment Work.

(c) Notwithstanding anything to the contrary in this Amendment, Tenant agrees to reimburse Landlord for all costs and expenses incurred by Landlord in connection with the Seismic Bracing Work (including, without limitation, all hard and soft construction costs, permitting fees, and construction management and oversight fees) up to a maximum of Thirty-Six Thousand Two Hundred Seventy and 00/100 Dollars (\$36,270.00) (collectively, the "**Landlord's Seismic Bracing Costs**") as follows: commencing on the Second Amendment Commencement Date, concurrently with its payments to Landlord of monthly Base Rent (but without regard to any credit or abatement of Base Rent), Tenant shall pay to Landlord an amount equal to the Monthly Amortized Landlord's Seismic Bracing Costs (as defined below). The term "**Monthly Amortized Landlord's Seismic Bracing Costs**" shall mean all of Landlord's Seismic Bracing Costs, amortized over the period from the Second Amendment Commencement Date (or such later date that any particular funds are expended) through and including the Second Amendment Expiration Date, on a monthly basis, with interest accruing on such Landlord's Seismic Bracing Costs at eight percent (8%) per annum. Tenant acknowledges and agrees that if any of Landlord's Seismic Bracing Costs are incurred after the Second Amendment Commencement Date, then the Monthly Amortized Landlord's Seismic Bracing Costs, and the remaining amortization schedule, shall be adjusted by Landlord to account for the same (such that Tenant will be responsible to reimburse Landlord for all of Landlord's Seismic Bracing Costs, regardless of the date incurred). Notwithstanding anything to the contrary herein, if the Lease shall be cancelled or terminated for any reason prior to the Second Amendment Expiration Date, one hundred percent (100%) of the unamortized Landlord's Seismic Bracing Costs shall become immediately due and payable by Tenant to Landlord; provided, however, in the event the Lease is terminated as a result of a casualty or condemnation event, Tenant's obligation to repay the unamortized Landlord's Seismic Bracing Costs shall be reduced to the extent that Landlord receives any excess insurance or condemnation proceeds over and above the amount necessary to compensate Landlord for one hundred percent (100%) of all losses, damages, and repair costs to the Building exclusive of the Seismic Bracing Work (i.e. no insurance or condemnation proceeds shall be attributable to the Seismic Bracing Work unless and until Landlord has been fully compensated for all other losses, damages and repairs to the Building relating to the applicable casualty or condemnation event). Tenant shall be solely responsible for immediately repaying any shortfall between such excess insurance or condemnation proceeds (if any) and the then unamortized Landlord's Seismic Bracing Costs. At Landlord's option, Tenant shall, within ten (10) days of written request from Landlord, execute an amendment to the Lease, on Landlord's form, or execute a letter agreement acknowledging the schedule of Tenant's obligation to repay Landlord's Seismic Bracing Costs (provided, however, that Tenant's obligation to repay Landlord's Seismic Bracing Costs shall not be effected in any way by any failure of Landlord to request, or Tenant to execute, any such amendment).

6. **Maintenance, Repair and Replacement of Roof.** In addition to the Second Amendment Work, from and after the date of this Amendment, Landlord agrees to perform certain repairs, maintenance and replacements with respect to the roof of the Building (the "**Roof Work**") in substantial accordance with the recommendations and schedule set forth in that certain Roof Evaluation Report dated May 19, 2014 prepared by CyberCon Consulting, Inc. (the "**Roof Report**"), a copy of which is attached hereto as **Exhibit C**. Without limiting the foregoing, per the recommendation set forth in the Roof Report, Landlord agrees that a new single-ply roof membrane will be installed over the Building's existing roof no later than December 31, 2019 (subject to delays resulting from events of Force Majeure or any acts or omissions of Tenant or its agents, employees, contractors, subcontractors, licensees or invitees). Landlord shall cause all of the Roof Work to be performed in a good, workmanlike and professional manner by licensed and reputable roofing contractor(s) selected by Landlord. Notwithstanding anything to the contrary contained in the Original Lease, Tenant agrees that all

costs and expenses incurred by Landlord in connection with the Roof Work shall be included as an element of Operating Expenses payable by Tenant under the Lease; provided, however, the cost of any repairs or replacements performed as part of the Roof Work which are classified as capital improvements under generally accepted accounting principles (consistently applied in Landlord's good faith, commercially reasonable discretion) shall be amortized with interest at the Amortization Rate (as defined below) over the useful life of the improvement (which useful life with respect to a roof replacement shall not be less than fifteen (15) years) and included in Operating Expenses only to the extent of the amortized amount for the respective calendar year. The term "**Amortization Rate**" shall mean an annual interest rate equal to the prime rate as then published in the Wall Street Journal (or, if the Wall Street Journal no longer exists, then as an average of the prime rate as announced by the largest three commercial banks in the United States) plus four percent (4%). Notwithstanding the foregoing or anything to the contrary in the Original Lease, Tenant shall be solely responsible for any costs or expenses of maintaining, repairing or replacing the roof of the Building that result from the misuse, negligence or willful misconduct of Tenant or its agents, employees, contractors, subcontractors, licensees or invitees, or any work, improvements or alterations performed by or on behalf of any such Tenant parties. Tenant shall not (and Tenant shall ensure that its agents do not) unreasonably interfere with the performance of the Roof Work and shall reasonably cooperate with Landlord in connection with the performance of the Roof Work, including, without limitation, by moving any equipment and other property which Landlord or its contractor may reasonably request be moved. Landlord shall be permitted to perform the Roof Work during Tenant's occupancy of the Premises, during normal business hours (or any hours), without any obligation to pay overtime or other premiums. Notwithstanding the foregoing, Landlord and its roofing contractor(s) shall reasonably cooperate with Tenant in the performance and scheduling of the Roof Work, including, without limitation, by (i) providing Tenant with as much advance written notice of any planned Roof Work as is practical under the circumstances, which advance notice shall, except in the case of an emergency (where no notice shall be required), not be less than thirty (30) days with respect to any roof replacement or other major repairs, and (ii) using commercially reasonable efforts to minimize interference with Tenant's business operations at the Premises; provided, however, in no event shall Landlord be required to incur overtime or afterhours charges, modify its construction schedule, or otherwise incur increased costs or expenses in connection therewith. Landlord agrees that no roof replacement work shall be commenced by Landlord during the months of August through September or January through February. Tenant hereby agrees that the performance of the Roof Work shall in no way constitute a constructive eviction of Tenant or entitle Tenant to any abatement of rent payable pursuant to the Lease. Landlord shall have no responsibility for, or for any reason be liable to, Tenant for any direct or indirect injury to or interference with Tenant's business arising from the performance of the Roof Work.

7. **Attorneys' Fees.** In the event either party shall commence an action to enforce any provision of this Amendment, the prevailing party in such action shall be entitled to receive from the other party, in addition to damages, equitable or other relief, and all costs and expenses incurred, including reasonable attorneys' fees and court costs and the fees and costs of expert witnesses, and fees incurred to enforce any judgment obtained. This provision with respect to attorneys' fees incurred to enforce a judgment shall be severable from all other provisions of this Amendment, shall survive any judgment, and shall not be deemed merged into the judgment. Tenant shall also reimburse Landlord for all costs incurred by Landlord in connection with enforcing its rights under the Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended, including without limitation, reasonable legal fees, experts' fees and expenses, court costs and consulting fees.

8. **Broker.** Tenant represents and warrants to Landlord that it has not dealt with any broker with respect to this Amendment other than CBRE, Inc. (Landlord's broker) ("**Broker**"). If Landlord or Tenant has dealt with any broker or person with respect to this Amendment other than the Broker, such party shall be solely responsible for the payment of any fees due said person or firm and such party shall protect, indemnify, hold harmless and defend the other party from any liability in respect thereto.

9. Estoppel. Tenant warrants, represents and certifies to Landlord that, to Tenant's actual knowledge, as of the date of this Amendment: (a) Landlord is not in default under the Lease; and (b) Tenant does not have any defenses or offsets to payment of rent and performance of its obligations under the Lease as and when same becomes due. Landlord acknowledges and agrees that the foregoing shall not limit Tenant's rights with respect to any reconciliations of Operating Expenses that have not been performed as of the date of this Amendment and Tenant retains all rights to any credit or refund for overpayments, if any, made by Tenant.

10. Authority. Tenant represents and warrants that it has full power and authority to enter into this Amendment and the person signing on behalf of Tenant has been fully authorized to do so by all necessary corporate or partnership action on the part of Tenant.

11. Original Lease in Full Force. Except for those provisions which are inconsistent with this Amendment and those terms, covenants and conditions for which performance has heretofore been completed, all other terms, covenants and conditions of the Original Lease shall remain unmodified and in full force and effect. Landlord and Tenant ratify the Original Lease, as amended hereby.

12. Facsimile/PDF; Counterparts. Each party hereto, and their respective successors and assigns shall be authorized to rely upon the signatures of all of the parties hereto on this Amendment which are delivered by facsimile or email in PDF format as constituting a duly authorized, irrevocable, actual, current delivery of this Amendment with original ink signatures of each person and entity. This Amendment may be executed in counterparts, each of which shall be deemed an original part and all of which together shall constitute a single agreement.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, this Amendment has been executed by Landlord and Tenant as of the date first set forth above.

**LANDLORD:**

CLPF – SLIC 8, L.P.,  
a Delaware limited partnership

By: CLPF – SLIC 8 GP, LLC,  
its general partner

By: Clarion Lion Properties Fund Holdings, L.P., its sole member

By: CLPF-Holdings, LLC,  
its general partner

By: Clarion Lion Properties Fund Holdings REIT, LLC, its sole  
member

By: Clarion Lion Properties Fund, LP,  
its managing member

By: Clarion Partners LPF GP, LLC,  
its general partner

By: Clarion Partners, LLC,  
its sole member

By: /s/ Stacey Magee  
Name: Stacey Magee  
Its: Authorized Signatory

**TENANT:**

SELECT COMFORT CORPORATION,  
a Minnesota corporation

By: /s/ Chris White  
Name: Chris White  
Its: Vice President

[Portions of this Exhibit have been omitted pursuant to a request for confidentiality under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. The confidential portions of this Exhibit that have been omitted are marked with "XXXX". A copy of this Exhibit with all sections intact has been filed separately with the Securities and Exchange Commission.]

**SECOND AMENDMENT TO  
RETAILER PROGRAM AGREEMENT**  
(*Select Comfort*)

THIS SECOND AMENDMENT TO RETAILER PROGRAM AGREEMENT (this "Amendment") is effective as of November 4, 2015, and amends that certain Retailer Program Agreement, made as of January 1, 2014 (as amended, modified and supplemented from time to time, the "Agreement"), by and between Synchrony Bank ("Bank") and Select Comfort Corporation ("Select Comfort") and Select Comfort Retail Corporation ("SCRC") and collectively with Select Comfort, "Retailer"). Capitalized terms used herein and not otherwise defined have the meanings given them in the Agreement.

WHEREAS, Bank and Retailer desire to increase the Credit Review Point, update the Financial Covenants, and to address certain other issues set forth below, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and subject to the terms and conditions hereinafter set forth, the parties hereby agree as follows:

**I. AMENDMENTS TO THE AGREEMENT**

**1.1 Amendment to Definition of "Credit Review Point" in Section 5(b).** The definition of "Credit Review Point" in Section 5(b) is hereby deleted and replaced with the following:

"Credit Review Point" means XXXX or such other higher amount as Bank, in its discretion, may from time to time specify to Retailer in writing."

[Portions of this Section have been omitted pursuant to a request for confidentiality under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. The confidential portions of this Section that have been omitted are marked with "XXXX". A copy of this Exhibit with all sections intact has been filed separately with the Securities and Exchange Commission.]

**1.2 Amendment to Section 6(h).** Section 6(h) is hereby deleted in its entirety and replaced with the following:

XXXX

[Portions of this Section have been omitted pursuant to a request for confidentiality under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. The confidential portions of this Section that have been omitted are marked with "XXXX". A copy of this Exhibit with all sections intact has been filed separately with the Securities and Exchange Commission.]

**1.3 Amendment to Appendix A.** The reference to "Volume Discount" in Appendix A is replaced with a reference to "Discount Refund."

**1.4 Amendment to Appendix B.** Appendix B is deleted in its entirety and replaced with the new Appendix B attached to this Amendment.

**1.5 Amendment to Schedule 6(h).** Schedule 6(h) is deleted in its entirety and replaced with the new Schedule 6(h) attached to this Amendment.

## II. GENERAL

**2.1 Authority for Amendment.** Retailer represents and warrants to Bank that the execution, delivery and performance of this Amendment has been duly authorized by all requisite corporate action on the part of Retailer and upon execution by all parties, will constitute a legal, binding obligation of Retailer.

**2.2 Effect of Amendment.** Except as specifically amended hereby, the Agreement, and all terms contained therein, remains in full force and effect. The Agreement, as amended by this Amendment, constitutes the entire understanding of the parties with respect to the subject matter hereof.


**2.3 Binding Effect; Severability.** Each reference herein to a party hereto shall be deemed to include its successors and assigns, all of whom shall be bound by this Amendment and in whose favor the provisions of this Amendment shall inure. In case any one or more of the provisions contained in this Amendment shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**2.4 Further Assurances.** The parties hereto agree to execute such other documents and instruments and to do such other and further things as may be necessary or desirable for the execution and implementation of this Amendment and the consummation of the transactions contemplated hereby and thereby.

**2.5 Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Utah, without regard to principles of conflicts of laws.

**2.6 Counterparts.** This Amendment may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one agreement.

**IN WITNESS WHEREOF,** the parties have caused this Second Amendment to be executed by their respective duly authorized officers to be effective as provided herein. The parties expressly consent and agree that this Amendment may be electronically signed. The parties agree that electronic signatures appearing on this Amendment shall be treated, for purposes of validity, enforceability and admissibility, the same as hand-written signatures.

<b>Select Comfort Corporation ("Select Comfort")</b> <b>Select Comfort Retail Corporation ("SCRC")</b>	<b>Synchrony ("Bank")</b>
Signature: /s/ Robert J. Poirier Printed Name: Robert J. Poirier Title: VP, Treasurer and Chief Accounting Officer Signature Date: Nov 3, 2015	Signature: /s/ Anthony S. Foster Printed Name: Anthony S. Foster Title: SVP Signature Date: Nov 4, 2015
 INTERNAL APPROVALS AS TO FORM	
Business: /s/ Robert J. Poirier Legal: /s/ Heather Somers Sourcing: /s/ Heather Somers N/R X Finance: /s/ Robert J. Poirier N/R IT: /s/ Heather Somers N/R X	



**APPENDIX B  
FINANCIAL COVENANTS**

**I. FINANCIAL COVENANTS**

**Rent Adjusted Net Leverage Ratio.** Retailer shall, at all times, maintain a Rent Adjusted Net Leverage Ratio equal to or less than 4.75.

**Debt Service Coverage Ratio.** Retailer shall maintain, on a combined basis and as of the end of each fiscal quarter of Retailer, a Debt Service Coverage Ratio of not less than 3.0 to 1.0.

**II. REPORTING**

In order to establish compliance with the Financial Covenant set forth above, Retailer will use commercially reasonable efforts to deliver to Bank (i) within forty-five (45) days after the end of each fiscal quarter of Retailer, a certificate, signed by the Chief Financial Officer of Retailer or Retailer's chief accounting officer or such other officer of the Retailer as Retailer shall designate and in a form satisfactory to Bank, establishing Retailer's compliance or non-compliance with the Financial Covenant for such fiscal quarter, and (ii) within ninety (90) days after the end of Retailer's fourth fiscal quarter during each fiscal year, a certificate, signed by the Chief Financial Officer of Retailer or Retailer's chief accounting officer or such other officer of the Retailer as Retailer shall designate and in a form satisfactory to Bank, establishing Retailer's compliance or noncompliance with the Financial Covenant for such fiscal quarter. Unless otherwise specifically set forth to the contrary, all financial calculations contemplated herein shall be performed in accordance with GAAP.

**III. DEFINITIONS**

"Debt Service Coverage Ratio" means, with respect to any entity and for any period, the ratio of (a) such entity's EBITDA for the four (4) fiscal quarter period immediately preceding such date, to (b) the sum of (i) interest expense (whether or not paid), excluding intercompany transactions, during such period on all of such entity's Funded Debt, plus (ii) scheduled payments of principal (whether or not paid) during such period on all of such entity's Funded Debt (excluding any nonscheduled payments on such entity's revolving loan facility, if any).

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

"EBITDA" means, with respect to any entity and as of any date of determination, the Net Income (or net loss) of such entity, excluding any taxes associated therewith, plus the sum of such entity's (a) interest expense, excluding intercompany transactions, (b) income tax expense, (c) depreciation expense and (d) amortization expense, in each case determined with GAAP.

"EBITDAR" means, with respect to any entity and as of any date of determination, EBITDA plus such entity's Consolidated Rent Expense.

"Funded Debt" means, with respect to any entity and for any period, the sum of (a) indebtedness under any working capital or similar credit facility with respect to which such entity is the borrower, plus (b) all other debt of such entity for borrowed money (whether by loan or the issuance and sale of debt securities or for the deferred purchase price of property), plus (c) obligations of such entity under capitalized leases (classified as such in accordance with GAAP), plus (d) such entity's obligations in respect of banker's acceptances or standby letters of credit, or similar instruments issued or accepted by banks and other financial institutions for the account of such entity.

"GAAP" means generally accepted accounting principles applicable in the United States, consistently applied; provided that, if any change to GAAP after the date hereof shall materially affect computations

determining compliance with the financial ratios and covenants set forth herein or otherwise in the Agreement, if either Bank or Retailer shall so request, the Bank and Retailer shall negotiate in good faith to amend such ratios or covenants to preserve the original intent thereof in light of such change in GAAP; provided further that, until so amended, (a) such ratio or restriction shall continue to be computed in accordance with GAAP prior to such change therein and (b) Retailer shall provide to the Bank financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratios or restrictions made before and after giving effect to such change.

"Rent Adjusted Net Leverage Ratio" means, as determined for the most recently completed four fiscal quarters of the Borrower, on a consolidated basis, the ratio of (a) the sum of (i) total funded indebtedness plus (ii) 8x rent, minus (iii) the aggregate amount of domestic unrestricted cash and cash equivalents of the Borrower that are in excess of \$40,000,000; to (b) EBITDAR

SCHEDULE 6(h)  
to  
Retailer Program Agreement  
(Select Comfort)  
  
Discount Refund

1. XXXX  
[Portions of this Section have been omitted pursuant to a request for confidentiality under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. The confidential portions of this Section that have been omitted are marked with "XXXX". A copy of this Exhibit with all sections intact has been filed separately with the Securities and Exchange Commission.]
2. XXXX  
[Portions of this Section have been omitted pursuant to a request for confidentiality under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. The confidential portions of this Section that have been omitted are marked with "XXXX". A copy of this Exhibit with all sections intact has been filed separately with the Securities and Exchange Commission.]
3. XXXX  
[Portions of this Section have been omitted pursuant to a request for confidentiality under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. The confidential portions of this Section that have been omitted are marked with "XXXX". A copy of this Exhibit with all sections intact has been filed separately with the Securities and Exchange Commission.]

**Certification by Chief Executive Officer**

I, Shelly R. Ibach, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Select Comfort Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)), for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2015

/s/ Shelly R. Ibach

Shelly R. Ibach

Chief Executive Officer

**Certification by Chief Financial Officer**

I, David R. Callen, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Select Comfort Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)), for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2015

/s/ David R. Callen

David R. Callen

Senior Vice President and Chief Financial Officer

CERTIFICATION PURSUANT TO  
18 U.S.C. §1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Select Comfort Corporation (the “Company”) on Form 10-Q for the quarter ended October 3, 2015, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, Shelly R. Ibach, Chief Executive Officer of the Company, solely for the purposes of 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, does hereby certify, to her knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 12, 2015

/s/ Shelly R. Ibach

Shelly R. Ibach

Chief Executive Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

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CERTIFICATION PURSUANT TO  
18 U.S.C. §1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Select Comfort Corporation (the “Company”) on Form 10-Q for the quarter ended October 3, 2015, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, David R. Callen, Senior Vice President and Chief Financial Officer of the Company, solely for the purposes of 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, does hereby certify, to his knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 12, 2015

/s/ David R. Callen

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David R. Callen

Senior Vice President and Chief Financial Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

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