**As filed with the Securities and Exchange Commission on April 14, 2021.**

**Registration No. 333-254930**

# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

# AMENDMENT No. 1 to
# FORM S-1

**REGISTRATION STATEMENT**
***UNDER***
***THE SECURITIES ACT OF 1933***

# Latham Group, Inc.

(Exact name of registrant as specified in its charter)

| **Delaware** | **3089** | **83-2797583** |
|---|---|---|
| (State or Other Jurisdiction of Incorporation or Organization) | (Primary Standard Industrial Classification Code Number) | (I.R.S. Employer Identification Number) |

**787 Watervliet Shaker Road**
**Latham, New York 12110**
**800-833-3800**
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

**Scott M. Rajeski**
**Chief Executive Officer**
**787 Watervliet Shaker Road**
**Latham, New York 12110**
**800-833-3800**
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

***Copies to:***

| **John C. Kennedy, Esq.**<br>**Paul, Weiss, Rifkind, Wharton & Garrison LLP**<br>**1285 Avenue of the Americas**<br>**New York, New York 10019-6064**<br>**(212) 373-3000** | **Ian D. Schuman, Esq.**<br>**Erika Weinberg, Esq.**<br>**Latham & Watkins LLP**<br>**885 Third Avenue**<br>**New York, New York 10022-4834**<br>**(212) 906-1200** |
|---|---|

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box. ☐

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

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

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

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

| | | | |
|---|---|---|---|
| Large accelerated filer | ☐ | Accelerated filer | ☐ |
| Non-accelerated filer | ☒ | Smaller reporting company | ☐ |
| | | Emerging growth company | ☒ |

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

**CALCULATION OF REGISTRATION FEE**

| **Title of each Class of Securities to be Registered** | **Amount to be Registered[(1)]** | **Proposed Maximum Offering Price Per Share[(1)(2)]** | **Proposed Maximum Aggregate Offering Price[(1)(2)]** | **Amount of Registration Fee[(3)]** |
|---|---|---|---|---|
| Common Stock, par value $0.0001 per share | 23,000,000 | $21.00 | $483,000,000 | $52,695 |

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(a) under the Securities Act of 1933, as amended. Includes 3,000,000 shares that the underwriters have the option to purchase. See "Underwriting."

(2) Calculated pursuant to Rule 457(a) of the Securities Act of 1933, as amended, based on an estimate of the proposed maximum aggregate offering price.

(3) The registrant previously paid $10,910.00 of the registration fee in connection with a prior filing of this Registration Statement.

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

Subject to Completion, dated April 14, 2021

PROSPECTUS

# 20,000,000 Shares

latham

# Latham Group, Inc.

## Common Stock

This is the initial public offering of shares of common stock of Latham Group, Inc., a Delaware corporation. We are offering 20,000,000 shares of common stock.

We expect the public offering price to be between $19.00 and $21.00 per share. Prior to this offering, there has been no public market for our common stock. We intend to apply to list our common stock on The Nasdaq Global Select Market (“NASDAQ”) under the symbol **“**SWIM.**”**

We are also an **“**emerging growth company**”** as defined under the U.S. federal securities laws, and as such may elect to comply with reduced public company reporting requirements. See "Prospectus Summary—Implications of Being an Emerging Growth Company."

Following the completion of this offering, an investment fund (the **“**Pamplona Fund**”**) managed by affiliates of Pamplona Capital Management, LLC (together with its respective subsidiaries and affiliates, **“**Pamplona**”**) and certain investment funds (the **“**Wynnchurch Funds**”**) managed by affiliates of Wynnchurch Capital, L.P. (together with its respective subsidiaries and affiliates, **“**Wynnchurch**”**) will continue to beneficially own, in the aggregate, a majority of the voting power of our outstanding common stock. As a result, we expect to be a controlled company under the corporate governance rules for NASDAQ-listed companies and will be exempt from certain corporate governance requirements of such rules. See **“**Risk Factors—Risks Relating to this Offering and Ownership of our Common Stock,**”** **“**Management—Controlled Company**”** and **“**Principal Stockholders.**”**

*Investing in our common stock involves risks that are described in the “Risk Factors” section beginning on page 22 of this prospectus.*

| | Per Share | Total |
|---|---|---|
| Public offering price | $ | $ |
| Underwriting discounts and commissions(1) | $ | $ |
| Proceeds to us, before expenses | $ | $ |

(1) See **“**Underwriting**”** for additional information regarding the underwriters’ compensation and reimbursement of expenses.

We have granted the underwriters an option to purchase up to an additional 3,000,000 shares from us at the public offering price, less underwriting discounts and commissions, for 30 days after the date of this prospectus.

At our request, the underwriters have reserved up to 5% of the common stock for sale at the public offering price through a directed share program to certain individuals associated with us. See **“**Underwriting—Directed Share Program.**”**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

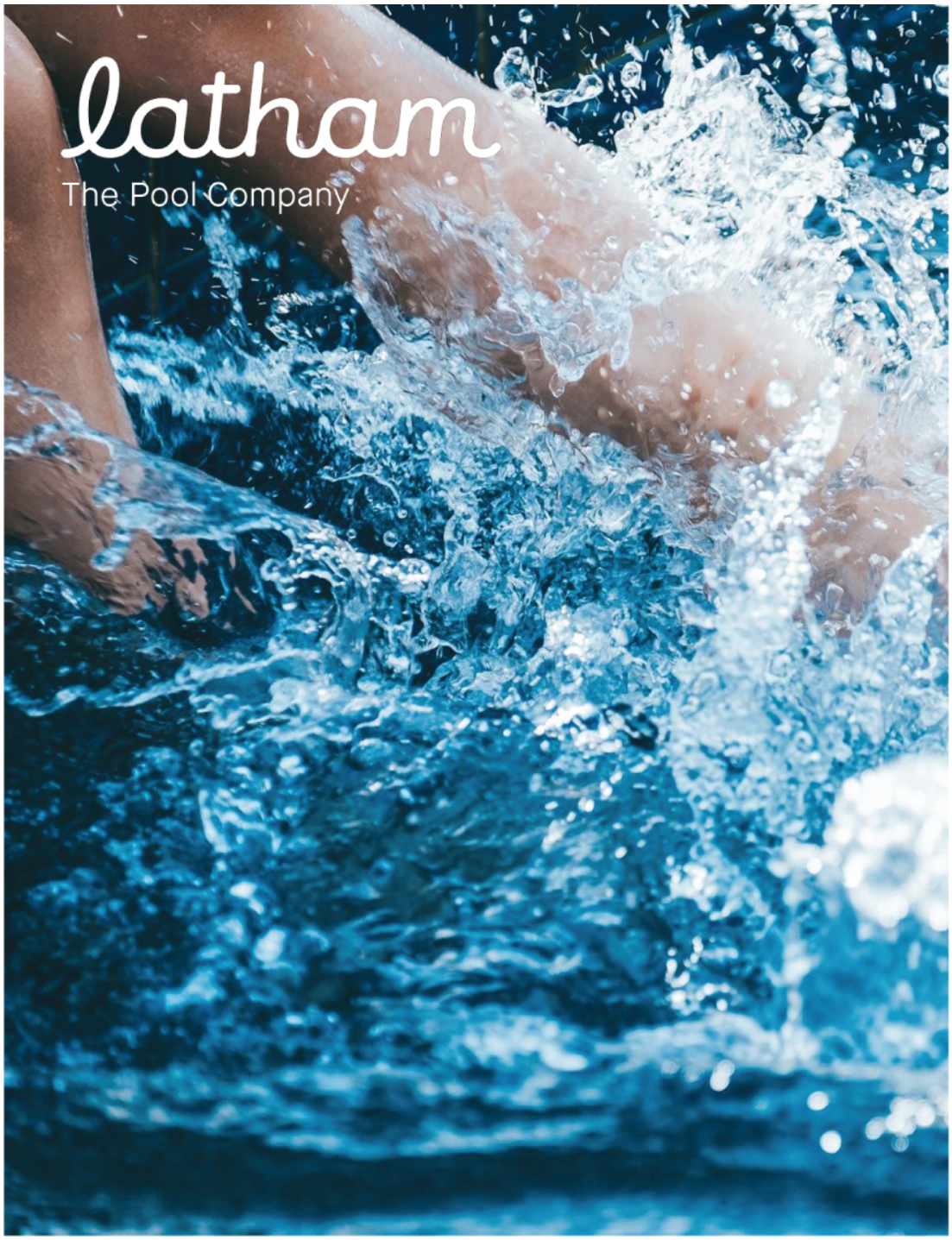
The underwriters expect to deliver the shares of common stock against payment on or about , 2021.

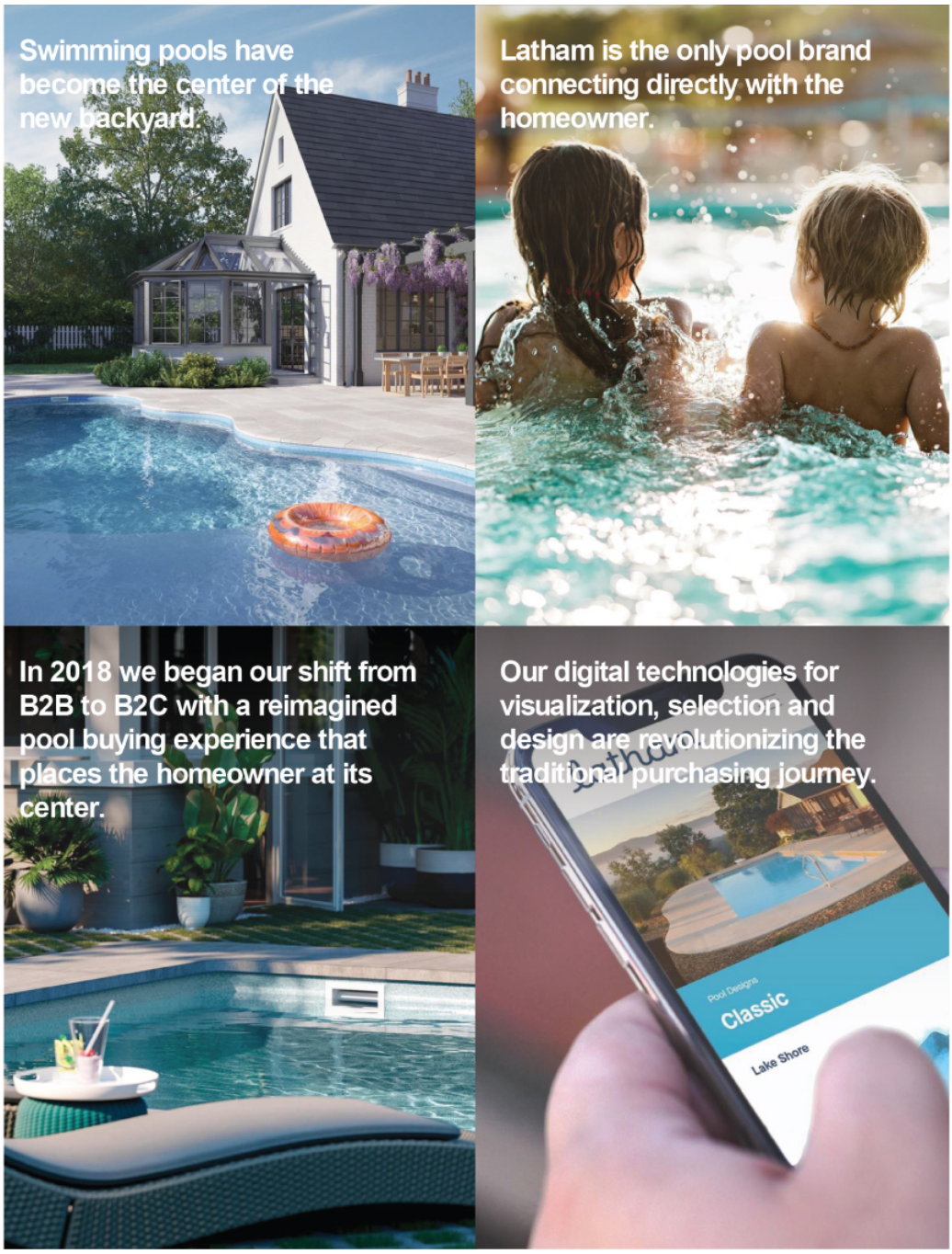
**Barclays** **BofA Securities** **Morgan Stanley** **Goldman Sachs & Co. LLC**

**Nomura** **William Blair**

**Baird** **KeyBanc Capital Markets** **Truist Securities**

Prospectus dated , 2021


latham
The Pool Company


Swimming pools have become the center of the new backyard.
Latham is the only pool brand connecting directly with the homeowner.
In 2018 we began our shift from B2B to B2C with a reimagined pool buying experience that places the homeowner at its center.
Our digital technologies for visualization, selection and design are revolutionizing the traditional purchasing journey.
Pool Designs
Classic
Lake Shore


1. **Premium Quality and Exceptional Design**

   With impressive strength that outperforms concrete and our proprietary stunning finishes, our fiberglass pools are the most durable and attractive swimming pools in the market.

2. **Less Chemicals, Saltwater Friendly**

   The smooth, non-porous finish of fiberglass eliminates the need for harsh chemicals. It also allows you to opt for an eye and skin-friendly, saltwater pool, without concerns of saltwater corrosion.

3. **Lower Cost: Now and for a Lifetime**

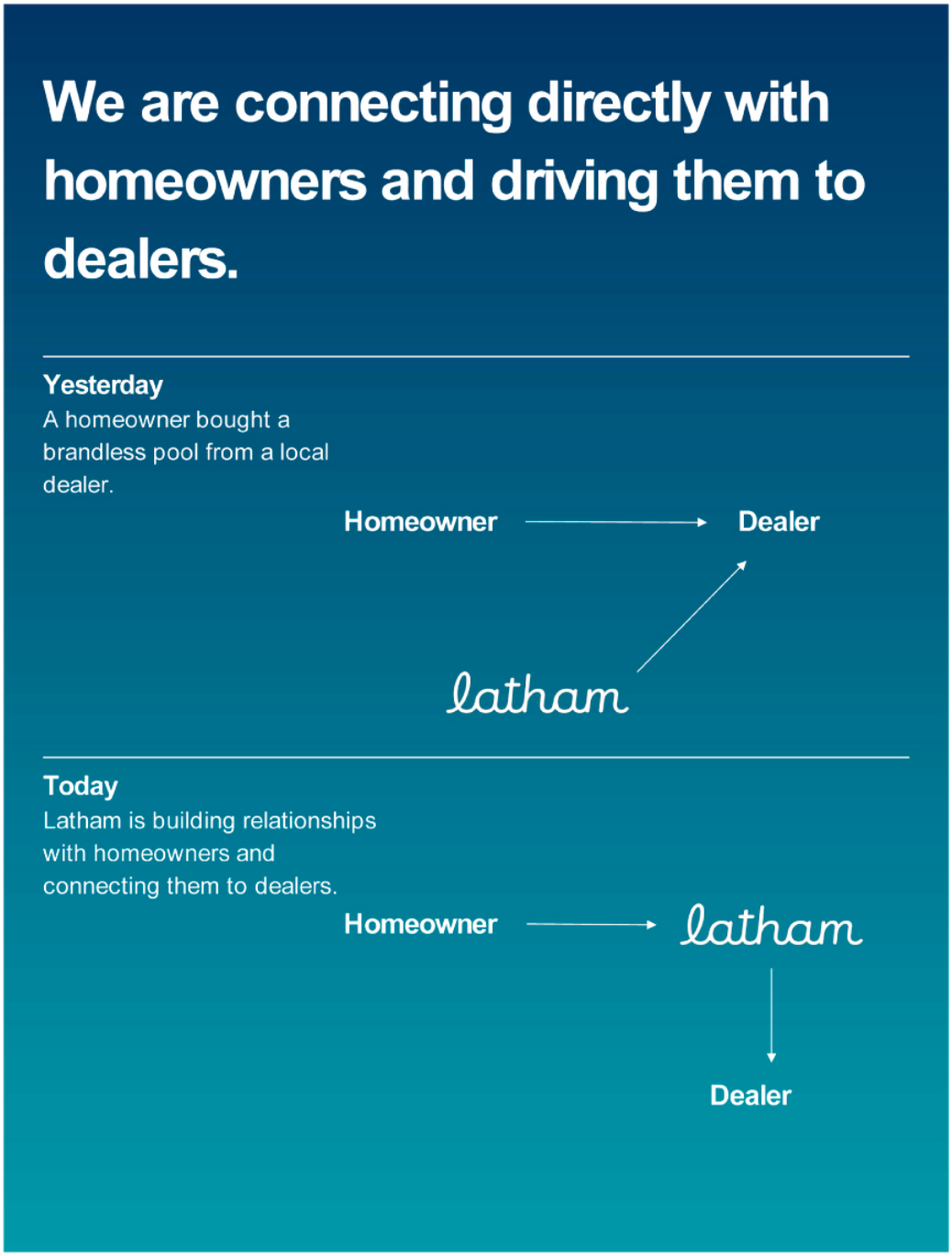
   Fiberglass pools cost less and have lower repair expenses, compared to concrete. No more worrying about cracks, tears, mold and refinishing.

4. **Buy Today, Swim Tomorrow**

   Fiberglass pools can be installed in as little as three days, compared to three months for concrete pools. Rapid installation means less time managing a construction site and more time swimming.

5. **Built to Last**

   Your Latham pool is guaranteed for a lifetime. Say goodbye to re-finishing and resurfacing concrete pools.


We are connecting directly with homeowners and driving them to dealers.
Yesterday
A homeowner bought a brandless pool from a local dealer.
Homeowner
Dealer
latham
Today
Latham is building relationships with homeowners and connecting them to dealers.
Homeowner
latham
Dealer


We don't just sell pools.
We sell reunions with friends.
We sell future anniversaries.
We sell inspired composition.
We sell dancing until the sun comes up.
We sell remembering when
remembering who
and remembering why.
We sell backyard experiences.

**For investors outside the United States: neither we nor the underwriters have done anything that would permit this offering or possession or distribution of this prospectus or any free writing prospectus we may provide to you in connection with this offering in any jurisdiction where action for that purpose is required, other than in the United States. You are required to inform yourselves about and to observe any restrictions relating to this offering and the distribution of this prospectus and any such free writing prospectus outside of the United States.**

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**We have not, and the underwriters have not, authorized any other person to provide you with any information or to make any representations other than those contained in this prospectus or in any free writing prospectuses we have prepared. We and the underwriters take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may provide you. We are offering to sell, and seeking offers to buy, shares of common stock only in jurisdictions where offers and sales are permitted. You should assume that the information appearing in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of the common stock. Our business, financial condition, results of operations and prospects may have changed since that date.**

**Through and including , 2021 (the 25th day after the date of this prospectus), all dealers effecting transactions in the common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.**

## TRADEMARKS, TRADE NAMES AND SERVICE MARKS

This prospectus contains references to our trademarks, trade names and service marks. “Latham,” “CoverStar,” “Narellan” and “GLI” are registered or unregistered trademarks of Latham in the United States and/or other countries. Solely for convenience, trademarks, trade names and service marks referred to in this prospectus may appear without the ® or TM symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the rights of the applicable licensor to these trademarks, trade names and service marks. Other trademarks, trade names and service marks appearing in this prospectus are the property of their respective holders. We do not intend our use or display of other companies’ trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

## INDUSTRY AND MARKET DATA

We include statements and information in this prospectus concerning our industry ranking and the markets in which we operate, including our general expectations and market opportunity. We are responsible for these statements included in this prospectus. We have reviewed information from independent industry organizations and other third-party sources (including third-party market studies that we commissioned in the ordinary course of our business, industry publications, surveys and forecasts). Our statements in this prospectus concerning our industry ranking and the markets in which we operate represent the results of management’s analysis and are based on the information from such studies.

The market studies appearing in this prospectus include the U.S. Residential Swimming Pool Market Report (YE 2019) by P.K. Data, Inc. (“P.K. Data”), as well as research studies conducted in the ordinary course of our business on our behalf by a third-party research and consulting firm in January 2015 (the “2015 Study”), April 2019 (“April 2019 Study”), May 2019 (the “May 2019 Fiberglass Study” and the “May 2019 Study”) and September 2020 (“2020 Study”).

Projections, assumptions and estimates of the future performance of the industry in which we operate and our future performance are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements” in this prospectus. These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

## BASIS OF PRESENTATION

In this prospectus, unless otherwise indicated or the context otherwise requires, references to the “Issuer” refer to Latham Group, Inc. and references to the “Company,” “Latham,” “we,” “us” and “our” refer to Latham Group, Inc. and its consolidated subsidiaries. References to our “Principal Stockholders” and “Sponsors” refer to the Pamplona Fund, managed by Pamplona and the Wynnchurch Funds, managed by Wynnchurch, each as described under “Prospectus Summary—Our Sponsors.” References to our “Parent” refer to Latham Investment Holdings, L.P.

On April 13, 2021, we effected a 109,673.709-for-one stock split of our common stock. All share and per share data included in this prospectus have been adjusted retroactively to reflect the stock split.

Prior to the closing of this offering, the Parent will be merged with and into the Issuer, with the Issuer being the surviving corporation, and, as part of the merger, shares of our common stock will be issued to our Principal Stockholders, our senior management and board members, and our current and former employees, which we refer to as the “Reorganization.” Except as otherwise indicated, all information in this prospectus gives effect to the proposed Reorganization.

On December 18, 2018, an investment fund managed by affiliates of Pamplona, the Wynnchurch Funds and management acquired all of our outstanding equity interests through the newly formed entities, the Parent, LPP Holdings Inc. and Latham Purchaser, Inc. A portion of the consideration was funded with proceeds from the issuance of long-term debt. We refer to such acquisition and the related financing transactions as the “Acquisition.” We have been controlled by the fund managed by Pamplona since the Acquisition. As a result of the Acquisition and related change in control, we applied purchase accounting as of December 18, 2018. As such, certain financial information provided in this prospectus relating to the

period preceding the Acquisition on December 18, 2018 is presented as “Predecessor” and relating to the period succeeding the Acquisition on December 18, 2018 is presented as “Successor.” Due to the change in the basis of accounting resulting from the Acquisition, the consolidated financial information for the Predecessor periods and the consolidated financial information for the Successor periods, included elsewhere in this prospectus, are not necessarily comparable.

All consolidated financial statements presented in this prospectus have been prepared in U.S. dollars and in accordance with generally accepted accounting principles in the United States of America (“GAAP”).

The Company reports financial and operating information in one segment.

## A LETTER FROM OUR CHIEF EXECUTIVE OFFICER, SCOTT M. RAJESKI

Over 60 years ago, Merrill and Alfred Laven founded a business with the dream of making high-quality in-ground swimming pools an attainable luxury for homeowners. My team and I are incredibly proud to be the current stewards of that business, now known as Latham, The Pool Company. Building upon their legacy as the pioneers of custom vinyl pools in the 1960's, we have continued Latham's culture of innovation, and now offer the most advanced fiberglass pool on the market, as well as digital buying tools for both homeowners and dealers.

Our company's mission is simple: we are dedicated to providing families with affordable access to a backyard experience that enriches time spent with family, friends and loved ones. In this uncertain world, we believe in the simple joy that a pool can provide. This belief is manifested in our passionate pursuit of designing both the world's best swimming pool and the related buying experience.

A number of years ago, we set out to reimagine the pool buying journey and to begin a transformation that leverages digital technology to place the consumer at the center of everything we do. We recognized that by investing in a direct relationship with the consumer, we could tailor the best pool buying experience, customized to fit their personal needs. Today it is easier than ever to transform your backyard with a Latham pool.

We have built a new education ecosystem supported by content-rich, homeowner-focused digital properties and the industry's first augmented reality mobile app. We knew that empowering consumers with knowledge would accelerate their preference for fiberglass, and we have seen the results in our financials.

This strategy, enhanced by the hard work and commitment of the entire Latham family, has driven over a decade of consecutive annual increases in net sales and margin expansion. All the transformation that we continue to bring to the industry gives us a high level of conviction that the next decade will be even more promising than the last.

To continue our success, we have built a world class leadership team that draws ideas from a wide range of industries. We are also in the midst of a multi-year capital plan, investing in our facilities, technology and systems. Our people and capital investments will enable Latham's design, manufacturing, customer service, and technology teams to support our accretive growth strategy and to continue disrupting the industry in our favor.

In addition to being the United States' only coast-to-coast operator, Latham has also established meaningful growth avenues abroad. Today we generate more than 20% of our sales internationally and are constantly evaluating further opportunities to execute our proven strategy in new geographies.

Since taking the helm three short years ago, I am honored to have led a culture focused on building the leading brand in outdoor living. Homeowners around the world increasingly turn to Latham to make their family dreams a reality. We will not waiver in our lifetime commitment to them.

As proud as we are of what we've accomplished so far, we feel we are only scratching the surface of making high-quality pools an attainable luxury around the world.

From our family to your backyard,

Scott M. Rajeski

## Prospectus Summary

The following summary contains selected information about us and about this offering. It does not contain all of the information that is important to you and your investment decision. Before you make an investment decision, you should review this prospectus in its entirety, including matters set forth under "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the related notes included elsewhere in this prospectus. Some of the statements in the following summary constitute forward-looking statements. See "Cautionary Note Regarding Forward-Looking Statements."

### Our Company

We are the largest designer, manufacturer and marketer of in-ground residential swimming pools in North America, Australia and New Zealand. We hold the #1 market position in North America in every product category in which we compete. We believe that we are the most sought-after brand in the pool industry and the only pool company that has established a direct relationship with the homeowner. We are Latham, The Pool Company™.

With an operating history that spans over 60 years, we offer the industry's broadest portfolio of pools and related products, including in-ground swimming pools, pool liners and pool covers. In 2020, we sold over 8,700 fiberglass pools in the United States, which we believe represents approximately one out of every ten in-ground swimming pools sold in the United States.

We have a heritage of innovation. In an industry that has traditionally marketed on a business-to-business basis (pool manufacturer to dealer), we pioneered the first "direct-to-homeowner" digital and social marketing strategy that has transformed the homeowner's purchase journey. Through this marketing strategy, we are able to create demand for our pools and generate and provide high quality, purchase-ready consumer leads to our dealer partners. In 2020, the first year in which all elements of our digital and social marketing strategy were available to homeowners, we have delivered over 45,000 consumer leads to our dealer network, representing growth of 210% over the prior year.

Partnership with our dealers is integral to our collective success, and we have enjoyed long-tenured relationships averaging over 14 years. In 2020, we sold to over 6,000 dealers; we also entered into a new and exclusive long-term strategic partnership with the nation's largest franchised dealer network. We support our dealer network with business development tools, co-branded marketing programs and in-house training, as well as a coast-to-coast operations platform consisting of over 2,000 employees across 32 facilities. The broad geographic reach of our manufacturing and distribution network allows us to deliver a fiberglass pool in a cost-effective manner to approximately 95% of the U.S. population in two days. No other competitor in the residential in-ground swimming pool industry has more than three manufacturing facilities.

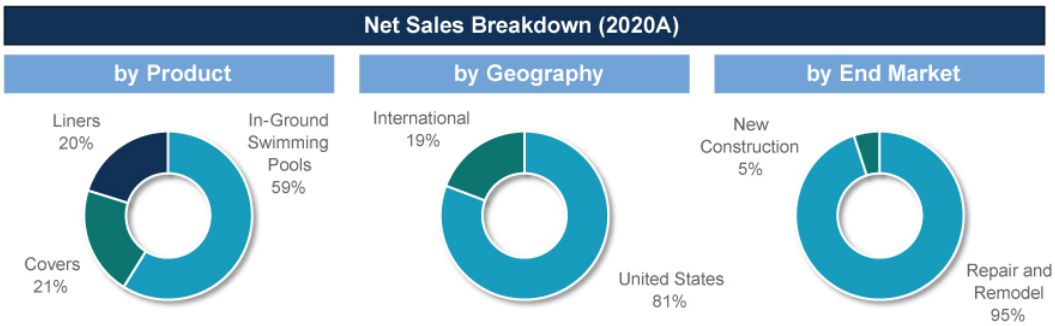
The full resources of our company are dedicated to designing and manufacturing high-quality pool products with the homeowner in mind, and positioning ourselves as a value-added partner to our dealers. As a result of this approach, 2020 marked our 11$^{th}$ consecutive year of net sales growth and Adjusted EBITDA margin expansion. Net income does not adhere to this trend.

**Value Proposition**

As summarized below, we believe that our product offering, in combination with our service capabilities, presents a compelling value proposition to both homeowners and our dealer partners.

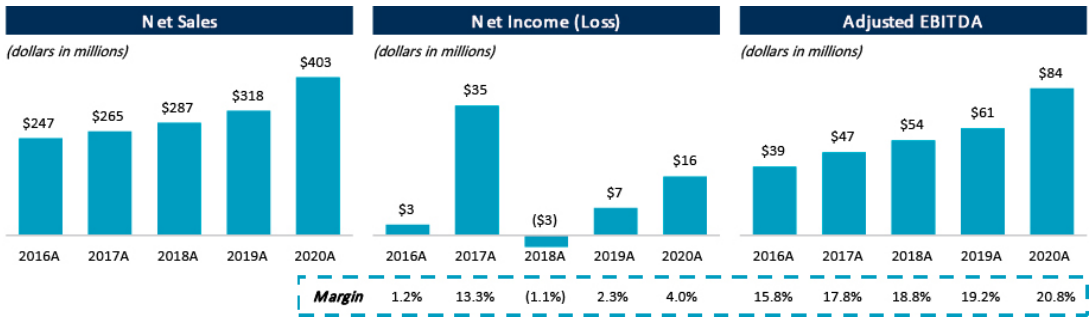
**Financial Highlights**

In 2020, we generated 59% of our net sales from residential in-ground swimming pools, the majority of which are derived from our fast-growing fiberglass pool offering. The balance of our net sales is split between our pool covers and liners product offerings. The demand for our pool covers and liners is predominantly driven by the installed base of over five million in-ground swimming pools in the United States. Our broad manufacturing and distribution capabilities allow us to serve a nationwide homeowner base with a growing presence internationally. Importantly, our exposure to the repair and remodel ("R&R") category of consumer spending, 95% of our net sales in 2020, positions us well to benefit from favorable long-term demand trends driven by continued homeowner investment in outdoor living spaces, including backyard pools. The chart below illustrates our net sales in 2020 by product, geography and end market.




(1) Repair & Remodel includes purchases of pools or other products occurring more than a year after new home construction, and New Construction includes such purchases in connection with, or less than a year after, new home construction.

In 2020, we generated $403.4 million in net sales, $16.0 million in net income and $83.8 million of Adjusted EBITDA. For a discussion of our use of Adjusted EBITDA and reconciliation to net income, please refer to "—Summary Consolidated Financial and Other Data." Net sales, net income and Adjusted EBITDA grew 26.9%, 114.3% and 37.3%, respectively in 2020 as compared to 2019. From 2016 to 2020, net sales, net income and Adjusted EBITDA have grown at a compound annual growth rate ("CAGR") of 13%, 53% and 21%, respectively. The charts below show our net sales, net income and net income margin, Adjusted EBITDA and Adjusted EBITDA margin from 2016 to 2020.




**Industry Overview**

We are the leader in the large, growing and highly-fragmented residential in-ground swimming pool industry. According to P.K. Data, total U.S. sales for residential in-ground swimming pools were $3.3 billion in 2019 (on 78,000 pool installations), and have grown at a CAGR of 8% since 2014. Despite this consistent growth, the industry still lags the twenty-year historical average of approximately 106,000 new pool installations per year.

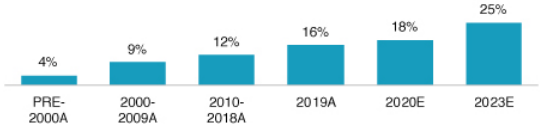
Over the last decade, macroeconomic trends have driven an increase in reinvestment in the home, and we expect that consumers will continue to focus R&R spending on exterior living spaces as they look for

more ways to spend time outdoors. A recent consumer survey organized by a third-party research and consulting firm indicates that pool ownership is the highest ranked consumer satisfaction purchase among discretionary purchases for the home. As such, we believe demand for pools will continue to increase. Furthermore, that same consumer survey found that 3.2% of U.S. homeowners expect to purchase a pool in the next year and have already taken steps in the purchase journey. This would translate into single-year demand of nearly three million new pools. While we believe the industry lacks the capacity to address this demand in a given year, we believe it positions fiberglass pools for above market growth. In discussions with our dealers, they have indicated that they are at full capacity and have already booked the majority of their calendars in 2021. This dynamic provides us and our dealer partners with strong visibility into 2021.

Fiberglass pools are underpenetrated in the United States residential in-ground swimming pool market, relative to other geographic markets. Based on the information from the 2020 Study and May 2019 Fiberglass Study, fiberglass pools accounted for 18% of the United States residential in-ground swimming pool market in 2020, and are expected to grow to approximately 25% by 2023. As a result of material conversion away from legacy pool construction materials, growth in sales of fiberglass pools is meaningfully outpacing that of the broader in-ground swimming pool market. Despite this expected growth in the United States, fiberglass pools still have significant runway for growth relative to comparable international markets. The charts below illustrate the development of the fiberglass pool product category in the United States and fiberglass penetration of comparable foreign pool markets.

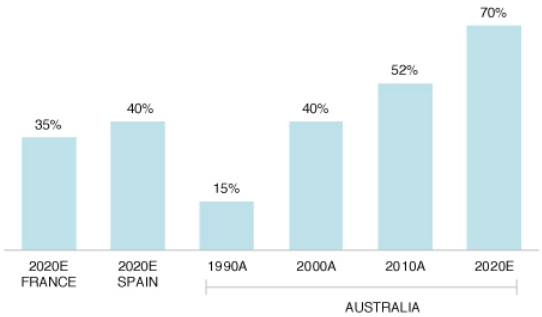
**FIBERGLASS SHARE OF U.S. POOL INSTALLATIONS**

*(% OF RESIDENTIAL IN-GROUND SWIMMING POOLS)*




**INTERNATIONAL FIBERGLASS MARKET PENETRATION**

*(% OF RESIDENTIAL IN-GROUND SWIMMING POOLS)*




*By volume. Source: the charts above represent management's analysis and are based on the information from the May 2019 Study, 2020 Study and 2015 Study by a third-party research consulting firm, as well as P.K. Data, and their knowledge as market participants.*

Based on the information from the 2020 Study, fiberglass pools will continue to trend toward penetration rates in more mature markets, such as Australia, where the product category represents approximately 70% of the overall pool industry. In 2019, we acquired Narellan Group Pty Limited ("Narellan"), the largest fiberglass manufacturer in Australia and one of the key drivers of fiberglass adoption in the Australian market over the last two decades. Leveraging insights gained from Narellan, we are investing to build the tools required to drive higher fiberglass penetration in the North American market.

This conversion to fiberglass pools from legacy pool construction materials is being driven by greater homeowner awareness of the benefits of fiberglass products, including:

- **Lower up-front and lifecycle costs.** Fiberglass pools cost less and have lower repair expenses compared to concrete pools.
- **Faster and easier installation.** Based on our knowledge of our dealers, we believe fiberglass pools can be installed in as little as two-to-three days, compared to three months for concrete pools.
- **Premium quality and aesthetics.** We believe our fiberglass pool offering is the most attractive swimming pool offering on the market. Our special finishing process allows for traction where you need it (such as steps) and a smooth and lustrous finish everywhere else.
- **Less chemicals.** The smooth non-porous finish of fiberglass dramatically reduces the need for harsh chemicals to treat the pool. It also allows homeowners to opt for an eye- and skin-friendly saltwater pool, without concern for corrosion.

- **Lifetime warranty.** Our fiberglass pools are guaranteed to the original purchaser for a lifetime and do not need to be resurfaced or repainted every eight to ten years like legacy materials.

Pool manufacturers have traditionally marketed to dealers rather than to homeowners. As a result, both manufacturers and homeowners have depended on dealers to educate homeowners and move them through their pool buying journey. The dealership market is highly-fragmented, consisting primarily of small, family-owned businesses. In addition, concrete pool installers face a number of challenges, particularly as a result, we believe, of many skilled tradesmen leaving the industry following the Great Recession's impact on construction. Each of these factors, paired with the long-term positive demand trends in the industry, contribute to the supply constraint in the pool market.

**Latham's Transformational "Direct-to-Homeowner" Business Model**

Latham's unique "direct-to-homeowner" marketing strategy is driving a greater understanding of the benefits of owning a pool, specifically a fiberglass pool, and generating significant consumer demand. This allows us to provide higher quality, purchase-ready leads to our dealer partners. In the traditional model, the homeowner's initial point of contact would typically be with a dealer. If the final purchase were a manufactured pool, the dealer would order that pool from the manufacturer and other pool equipment, such as pumps, controls and chemicals from other manufacturers. We are disrupting the industry with our "direct-to-homeowner" marketing approach, which positions us as the primary point of contact with the homeowner. We are helping consumers understand the variety of pool types available and illustrating the benefits of fiberglass, which is the best option for most homeowners. The key components of our homeowner-focused business model include:

- **Unique Latham Branding:** In 2019, we unified our corporate branding and consolidated legacy brands under one banner, Latham. We relaunched our website under the Latham brand in February 2020 and streamlined our go-to-market approach by making the consumer the center of our strategy. This enabled us to increase our brand awareness with homeowners and create the only consumer focused brand in a fragmented category.
- **Digital Platform:** We believe our portfolio of digital assets and capabilities allows us to generate a greater volume of cost-effective and highly qualified leads for our dealer partners while also providing a consumer-facing touchpoint for the brand. The key elements of our digital strategy were made possible by, among other things, our unparalleled national manufacturing and distribution footprint and include:
  - ***Proprietary Branded Website:*** We updated our global flagship website in February 2020 to place an emphasis on inspiration and homeowner education. The site contains proprietary content and imagery that guides homeowners along their pool buying journey. We have invested in search engine optimization which has driven significant traffic to the site. In 2020, our website recorded 3.5 million sessions, compared to just 105,000 sessions in 2018. As a result, we have generated significant consumer leads for our dealer partners.
  - ***Latham Augmented Reality Visualizer App:*** In 2019, we developed the pool industry's first augmented reality visualization mobile app. This app allows homeowners to visualize a Latham pool in their own backyard. The interactive nature allows homeowners to compare a variety of pool types and shapes and, when ready, directly contact a dealer without leaving the app. This has generated strong interest in Latham pool installations driven by approximately 50,000 downloads in 2020.
  - ***Sophisticated Social Marketing:*** As our business model has evolved, we have directed a significant portion of our advertising spend to digital channels, including social media and search advertising. Our targeted digital marketing and enhanced lead generation engine drive sales for dealers. Additionally, by meeting homeowners where they are digitally, we have been able to drastically reduce our cost per lead to approximately $44 in 2020. Given that our scalable manufacturing platform has capacity to enhance profitability for each incremental fiberglass pool sold, the return profile for our lead generation program is highly compelling.
- **Exclusive Dealer Partnerships Powered by Homeowner Leads:** In order to strengthen our relationship with our loyal dealer partners, we have implemented "Latham Grand," a key dealer strategy whereby

we have secured exclusivity from over 250 of our largest dealers. “Latham Grand” dealers benefit from priority for high-quality consumer leads, co-branding for their retail stores and partnership on local marketing initiatives. We benefit through closer partnership around volume planning and specific commitments on growth. We also support our dealer partners with “Latham University” and “Business Excellence” coaches:

- ***“Latham University”:*** Our “Latham University” program addresses the supply constraint in the pool industry by providing hands-on installation training for our dealer partners. Additionally, we provide on-site installation assistance to our new dealer partners on their initial fiberglass pool installation.
- ***“Business Excellence” Coaches:*** Our “Business Excellence” coaches provide our dealers with tailored consulting on how to improve operations and grow their businesses.

**Our Strengths**

***Leading Consumer Brand in the Residential Pool Market***

We are the leader in the North American in-ground residential swimming pool market, holding the #1 position by volume in each of our product categories, based on the information from the May 2019 Study and 2020 Study, a position that we have established throughout our 60 plus year operating history. Latham is the only consumer brand in the residential pool industry with a differentiated value proposition that includes an unmatched product portfolio, a coast-to-coast footprint of 19 manufacturing facilities and 13 distribution facilities, an experienced sales force and a network of over 250 exclusive dealer partners. Our sophisticated digital marketing targeted directly at homeowners has been instrumental in educating and empowering them, helping to drive material conversion in the pool market from traditional materials to fiberglass. In the fast-growing fiberglass pool product category of the residential in-ground swimming pool market in North America, we command over a 50% share, which is more than four times that of the second largest fiberglass competitor, based on the information from the May 2019 Study.

***“Direct-to-Homeowner” Relationship That Drives Business for Our Dealer Partners***

Latham is organized around our commitment to provide an exceptional homeowner experience. Our focus in recent years has been on simplifying the historically complex homeowner experience of purchasing a swimming pool. We make finding and buying the right product an amazing start to a homeowner journey that is now easy and enjoyable. We are recognized by homeowners and dealer partners for our differentiated capabilities, quality, on-trend style, design and breadth of our product portfolio and the unique homeowner-focused journey that we have created. Given the level of near continuous connectivity offered to consumers through mobile devices, businesses are adapting their marketing strategies and increasingly focusing on mobile and social media platforms. We have been at the forefront of this dynamic within our industry. Our scale enables us to reinvest more in technology and marketing than our much smaller competitors, driving a virtuous cycle whereby we are able to deliver more purchase-ready leads to our dealer partners. Over the last two years, our new digital platform has increased traffic to our website by a factor of 11 times and website visit duration has risen over 64%. To increase lead conversion, we systematically track and interact with each homeowner throughout their purchase journey.

***Serving a Large, Growing Market that is Benefiting from Material Conversion***

According to P.K. Data, over the last 20 years, the industry averaged approximately 108,000 new pool installations per year, compared to only 78,000 in 2019, and, based on our estimates, 90,000 in 2020. Given recent consumer trends, we expect demand for pools to grow to over 100,000 pools per year in each of the next three years. Fiberglass pools currently make up approximately 18% of North American residential in-ground swimming pool market and the pace of material conversion from concrete and vinyl pools to fiberglass products is accelerating. This is due in large part to increased awareness among our consumers of the higher quality and durability of our fiberglass pools, as well as beautiful design with a lower overall cost of ownership versus concrete pools. We believe that fiberglass pools will continue to gain share in the in-ground swimming pool market, and as the leading fiberglass pool manufacturer, we are well positioned to both benefit from this growth and accelerate the pace of material conversion through our efforts. We have

benefited from the sharing of best practices with our Narellan platform, which has been a key driver of fiberglass adoption in Australia, as we have driven higher penetration in the North American market.

***Broadest Portfolio of Branded Products Known for Quality, Durability and Aesthetics***

Our extensive portfolio of pool models is recognized by consumers and dealers for its high-quality, superior durability and aesthetic designs. From our carbon fiber, Kevlar and ceramic fiberglass build to our Ultra-Seam™ liner fabrication, our product development team consistently sets the standard for innovation in our industry. Our broad product portfolio allows dealers and distributors to offer consumers a wide variety of innovative pool shapes, features, depths and lengths, which significantly exceed our competitors' offering. Additionally, we build our fiberglass pools in a controlled environment compared to the on-site nature of our concrete pool competitors, allowing for better product quality control. Homeowners can further customize their fiberglass pools by selecting from 12 fiberglass color patterns, ranging from deep blues and whites to corals and naturals. In addition to color customization, we offer the industry's most elaborate finishes in our innovative G2 and G3 finish options, which provide deep visuals that let homeowners choose the perfect water color to complement their backyard surroundings. Our models offer a variety of swim up seating, multiple points of entry and exit, wading areas, tanning ledges and built-in steps, which are features consumers seek in more expensive custom pool designs. Our array of feature rich options across our portfolio of products are core to our strategy to provide superior design at a value to homeowners.

***Broad Reach, Regulatory Expertise and Technological Capabilities Create Significant Competitive Advantages***

Our leading position is driven by our consumer brand, geographic reach, national manufacturing platform, regulatory expertise and compelling value proposition. Our brand has become synonymous with the re-imagination of the homeowner journey in purchasing a swimming pool, created significant pull-through demand from homeowners and made our offering a critical component to profitable growth for our dealer partners. This dynamic forms a virtuous cycle that is accelerating homeowner awareness for our products and increasing dealers' desire to partner with us in order to profitably expand their businesses. Supported by our fleet of over 150 cars, trucks and trailers and team of 60 dedicated drivers, our North American network of nine fiberglass manufacturing facilities provides cost efficient delivery and service to our network of entrenched dealer and distributor partners, including over 250 exclusive Latham Grand dealers. Notably, we are the only nationwide, multi-facility manufacturer of fiberglass swimming pools, providing us with an advantage over regional players that lack similar geographic reach and scale. The fiberglass pool manufacturing process requires significant regulatory approvals and continuous compliance. We have successfully navigated this process across our entire manufacturing footprint throughout our history. Additionally, we have filed or obtained the required permits to expand our fiberglass manufacturing capacity and are in the process of doubling it, providing us a runway for further growth. Finally, our compelling value proposition is underpinned by our ability to leverage a unique technology infrastructure to generate a significant number of purchase-ready leads for our dealer partners and drive increasing levels of consumer awareness for our products. In tandem with the training and marketing tools we provide to our dealers, our technological capabilities have been critical in solidifying our position as the leader in every major pool product sub-category in which we compete in North America.

***History of Consistent Net Sales Growth and Margin Expansion***

Our business has consistently driven growth and margin expansion over the long-term and 2020 will represent the 11th consecutive year of net sales growth and Adjusted EBITDA margin expansion. Net income does not adhere to this trend. From 2016 to 2020, we realized a net sales, net income and Adjusted EBITDA growth CAGR of 13%, 53% and 21%, respectively. Additionally, over the same period our net income margins have expanded by 280 basis points and our Adjusted EBITDA margins have expanded by 500 basis points. Our net income margin expansion and Adjusted EBITDA margin expansion has largely been driven by a mix shift towards our fastest growing fiberglass pools business, which has a materially higher margin profile than our other product categories. As our recent strategic and capital investments mature, we believe there is a significant opportunity for us to continue to drive increased fiberglass penetration rates, accelerate net sales growth and expand our margins.

***Visionary Management Team with Proven Track Record of Execution***

We have assembled a team of highly experienced and accomplished executives with public company experience and a proven track record of leading global consumer and industrial organizations. Our management team has experience with developing consumer-branded lifestyle platforms, disrupting traditional business-to-business market structures and delivering an expansive portfolio of high-quality, durable, cost-efficient products to consumers.

In a few short years, our team has pioneered a disruptive "direct-to-homeowner" marketing approach, consolidated our brands under the Latham master brand, created innovative new products and enhanced our digital platform to better focus on the overall consumer journey. Our Chief Executive Officer, Scott M. Rajeski, was appointed in 2017 after serving as the Company's Chief Financial Officer since 2012. Scott previously served in leadership positions at GLOBALFOUNDRIES, Momentive Performance Materials and General Electric. Scott was critical in recruiting our Chairman, James E. Cline, who joined our board in early 2019 and previously served as president and chief executive officer of Trex. We believe Mr. Cline, as the former chief executive officer of Trex, has been an invaluable non-executive member of the board of directors due to his experience building the industry leader in the similarly material conversion driven composite decking industry, while also creating one of the best known brands in the building products industry. Our Chief Financial Officer, J. Mark Borseth, joined the team in 2020 after serving as president and chief executive officer of Ranpak under Rhone Capital's ownership, as well as holding numerous leadership roles at 3M. Our Chief Marketing Officer, Joel R. Culp, was appointed in 2019 after previously serving in the same role for Wilsonart, as well as holding various leadership positions at MasterBrand, a Fortune Brands company, Uponor and Kohler. Collectively, our team has extensive experience at leading public and private companies, including Trex, Kohler, General Electric, 3M, Ingersoll Rand, Wilsonart and Ranpak.

**Our Growth Strategies**

***Utilize Leading Brand and Digital Assets to Generate Greater Homeowner Lead Volumes***

During 2019 and 2020, we have increased spending on digital strategies and marketing. Our content-rich digital platform provides homeowners with education and engagement tools that help them navigate their pool buying journey, including an unrivaled pool visualization experience, informational videos and resources, budget calculators, and a pool expert community consisting of a blog and direct homeowner outreach. Our investment has resulted in increased web traffic and lead generation of 105,000 sessions in 2018 to 3,544,334 sessions in 2020 and 14,589 in 2018 to 45,224 in 2020, respectively. The implementation of our new digital strategy has resulted in superior search engine optimization performance, outpacing our next closest peer in organic traffic by five times. We have boosted leads by 210% between 2018 and 2020 for our dealers, further entrenching Latham with our dealer base and increasing switching costs.

***Accelerate Fiberglass Material Conversion through Unique Market Positioning***

As the leader in the fiberglass pool product category, we are driving the acceleration of material conversion by educating both homeowners and dealer partners about the benefits of fiberglass. Our marketing campaigns and digital platform, including our easy to use interactive website and mobile app, inform homeowners on the benefits of fiberglass, including lower up-front and total cost of ownership, quicker installation, easier maintenance and a more convenient buying experience. The Latham Augmented Reality Pool Visualizer app allows homeowners to browse fiberglass models and select from a variety of options from their mobile device. At "Latham University," our dealer partners discover firsthand the benefits of fiberglass pools, including the ease and speed of installation versus concrete pools, which drive better economics. We also host company conferences and participate in trade shows, where we continue to drive education on the benefits of fiberglass pools. The charts below show an illustrative profit potential to installers and cost to homeowners of installing a pool of comparable size by the type of the pool material, assuming that all other conditions are the same.

**Illustrative Installer Economics**

| | Fiberglass | Vinyl | Concrete |
|---|---|---|---|
| Total Project Time | ~1 week | ~1 month | ~3 months |
| Labor Crew | 3 people | 6 – 8 people | 8 – 10 people |
| 52-Week Install Capacity | ~125 pools | ~35 pools | ~20 pools |
| Profit per Pool | $5 – $10k | $5 – $10k | $5 – $15k |
| Potential Installer Profitability | ~$1.25mm | ~$350k | ~$300k |
| Profit Potential Ranking | #1 | #2 | #3 |

**Illustrative Homeowner Economics**

| | Fiberglass | Vinyl | Concrete |
|---|---|---|---|
| Up Front Cost | ~$54,000 | ~$37,500 | ~$75,000 |
| # of Major Repairs | - | 1 | 1 |
| 10 Year Maintenance | ~$10,500 | ~$19,000 | ~$38,100 |
| Total 10 Year Cost | ~$64,500 | ~$56,500 | ~$113,100 |
| Lifetime Warranty | ✓ | ✗ | ✗ |
| Customer Satisfaction Rank | #1 | #3 | #2 |

*Source: 2020 Study and management estimates. Assumes: certain number of working days per year with one pool building crew; certain number of days per installation of each type of pool, resulting in certain number of pool installations per year for each type of pool.*

***Secure Additional Strategic Partnerships with Priority Dealers to Gain Share***

Our approach as a true business partner with our dealers positions us to take market share in our highly-fragmented industry. We have secured exclusivity from over 250 of our top dealer partners, as well as the nation's largest franchised dealer network, Premier Pools & Spas. As the only participant with scale in the fiberglass pool product category, we intend to continue to pursue additional strategic partnerships with priority dealers in underpenetrated geographical markets that can help us accelerate our growth. We believe these exclusive relationships will continue to enable us to increase market share at the expense of the fragmented and regional universe of competitors.

***Grow Industry Capacity by Onboarding and Training New Dealer Partners***

We believe that there is a tremendous opportunity to expand the capacity of skilled dealer partners to support overall industry growth and our continued market penetration. As such, we intend to continue to use our leadership position in the industry to educate small business owners currently installing concrete pools, as well as those in related trades, about the economic opportunities available in the fiberglass product category of the pool market. We further intend to onboard, train and support them with the same emphasis we have placed on our existing dealer partnerships, including our co-branding programs, "Latham University," and our "Business Excellence" coaching designed to help them manage their growth. Leveraging our investments and management expertise, we should be able to play a key role in growing the industry's capacity back towards levels of more than 150,000 annual in-ground swimming pool installations that preceded the Great Recession.

***Expand Margins through Mix Shift Towards Fiberglass and Productivity Initiatives***

Fiberglass pools are both our highest margin and fastest growing product category. We believe that our consumer-centric marketing and compelling value proposition to our dealer partners will continue to drive consistent, long-term growth for our fiberglass pools. We have made significant manufacturing capacity investments to not only support this future growth, but also to continue to deliver the compelling margin profile of our fiberglass pool offering. We expect to increase our margins significantly as we grow into our capacity investments and our product mix continues to shift towards fiberglass pools. Additionally, we expect that our investments in people, processes and equipment aimed at enhancing our manufacturing productivity will further expand our margins. From 2018 to 2020, we have improved our net income margins by 510 basis points and our Adjusted EBITDA margins by 193 basis points through operational excellence initiatives and we expect this trend to accelerate as we realize meaningful benefits from historical and ongoing capital and other investments in the business.

***Strategic Acquisitions that Enhance the Latham Platform***

The pool industry remains highly-fragmented, which offers attractive opportunities to utilize strategic acquisitions to drive consolidation and expand our product offering. We have historically used strategic acquisitions to expand our geographic reach within the United States and internationally, enhance our product portfolio and drive operational efficiencies. We believe that we have the opportunity to be the consolidator of choice in the industry, and we will continue to focus on acquiring high-quality, market-leading businesses with teams, capabilities, and technologies that are complementary to our existing offerings and enable us to better serve homeowners and dealer partners.

**Recent Developments**

***Financing Transactions***

In October 2020, Parent purchased 32,902,113 shares of our common stock for $64.9 million. On December 28, 2020, we repurchased those 32,902,113 shares of common stock in exchange for a note payable in the amount of $64.9 million, equal to the Parent's original purchase price for the common stock (the "Parent Note"). The Parent Note bore interest at 0.15% per annum and was due on October 20, 2023 (collectively, the "2020 Financing Transactions").

On January 25, 2021, Latham Pool Products, Inc. ("Latham Pool Products"), our indirect wholly-owned subsidiary and the borrower under our Credit Agreement (as defined below), entered into an amendment to the Credit Agreement and borrowed an additional $175.0 million under the Amended Term Loan (as defined below). In February 2021, we used $175.0 million that we borrowed under our Credit Agreement to repay a loan to our Parent in the amount of $64.9 million and to pay a $110.0 million dividend to our Parent (collectively, the "2021 Financing Transactions"). Amounts paid to our current executive officers and directors as part of the 2021 Financing Transactions were approximately $2.2 million. Amounts paid to our Sponsors as part of the 2021 Financing Transactions were approximately $163.8 million. In 2019 and 2020, we paid distributions of $0.2 million and $0.6 million, respectively, to our Parent for the repurchase of our Parent's Class A shares.

Such 2020 Financing Transactions and 2021 Financing Transactions are collectively referred to as the "Financing Transactions." See "Use of Proceeds" and "Certain Relationships and Related Party Transactions —Purchases from Equityholders" for further details.

We intend to use the net proceeds from this offering, assuming an initial public offering price of $20.00 per share (the midpoint of the range set forth on the cover of this prospectus) as follows:

- $152.7 million of our net proceeds from this offering to repay $152.7 million of the Amended Term Loan under our Credit Agreement;
- $16.0 million of our net proceeds from this offering to repay the $16.0 million outstanding on the Revolving Credit Facility (as defined and described under "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Our Indebtedness);
- $172.0 million of our net proceeds from this offering to repurchase 8,829,191 shares of our common stock from the Principal Stockholders and 418,121 shares of common stock from a current employee who is not an executive officer or a director of the Company prior to this offering at a price per share equal to the price per share paid by the underwriters to us for shares of our common stock in this offering. If the underwriters were to fully exercise their option to purchase additional shares of our common stock, we would use approximately $227.8 million of our net proceeds from this offering to repurchase 11,693,545 shares of common stock from the Principal Stockholders and 553,767 shares of common stock from a current employee who is not an executive officer or a director of the Company at a price per share equal to the price per share paid by the underwriters to us for shares of our common stock in this offering; and
- $25.0 million of our net proceeds, for general corporate purposes.

We have a significant amount of indebtedness. Following this offering and the use of proceeds from this offering, we will have $242.6 million of indebtedness in the form of the Amended Term Loan outstanding under the Credit Agreement and $30.0 million of availability under the Revolving Credit Facility under the Credit Agreement (as defined and described under "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Our Indebtedness").

***Preliminary Estimated Net Sales for the Fiscal Quarter Ended April 3, 2021***

Our financial results for the fiscal quarter ended April 3, 2021 are not yet complete and will not be available until after the completion of this offering. Accordingly, set forth below is our preliminary estimated range for net sales for the fiscal quarter ended April 3, 2021 and our actual net sales for the fiscal quarter ended March 28, 2020. Our estimated net sales for the fiscal quarter ended April 3, 2021 is subject to revision based upon the completion of our quarter-end financial closing processes and other developments that may arise prior to the time our financial results for the fiscal quarter ended April 3, 2021 are finalized. Our preliminary estimated range for net sales is therefore a forward-looking statement based solely on information available to us as of the date of this prospectus and the reported net sales may differ from this estimate. The preliminary estimated range of net sales set forth below has been prepared by, and is the responsibility of, management and is based on a number of assumptions. Neither the Company's independent auditors, nor any other independent accountants, have audited, reviewed, compiled, examined, or performed any procedures with respect to the preliminary financial information, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the preliminary financial information. Our actual results may differ from this estimate due to the completion of our final closing procedures, final adjustments and other developments that may arise between now and the time our financial results for the fiscal quarter ended April 3, 2021 are finalized. You should not place undue reliance on this preliminary estimate. In addition, this preliminary estimate of net sales set forth below is not necessarily indicative of the results we may achieve in any future periods. For additional information, see "Cautionary Note Regarding Forward-Looking Statements" and "Risk Factors."

The following are our preliminary estimated range for net sales for the fiscal quarter ended April 3, 2021 and our actual net sales for the fiscal quarter ended March 28, 2020:

| | Fiscal Quarter Ended | | |
|---|---|---|---|
| *(in millions)* | **April 3, 2021 (estimated low)** | **April 3, 2021 (estimated high)** | **March 28, 2020 (actual)** |
| Net sales | $143.0 | $150.0 | $51.1 |

**Reorganization**

Prior to the closing of this offering, our Parent will merge with and into Latham Group, Inc., with Latham Group, Inc. surviving the merger (the "Reorganization"). In the merger, the limited partnership interests and profit interests in our Parent will be exchanged for an economically equivalent number of vested and unvested shares of our common stock. Following the Reorganization and prior to this offering, our common stock will be owned by our Principal Stockholders, our senior management and board members, and our current and former employees. The total number of shares of common stock to be issued to each equityholder of Parent in the merger will be based on the initial public offering price in this offering and the liquidation value of such interests in Parent. Although the number of shares to be issued to each equityholder will vary depending on the initial public offering price, the aggregate number of outstanding shares of common stock prior to this offering will be fixed at 109,673,709. The purpose of the Reorganization is to reorganize our structure so that our existing investors will own only our common stock rather than limited partnership interests in our Parent.

**Summary Risk Factors**

Participating in this offering involves substantial risk. Our ability to execute our strategy also is subject to certain risks. The risks described under the heading "Risk Factors" immediately following this summary

may cause us not to realize the full benefits of our competitive strengths or may cause us to be unable to successfully execute all or part of our strategy. Some of the more significant challenges and risks we face include the following:

- lack of demand for our swimming pools and related products;
- changes in economic and business conditions;
- adverse weather conditions impacting our sales;
- inability to attract dealers and distributors to purchase our products since our products are not sold directly to consumers;
- inability to sustain further growth in our business;
- failure to meet customer specifications or consumer expectations;
- increases in costs of our raw materials and components and inability to source the quantity or quality of raw materials and components that we need to manufacture our products;
- changing patterns in consumer spending, and ability of consumers to obtain financing to purchase our products;
- natural disasters, war, terrorism, public health issues such as the novel coronavirus ("COVID-19") pandemic or other catastrophic events that could disrupt the supply, delivery or demand of our products;
- inability to obtain transportation services to deliver our product and to obtain raw materials timely or increases in the cost of transportation;
- product quality issues, warranty claims or safety concerns and other claims in the ordinary course of business;
- our ability to obtain, maintain and enforce intellectual property protection for our current and future products;
- the risks of doing business internationally;
- cyber security breaches and data leaks, and our dependence on information technology systems;
- changes in environmental, health and safety regulations;
- competition that we face; and
- the other factors set forth under "Risk Factors."

These and other risks are more fully described in the section entitled "Risk Factors" in this prospectus. If any of these risks actually occurs, our business, financial condition, results of operations, cash flows and prospects could be materially and adversely affected. As a result, you could lose all or part of your investment in our common stock.

**Implications of Being an Emerging Growth Company**

We are an "emerging growth company," as defined in Section 2(a)(19) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act") and are eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies," including, but not limited to: (1) presenting only two years of audited financial statements in addition to any required unaudited interim financial statements with correspondingly reduced "Management's Discussion and Analysis of Financial Condition and Results of Operations" disclosure in this prospectus; (2) not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"); (3) having reduced disclosure obligations regarding executive compensation in our periodic reports and proxy or information statements; (4) being exempt from the requirements to hold a non-binding advisory vote on executive compensation or seek stockholder approval of any golden parachute payments not previously

approved and (5) not being required to adopt certain accounting standards applicable to public companies until those standards would otherwise apply to private companies.

Although we are still evaluating our options under the JOBS Act, we may take advantage of some or all of the reduced regulatory and reporting requirements that will be available to us so long as we qualify as an "emerging growth company" and thus the level of information we provide may be different than that of other public companies. If we do take advantage of any of these exemptions, some investors may find our securities less attractive, which could result in a less active trading market for our common stock, and the price of our common stock may be more volatile. As an "emerging growth company" under the JOBS Act, we are permitted to delay the adoption of new or revised accounting pronouncements applicable to public companies until such pronouncements are made applicable to private companies. We are electing to take advantage of such extended transition period, and as a result, we will not comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies until the earlier of the date we (i) are no longer an "emerging growth company" or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates. Early adoption is permitted.

We could remain an "emerging growth company" until the earliest to occur of:

- the last day of the year following the fifth anniversary of this offering;
- the last day of the first year in which our annual gross revenues exceed an amount specified by regulation (currently $1.07 billion);
- the day we are deemed to be a "large accelerated filer" as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended, (the "Exchange Act"), which would occur if the market value of our common stock held by non-affiliates exceeded $700.0 million as of the last business day of the second quarter of such year; and
- the date on which we have issued more than $1.0 billion in non-convertible debt securities during the preceding three-year period.

**Our Sponsors**

***Pamplona***

Pamplona Capital Management is a specialist investment manager founded in 2005 that provides an alternative investment platform across private equity investments. Pamplona manages over $7 billion in assets for its limited partners. Pamplona has offices in New York, London, Malta, Madrid and Monaco. The firm invests long-term capital primarily in North America and Europe.

***Wynnchurch***

Wynnchurch, headquartered in the Chicago suburb of Rosemont, Illinois, with an office in California and an affiliate in Canada, was founded in 1999, and is a leading middle-market private equity investment firm. Wynnchurch's strategy is to partner with middle market companies in the United States and Canada that possess the potential for substantial growth and profit improvement. Wynnchurch manages a number of private equity funds with $4.2 billion of committed capital under management and specializes in recapitalizations, growth capital, management buyouts, corporate carve-outs and restructurings.

***Stockholders' Agreement***

Prior to the consummation of this offering, we intend to enter into a stockholders' agreement (the "Stockholders' Agreement") with our Principal Stockholders. The Stockholders' Agreement will grant Pamplona the right to nominate to our board of directors a number of designees on a sliding scale depending on Pamplona's affiliates' ownership of our common stock, ranging from Pamplona being able to nominate at least a majority of the total number of directors so long as its affiliates beneficially own at least 50% of the shares of our common stock to Pamplona being able to nominate at least 10% of the total number of

directors as long as its affiliates beneficially own at least 5%. For so long as Wynnchurch owns at least 5% of our common stock, Wynnchurch will have the right to appoint one director.

**Controlled Company**

Upon the closing of this offering, we will be a "controlled company" within the meaning of the NASDAQ corporate governance standards because more than 50% of the voting power of our outstanding common stock will be beneficially owned by the Pamplona Fund and Wynnchurch Funds, in the aggregate. We intend to rely upon the "controlled company" exception relating to the board of directors and committee independence requirements under the listing rules of NASDAQ. Pursuant to this exception, we will be exempt from the rules that would otherwise require that our board of directors consist of a majority of independent directors and that our compensation committee and nominating and corporate governance committee be composed entirely of independent directors. For further information on the implications of being a "controlled company," see "Risk Factors—Risks Relating to this Offering and Ownership of our Common Stock" and "Management—Controlled Company."

**Company Information**

Latham Group, Inc. was organized under the laws of Delaware as a corporation on December 6, 2018 and is the issuer of the common stock offered by this prospectus. Our principal executive offices are located at 787 Watervliet Shaker Road, Latham, New York 12110. Our telephone number is 800-833-3800. Our website is https://www.lathampool.com. Our website and the information contained on, or that can be accessed through, our website will not be deemed to be incorporated by reference in, and are not considered part of, this prospectus. You should not rely on our website or any such information in making your decision whether to purchase shares of our common stock.

| The Offering | |
|---|---|
| Issuer | Latham Group, Inc. |
| Common stock offered by us | 20,000,000 shares (or 23,000,000 shares if the underwriters exercise their option to purchase additional shares in full as described below). |
| Option to purchase additional shares | We have granted the underwriters an option to purchase up to an additional 3,000,000 shares from us. The underwriters may exercise this option at any time within 30 days from the date of this prospectus. See "Underwriting." |
| Common stock outstanding after giving effect to this offering | 120,426,397 shares (or 120,426,397 shares if the underwriters exercise their option to purchase additional shares in full). |
| Use of proceeds | We estimate that our net proceeds from this offering will be approximately $365.7 million (or approximately $421.5 million if the underwriters exercise their option to purchase additional shares in full), after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, based on an assumed initial public offering price of $20.00 per share (the midpoint of the range set forth on the cover page of this prospectus).<br><br>We intend to use the net proceeds from this offering, assuming an initial public offering price of $20.00 per share (the midpoint of the range set forth on the cover of this prospectus) as follows:<br>• $152.7 million of our net proceeds from this offering to repay $152.7 million of the Amended Term Loan under our Credit Agreement;<br>• $16.0 million of our net proceeds from this offering to repay the $16.0 million outstanding on the Revolving Credit Facility;<br>• $172.0 million of our net proceeds from this offering to repurchase 9,247,312 shares of our common stock (or $227.8 million to repurchase 12,247,312 shares if the underwriters exercise their option to purchase additional shares in full) from the Principal Stockholders and a current employee who is not an executive officer or a director of the Company at a price per share equal to the price per share paid by the underwriters to us for shares of our common stock in this offering; and<br>• $25.0 million of our net proceeds, for general corporate purposes.<br><br>See "Use of Proceeds" for additional information. |
| Dividend policy | We do not intend to pay cash dividends on our common stock. However, we may, in the future, decide to pay dividends on our common stock. Any declaration and payment of cash dividends in the future, if any, will be at the discretion of our board of directors and will depend upon such factors as earnings levels, cash flows, capital requirements, levels of indebtedness, restrictions imposed by applicable law, our |

| | |
|---|---|
| | overall financial condition, restrictions in our debt agreements, and any other factors deemed relevant by our board of directors. See "Dividend Policy." |
| Listing | We intend to apply to list our common stock on NASDAQ under the symbol "SWIM." |
| Risk Factors | You should read the section titled "Risk Factors" beginning on page 22 and the other information included in this prospectus for a discussion of some of the risks and uncertainties you should carefully consider before deciding to invest in our common stock. |
| Directed Share Program | At our request, the underwriters have reserved for sale, at the initial public offering price, up to 5% of the common stock for sale to our directors, officers, employees and other individuals associated with us and members of their families. The sales will be made, at our direction, by Morgan Stanley & Co. LLC, an underwriter of this offering, through a directed share program. We do not know if these persons will choose to purchase all or any portion of these reserved shares, but any purchases they do make will reduce the number of shares available to the general public. Participants in the directed share program who purchase more than $1,000,000 of shares shall be subject to a 25-day lock-up with respect to any shares sold to them pursuant to that program. This lock-up will have similar restrictions and an identical extension provision to the lock-up agreements described herein. Any shares sold in the directed share program to our directors, executive officers or Principal Stockholders shall be subject to the lock-up agreements described herein. Any reserved shares of common stock that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares of common stock offered by this prospectus. See "Underwriting—Directed Share Program" for more information. |

The number of shares of our common stock to be outstanding after this offering is based on 109,673,709 shares of our common stock outstanding as of April 13, 2021 and excludes 4,830,086 shares of common stock reserved for future issuance under our Omnibus Incentive Plan (as defined under "Executive Compensation—Post-IPO Equity Compensation Plans—2021 Omnibus Incentive Plan"), of which 325,753 shares of common stock will be issuable pursuant to restricted stock units in connection with the IPO and 842,524 shares of common stock will be issuable pursuant to stock options to acquire shares of common stock at an exercise price equal to the public offering price in connection with the IPO. See "Executive Compensation." The 109,673,709 shares includes 8,328,344 shares of restricted stock to former holders of profits interests which will be issued under the Omnibus Incentive Plan.

Except as otherwise indicated, all of the information in this prospectus:

- gives effect to the Reorganization, as a result of which there will be an aggregate of 109,673,709 shares of common stock outstanding prior to this offering, as further described in the section titled "—Reorganization";
- reflects a 109,673.709-for-one split of our common stock effected on April 13, 2021;
- assumes an initial public offering price of $20.00 per share of common stock (the midpoint of the price range set forth on the cover page of this prospectus); and
- assumes no exercise of the underwriters' option to purchase up to 3,000,000 additional shares of common stock in this offering.

**Summary Consolidated Financial and Other Data**

The following tables present our summary consolidated financial and other data for the periods indicated. We have derived our historical consolidated statement of operations data for the years ended December 31, 2016 and 2017, for the period from January 1, 2018 through December 18, 2018 (Predecessor) and for the period from December 19, 2018 through December 31, 2018 (Successor) from our unaudited consolidated financial statements not appearing in this prospectus. We have derived the summary historical consolidated statement of operations data and the summary historical consolidated statement of cash flows data for the years ended December 31, 2019 and 2020 (Successor) and our summary historical consolidated balance sheet data as of December 31, 2020 (Successor) from our audited consolidated financial statements included elsewhere in this prospectus. The following summary consolidated financial and other data should be read in conjunction with the sections titled "Selected Historical Consolidated Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Capitalization" and our audited consolidated financial statements and the related notes included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that should be expected in the future.

**Consolidated Statements of Operations Data:**
*(in thousands, except share and per share data)*

| | Predecessor | | | Successor[1] | | |
|---|---|---|---|---|---|---|
| | Year ended December 31, | | Period of January 1, 2018 through December 18, | Period of December 19, 2018 through December 31, | Year ended December 31, | |
| | 2016 (unaudited) | 2017 (unaudited) | 2018 (unaudited) | 2018 (unaudited) | 2019[2] | 2020[2] |
| Net sales | $247,496 | $265,247 | $285,838 | $ 1,374 | $ 317,975 | $ 403,389 |
| Cost of sales | 168,021 | 178,761 | 190,834 | 2,881 | 219,819 | 260,616 |
| Gross profit | 79,475 | 86,486 | 95,004 | (1,507) | 98,156 | 142,773 |
| Selling, general and administrative expense | 47,268 | 43,931 | 67,466 | 2,689 | 57,388 | 85,527 |
| Amortization | 8,990 | 8,288 | 7,992 | 1,068 | 15,643 | 17,347 |
| Income (loss) from operations | 23,217 | 34,267 | 19,546 | (5,264) | 25,125 | 39,899 |
| Other expense (income): | | | | | | |
| Interest expense | 14,550 | 14,143 | 11,116 | 664 | 22,639 | 18,251 |
| Other expense (income), net | 47 | (1,596) | 2,312 | 85 | (300) | (1,111) |
| Total other expense (income), net | 14,597 | 12,547 | 13,428 | 749 | 22,339 | 17,140 |
| Income (loss) before income taxes | 8,620 | 21,720 | 6,118 | (6,013) | 2,786 | 22,759 |
| Income tax (benefit) expense | 5,720 | (13,516) | 4,229 | (981) | (4,671) | 6,776 |
| Net income (loss) | $ 2,900 | $ 35,236 | $ 1,889 | $ (5,032) | $ 7,457 | $ 15,983 |
| Net income (loss) per share attributable to common stockholders:[3] | | | | | | |
| Basic and diluted | | | | $ (0.05) | $ 0.07 | $ 0.14 |
| Weighted-average common shares outstanding:[3] | | | | | | |
| Basic and diluted | | | | 109,673,709 | 109,673,709 | 116,469,884 |

| | Predecessor | | | Successor[1] | | |
|---|---|---|---|---|---|---|
| | Year ended December 31, | | Period of January 1, 2018 through December 18, | Period of December 19, 2018 through December 31, | Year ended December 31, | |
| | 2016 (unaudited) | 2017 (unaudited) | 2018 (unaudited) | 2018 (unaudited) | 2019[2] | 2020[2] |
| Pro forma net loss per share attributable to common stockholders:[4] | | | | | | |
| Basic and diluted | | | | | | $ (0.31) |
| Pro forma weighted-average common shares outstanding:[4] | | | | | | |
| Basic and diluted | | | | | | 121,279,040 |

**Consolidated Statements of Cash Flows Data:**
*(in thousands)*

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Net cash provided by operating activities | $ 35,655 | $ 63,161 |
| Net cash used in investing activities | (27,083) | (115,805) |
| Net cash provided by financing activities | 16,551 | 54,302 |

**Other Data (unaudited):**
*(in thousands)*

| | Predecessor | | | Successor[1] | | |
|---|---|---|---|---|---|---|
| | Year ended December 31, | | Period of January 1, 2018 through December 18, | Period of December 19, 2018 through December 31, | Year ended December 31, | |
| | 2016 | 2017 | 2018 | 2018 | 2019[2] | 2020[2] |
| Net income margin[5] | 1.2% | 13.3% | 0.7% | (366.2)% | 2.3% | 4.0% |
| Adjusted EBITDA[6] | $39,063 | $47,252 | $57,324 | $(3,185) | $61,050 | $83,836 |
| Adjusted EBITDA margin[7] | 15.8% | 17.8% | 20.1% | (231.8)% | 19.2% | 20.8% |

**Consolidated Balance Sheets Data:**
*(in thousands)*

| | As of December 31, 2020 | |
|---|---|---|
| | Actual | As Further Adjusted[8] |
| Cash | $ 59,310 | $ 99,181 |
| Working capital[9] | 73,389 | 104,295 |
| Total assets | 646,676 | 685,506 |
| Total debt[10] | 286,434 | 242,637 |
| Total liabilities | 430,005 | 385,168 |
| Total stockholders' equity | 216,671 | 300,338 |

(1) Our operating results and financial position for the years ended December 31, 2019 and 2020, and for the period from December 19, 2018 through December 31, 2018, the Successor periods, are impacted by the Acquisition. Due to the Acquisition and the application of purchase accounting, the Successor and Predecessor periods are not necessarily comparable.

(2) Our operating results and financial position for the years ended December 31, 2019 and 2020 were impacted by the adoption of Accounting Standards Codification 606, *Revenue from Contracts with Customers*, ("ASC 606"). We used the modified retrospective method of adoption. Results for reporting periods beginning January 1, 2019 are presented under ASC 606, while prior period amounts are not adjusted and continue to be reported in accordance with the historical accounting guidance under Accounting Standards Codification 605, *Revenue Recognition*, ("ASC 605"). See Note 2, Summary of Significant Accounting Policies, to our audited consolidated financial statements included elsewhere in this prospectus for more information.

(3) See Note 18, Net Income Per Share, to our consolidated financial statements included elsewhere in this prospectus for additional information regarding the calculation of basic and diluted income per share attributable to common stockholders.

(4) Pro forma net loss per share, basic and diluted, is computed by dividing pro forma net loss of $37.9 million by 121,279,040 pro forma weighted-average shares outstanding. For the year ended December 31, 2020, pro forma net loss gives effect to (i) the immediate recognition of $52.0 million of stock-based compensation expense upon the Reorganization due to the accelerated vesting and incremental fair value resulting from modifications made to the profits interest units' awards and (ii) the incremental interest expense of $1.9 million resulting from the additional $175.0 million borrowed under the Amended Term Loan as part of the 2021 Financing Transactions, reduced by the application of $152.7 million of the net proceeds to repay $152.7 million of the Amended Term Loan under our Credit Agreement, as if the offering had occurred on January 1, 2020, as set forth under "Use of Proceeds." For the year ended December 31, 2020, pro forma weighted-average shares outstanding gives effect to the issuance of 13,137,500 shares of common stock, which is the number of shares that would be attributable to the proceeds used to (i) repay $152.7 million of the Amended Term Loan under our Credit Agreement, (ii) repay the $16.0 million outstanding on our Revolving Credit Facility as described in "Use of Proceeds" and (iii) pay the portion of the dividend to Parent in excess of net income for the year ended December 31, 2020 of $94.1 million, at an assumed initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus). Pro forma weighted-average shares outstanding also gives effect to a reduction of 8,328,344 shares, which reflects the restricted stock issued to our shareholders as part of the Reorganization. We issued 9,247,312 shares of common stock, of which the proceeds received were used to repurchase the same number of shares and therefore, the use of those proceeds to repurchase shares did not impact pro forma weighted-average shares outstanding. This pro forma per share information is presented for informational purposes only and does not purport to represent what our net income (loss) or net income (loss) per share actually would have been had the Reorganization, the offering and use of proceeds to repay $152.7 million of the Amended Term Loan under our Credit Agreement, repay the $16.0 million outstanding on our Revolving Credit Facility, repurchase shares of common stock as described in "Use of Proceeds" or pay the dividend to Parent occurred on January 1, 2020, or to project our net income (loss) or net income (loss) per share for any future period. The pro forma per share information does not give effect to the new rate of interest that would be applicable to the extent the third amendment to the Credit Agreement was in effect on January 1, 2020.

(5) Net income margin is calculated by dividing net income by net sales.

(6) Adjusted EBITDA is a non-GAAP financial measure. We define "Adjusted EBITDA" as net income (loss) plus (i) depreciation and amortization, (ii) interest expense, (iii) income tax (benefit) expense, (iv) loss on sale and disposal of property and equipment, (v) restructuring charges, (vi) management fees, (vii) stock-based compensation expense, (viii) other expense (income), net, (ix) other non-cash items, (x) strategic initiative costs, (xi) acquisition and integration related costs, (xii) other, (xiii) IPO costs, and (xiv) COVID-19- related expenses (income). See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Non GAAP Financial Measures" for important information about this measure. The following is the reconciliation of Adjusted EBITDA to its most directly comparable GAAP measure, net income, and the calculation of Adjusted EBITDA margin (in thousands):

| | Predecessor | | | Successor[2] | | |
|---|---|---|---|---|---|---|
| | Year ended December 31, | | Period of January 1, 2018 through December 18, | Period of December 19, 2018 through December 31, | Year ended December 31, | |
| | 2016 (unaudited) | 2017 (unaudited) | 2018 (unaudited) | 2018 (unaudited) | 2019[1] | 2020[1] |
| **Net income** | $ 2,900 | $ 35,236 | $ 1,889 | $ (5,032) | $ 7,457 | $ 15,983 |
| Depreciation and amortization | 14,162 | 14,587 | 14,767 | 1,228 | 21,659 | 25,365 |
| Interest expense | 14,550 | 14,143 | 11,116 | 664 | 22,639 | 18,251 |
| Income tax (benefit) expense | 5,720 | (13,516) | 4,229 | (981) | (4,671) | 6,776 |

| | Predecessor | | | Successor[2] | | |
|---|---|---|---|---|---|---|
| | Year ended December 31, | | Period of January 1, 2018 through December 18, | Period of December 19, 2018 through December 31, | Year ended December 31, | |
| | 2016 (unaudited) | 2017 (unaudited) | 2018 (unaudited) | 2018 (unaudited) | 2019[1] | 2020[1] |
| Loss (gain) on sale and disposal of property and equipment | 233 | (204) | 914 | 34 | 680 | 332 |
| Restructuring charges[a] | 609 | 176 | 1,271 | 47 | 980 | 1,265 |
| Management fees[b] | 500 | 500 | 482 | 18 | 500 | — |
| Stock-based compensation expense | 9 | 9 | (18) | — | 808 | 1,827 |
| Other expense (income), net[c] | 47 | (1,596) | 2,312 | 85 | (300) | (1,111) |
| Other non-cash items[d] | — | — | 1.050 | 39 | 6,331 | 1,338 |
| Strategic initiative costs[e] | — | — | — | — | 964 | 6,264 |
| Acquisition and integration related costs[f] | 592 | 239 | 19,135 | 707 | 3,612 | 5,497 |
| Other[g] | (259) | (2,322) | 177 | 6 | 391 | 1,007 |
| IPO costs[h] | — | — | — | — | — | 1,731 |
| COVID-19-related expenses (income)[i] | — | — | — | — | — | (689) |
| **Adjusted EBITDA (unaudited)** | $ 39,063 | $ 47,252 | $ 57,324 | $ (3,185) | $ 61,050 | $ 83,836 |
| **Net Sales** | $247,496 | $265,247 | $ 285,838 | $ 1,374 | $317,975 | $403,389 |
| **Net income margin** | 1.2% | 13.3% | 0.7% | (366.2)% | 2.3% | 4.0% |
| **Adjusted EBITDA margin (unaudited)** | 15.8% | 17.8% | 20.1% | (231.8)% | 19.2% | 20.8% |

(a) Represents the cost of shutting down production and warehouse facilities in New Market, New Hampshire, Decatur, Georgia, Oregon City, Oregon, and Mississauga, Ontario, Canada, including the cost to transfer and dispose of property and equipment and involuntary workforce reductions. Also includes severance and other costs for our executive management changes.

(b) Represents management fees paid to our Principal Stockholders in accordance with our expense reimbursement arrangement, which will terminate as of the effective date of our initial public offering.

(c) Represents foreign currency transaction (gains) and losses associated with our international subsidiaries and changes in the fair value of the contingent consideration recorded in connection with the acquisition of Narellan, which was settled in September 2020.

(d) Represents non-cash adjustments to record the step-up in the fair value of inventory related to the Acquisition, the acquisition of Narellan and the acquisition of GL International, LLC (“GLI”), which are amortized through cost of sales in the consolidated statements of operations. Also includes non-cash adjustments related to our frozen defined benefit pension plans, which were terminated in 2020.

(e) Represents fees paid to external consultants for our strategic initiatives, including our rebranding initiative.

(f) Represents acquisition and integration costs primarily related to the acquisition of Narellan, the acquisition of GLI, the equity investment in Premier Pools & Spas, as well as other costs related to a transaction that was abandoned.

(g) Other costs consist of other discrete items as determined by management, including fees paid to external consultants for tax restructuring, the cost for legal defense of a specified matter, the cost incurred and insurance proceeds received related to our production facility fire in Dix, Illinois, in 2016, and our production facility fire in Picton, Australia, in 2020, and other items.

(h) Represents items management believes are not indicative of ongoing operating performance. These expenses are primarily composed of legal, accounting and professional fees incurred in connection with this offering that are not capitalizable, which are included within selling, general and administrative expense.

(i) Represents temporary cleaning, equipment and salary costs incurred in response to the COVID-19 pandemic, offset by government grants received in the United States, Canada and New Zealand.

(7) Adjusted EBITDA margin is a non-GAAP financial measure. Adjusted EBITDA margin is defined as Adjusted EBITDA divided by net sales. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Non-GAAP Financial Measures” for important information about this measure.

(8) The as further adjusted balance sheet data gives effect to (i) the Reorganization, (ii) the 2021 Financing Transactions, (iii) the issuance and sale of shares of our common stock in this offering at an assumed initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), after deducting estimated underwriting discounts and commissions payable by us and (iv) the application of the net proceeds of this offering as described under “Use of Proceeds.”

A $1.00 increase (decrease) in the assumed initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus) would increase (decrease) the as further adjusted amount of each of cash, additional paid-in capital, total stockholders’ equity and total capitalization by $18.6 million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. An increase (decrease) of 1,000,000 shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase (decrease) the as further adjusted amount of each of cash, additional paid-in capital, total stockholders’ equity and total capitalization by $18.6 million, assuming no change in the assumed initial public offering price per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

(9) Working capital is defined as total current assets less total current liabilities.

(10) Total debt includes current and non-current portion of long-term debt, net of discount and debt issuance costs and the Parent Note.

## Risk Factors

*You should carefully consider the risks and uncertainties described below, as well as the other information contained in this prospectus, including our consolidated financial statements and the related notes included elsewhere in this prospectus and "Management's Discussion and Analysis of Financial Condition and Results of Operations," before deciding to invest in our common stock. In addition, past financial performance may not be a reliable indicator of future performance and historical trends may not predict results or trends in future periods. Any of the following risks could materially adversely affect our business, financial condition and results of operations, in which case the trading price of our common stock could decline and you could lose all or part of your investment.*

### Risks Related to Our Operations

***The demand for our swimming pools and related products may be adversely affected by unfavorable economic conditions and trends in consumer spending.***

A swimming pool is a consumer discretionary purchase. Consumer discretionary spending affects our sales and is impacted by factors outside of our control, including general economic conditions, the residential housing market, unemployment rates and wage levels, interest rate fluctuations, inflation, disposable income levels, consumer confidence and access to credit. In economic downturns, the demand for swimming pools and related products may decline, often corresponding with declines in discretionary consumer spending, the growth rate of pool eligible households and swimming pool construction. This cyclicality in consumer demand for our products means that the results for any prior period may not be indicative of results for any future period.

In addition, consumer demand for swimming pools is impacted by consumer demand for, and spending on, outdoor living spaces. While we believe consumers have increased spending on outdoor living in recent years, the level of spending could decrease in the future.

Any substantial deterioration in general economic conditions that diminishes consumer confidence or discretionary income may reduce our sales and materially adversely affect our business, financial condition and results of operations. Even in generally favorable economic conditions, severe and/or prolonged downturns in the housing market could have a material adverse impact on our financial performance. Such downturns expose us to certain additional risks, including, but not limited to the risk of dealer closures or bankruptcies, which could shrink our potential customer base and inhibit our ability to collect on those dealers' receivables.

We believe that consumers' access to consumer credit is a factor enabling the purchase of new pools because a significant percentage of consumers finance their pool installations. Tightening consumer credit or increases in interest rates could prevent consumers from obtaining financing for pools, which could negatively impact our sales.

***We are susceptible to adverse weather conditions.***

Given the nature of our business, weather is one of the principal external factors affecting our business, and the impact of bad weather is further exacerbated by the seasonality of our business. The second and third quarters of the year, which correspond to the spring and summer months in the United States, represent the peak months of swimming pool use and pool installation and maintenance. Unseasonably late warming trends in the spring or early cooling trends in the fall can shorten the length of the pool season. In addition, unseasonably cool weather or extraordinary rainfall during the peak season can have an adverse impact on demand due to decreased swimming pool use and installation. Drought conditions or water management initiatives may lead to municipal ordinances related to water use restrictions. Such restrictions could result in decreased pool installations, which could negatively impact our sales.

***Our products are sold to other businesses for resale to consumers, and inability to attract dealers and distributors to purchase our products or the loss of our largest customer could adversely affect our results of operations.***

We sell all of our products to key channel partners, dealers and distributors, who resell the products to consumers. Some of our customers also sell our competitors' products. The customers' success in reselling

our products to consumers is a key driver of our net sales. If we are unable to attract or retain successful customers on a cost-effective basis, our business, financial condition and results of operations may be materially adversely affected.

Our customers are generally not contractually obligated to purchase from us. They make purchase decisions based on a combination of brand, product quality, consumer demand, customer service performance, price and other factors. Changes in our customers' strategies may adversely affect our sales. Additionally, our customers may face financial or other difficulties that may impact their operations and their purchases from us. Finally, our customers may default on their obligations to us.

These risks are heightened with respect to our largest customer that accounted for 22.3% of our net sales in 2020. A reduction in sales to our customers, particularly the loss of, or a reduction in sales to, our largest customer, could have a material adverse effect on our business, financial condition, and results of operations.

***We may be unable to sustain further growth in our business.***

Our core strategy for our business is growth, including by contributing to the transformation of the North American residential pool industry by driving and benefiting from material conversion to fiberglass pools, our key product. See "Summary—Our Growth Strategies." Although we have generated 11 consecutive years of net sales growth, we may not be able to continue generating net sales growth in the future. Our failure to implement our growth strategy in a cost-effective and timely manner could have an adverse effect on our business, financial condition and results of operations.

***A failure to meet customer specifications or consumer expectations could result in lost sales, increased expenses, negative publicity, claims for damages and harm to our brand and reputation.***

A failure or inability by us to meet customer specifications or consumer expectations could damage our reputation and adversely affect our ability to attract new business and result in delayed or lost sales. One of our growth strategies is the use of consumer-focused branding for our products to grow our sales. Our ability to create, maintain, enhance and protect our brand image and reputation and consumers' connection to our brand depends in part on our design and marketing efforts, including our increasing reliance on social media and online dissemination of consumer advertising campaigns. Negative publicity or product quality issues, whether real or perceived, could tarnish our reputation and our brand image. Failure to maintain, enhance and protect our brand image could have a material adverse effect on our results of operations. In addition, any failure to meet customer specifications could result in reduced net sales and income.

***We depend on a global network of third-party suppliers to provide components and raw materials essential to the manufacturing of our pools and price increases or deviations in the quality of the raw materials used to manufacture our products could adversely affect our net sales and operating results.***

We rely on manufacturers and other suppliers to provide us with the components and raw materials to manufacture our products. The primary raw materials used in our products are polyvinyl chloride ("PVC") plastic, galvanized steel, fiberglass, aluminum, carbon fiber, Kevlar fiber, various resins, gelcoat, polypropylene fabric and roving. Other than occasional strategic purchases of larger quantities of certain raw materials, we generally buy materials on an as-needed basis. We are dependent upon the ability of our suppliers to consistently provide raw materials and components that meet our specifications, quality standards and other applicable criteria. Our suppliers' failure to provide raw materials and components that meet such criteria on a timely basis could adversely affect production schedules and our product quality, which in turn could materially adversely affect our business, financial condition and results of operations. While we believe that our relationships with our current suppliers are sufficient to provide the materials necessary to meet present production demand, these relationships may not continue or the quantity or quality of materials available from these suppliers may not be sufficient to meet our future needs, irrespective of whether we successfully implement our growth strategy, and we may not be able to obtain supplies on favorable terms. In the event of a shortage of our raw materials, we may not be able to arrange for alternative sources of such materials on a timely basis or on equally favorable terms.

In addition, increases in the cost of the raw materials used to manufacture our products could adversely affect our operating results. The cost of some of the raw materials we use in the manufacture of our products, such as steel, is subject to price volatility. Changes in prices of our raw materials have a direct impact on our cost of sales. Accordingly, we are exposed to the risk of increases in the market prices of raw materials used in the manufacture of our products. If we are unable to increase our prices or experience a delay in our ability to increase our prices or to recover such increases in our costs, our gross profit will suffer. In addition, increases in the price of our products to compensate for increased costs of raw materials may reduce demand for our products and adversely affect our competitive position.

***The current outbreak of COVID-19, or the future outbreak of any other highly infectious or contagious diseases, has caused, and will continue to cause, disruption to our business and operations.***

Any outbreaks of contagious diseases, public health epidemics or pandemics and other adverse public health developments could have a material adverse effect on our business, financial condition and results of operations. Since December 2019, COVID-19 has spread across the globe, including every state in the United States.

In response to the COVID-19 pandemic, governmental authorities, including in all of the jurisdictions in which we operate, took measures to limit the spread of the outbreak, including mandatory business closures, travel restrictions, quarantines, declarations of states of emergency, “stay-at-home” or “shelter-in-place” orders and social distancing protocols, seeking voluntary facility closures and/or other restrictions. These restrictions and the potential reintroduction of similar restrictions could materially adversely affect our ability, and our customers’ and suppliers’ ability, to adequately staff, manage and maintain their respective businesses. Given the seasonality inherent in our business, the impact of such restrictions on our business would be particularly severe if the timing coincides with the peak months of swimming pool use and pool installation and maintenance. The COVID-19 pandemic or another pandemic could have material and adverse effects on our ability to successfully operate due to, among other factors:

- a general decline in consumer confidence, increase in unemployment rates and financial distress of consumers negatively impacting demand for our products;
- our customers experiencing diminished financial condition or financial distress, which reduces their demand for our products, and potentially renders them unable to meet their payment obligations to us in a timely manner or at all;
- delays or disruptions and temporary suspensions of our operations and those of our suppliers and building contractors that consumers use to install our pools;
- disruptions or delays in our supply chain, which may result in the need to seek alternative suppliers, who may be more expensive or may not be available at all;
- increase in our operating costs and reduction of efficiency due to measures that we have taken and will likely continue to take to address the COVID-19 pandemic, including, among other things, providing additional safety equipment, enhancing facility cleaning, switching our office employees to remote working, enacting and enforcing employee physical distancing protocols in our factories and reducing the need for face-to-face interactions, providing enhanced employee benefits and possibility of increased overhead or other expenses resulting from compliance with any future government orders or other measures enacted in response to the COVID-19 pandemic;
- continued or repeated closures of borders, impositions of prolonged quarantines and further restrictions on travel and business activity, which could materially impair our ability to support our operations, to source supplies through our supply chain, to identify, pursue and capture new business opportunities, and restrict the ability of our employees to access their workplaces;
- impairment or restructuring charges;
- inability to comply with financial covenants in our debt agreements;

- difficulty accessing the capital markets on attractive terms, or at all, and a severe disruption and instability in the global financial markets, or deteriorations in credit and financing conditions which could affect our access to capital necessary to fund business operations or address maturing liabilities on a timely basis; and
- the potential negative impact on the health of our highly qualified personnel.

Our management of the impact of the COVID-19 pandemic has required, and will continue to require, significant investment of time by our management and employees. The rapid development and fluidity of this situation precludes any prediction as to the ultimate adverse impact of the COVID-19 pandemic and the resulting governmental and other measures. The foregoing and other impacts of the COVID-19 pandemic could have the effect of heightening many of the other risks described in this prospectus, and any of these impacts could materially adversely affect our business, financial condition and results of operations.

***We depend on third parties for transportation services to some extent, and the lack of availability of and/or increases in the cost of transportation could have a material adverse effect on our business and results of operations.***

Our business depends on the transportation of both finished goods to our customers and the transportation of raw materials to us primarily through the use of flatbed trucks and rail transportation. We rely partially on third parties for transportation of these items. The availability of these transportation services is subject to various risks, including those associated with supply shortages, change in fuel prices, work stoppages, operating hazards and interstate transportation regulations. In particular, a significant portion of our finished goods is transported by flatbed trucks, which are occasionally in high demand (especially at the end of calendar quarters) and/or subject to price fluctuations based on market conditions and the price of fuel.

If the required supply of transportation services is unavailable when needed, we may be unable to sell our products when they are requested by our customers. In that event, we may be required to reduce the price of the affected products, seek alternative and, potentially more costly, transportation services or be unable to sell the affected products. Similarly, if any of these transportation providers were unavailable to deliver raw materials to us in a timely manner, we may be unable to manufacture our products in response to customer demand. In addition, a significant increase in transportation rates or fuel surcharges could adversely affect our profitability. Any of these events could have a material adverse effect on our business and results of operations.

***Product quality, warranty claims or safety concerns and other claims in the ordinary course of business could negatively impact our sales, lead to increased costs and expose us to litigation.***

Product quality issues could negatively impact consumer confidence in our brands and our business. If our product offerings do not meet applicable legal standards or consumers' expectations regarding safety or quality, we could experience lost sales and increased costs and be exposed to legal, financial and reputational risks, as well as governmental enforcement actions. Since we provide various warranties on our products, generally ranging from five years to lifetime warranties, we become liable for warranty obligations should problems arise. Warranty obligations in excess of our reserves could have a material adverse effect on our financial condition and results of operations. Actual, potential or perceived product safety concerns, including health-related concerns, could expose us to litigation, as well as government enforcement actions, and result in costly product recalls and other liabilities.

We are also involved or may be involved in various disputes, litigation and regulatory matters incidental to and in the ordinary course of our business, including employment matters, personal injury claims, intellectual property disputes, commercial disputes, government compliance matters, environmental matters, and other matters arising out of the normal conduct of our business. We intend to vigorously defend ourselves in such matters as they arise. While the impact of this litigation has or may be immaterial, there can be no assurance that the impact of the pending and any future claims will not be material to our business, financial condition or results of operations in the future.

***Our business operations could suffer if we fail to protect adequately our intellectual property rights, and we may experience claims by third parties that we are violating their intellectual property rights.***

We rely on trademark and service market protection to protect our brands and we have registered or applied to register many of these trademarks and services marks. In the event that our trademarks or service marks are successfully challenged and we lose the rights to use those trademarks or service marks, or if we fail to prevent others from using them (or similar marks), we could be forced to rebrand our products, requiring us to devote resources to advertising and marketing new brands. In addition, we cannot be sure that any pending trademark or service mark applications will be granted or will not be challenged or opposed by third parties.

We generally rely on a combination of unpatented proprietary know-how and trade secrets and, to a lesser extent, patents to preserve our position in the market. Because of the importance of our proprietary know-how and trade secrets, we employ various methods to protect our intellectual property, such as entering into confidentiality agreements with third parties, and controlling access to, and distribution of, our proprietary information. We may not be able to deter current and former employees, contractors and other parties from breaching confidentiality obligations and misappropriating proprietary information. It is difficult for us to monitor unauthorized uses of our products and technology. Accordingly, these protections may not be adequate to prevent competitors from copying, imitating or reverse engineering our products or from developing and marketing products that are substantially equivalent to or superior to our own.

In addition, we have applied for patent protection relating to certain products, processes and services or aspects thereof. We cannot be sure that any of our pending patent applications will be granted or that any patents issued as a result of our patent applications will be of sufficient scope or strength to provide us with any meaningful protection or commercial advantage.

Moreover, since our patents, trademarks and service marks are primarily registered in the United States and Canada, we may not be successful in asserting patent or trademark protection in other countries.

If third parties take actions that affect our rights or the value of our intellectual property or proprietary rights, or if we are unable to protect our intellectual property from infringement or misappropriation, other companies may be able to offer competitive products at lower prices, and we may not be able to effectively compete against these companies. In addition, if any third party copies or imitates our products in a manner that affects customer or consumer perception of the quality of our products, or of engineered products generally, our reputation and sales could suffer whether or not these violate our intellectual property rights.

In addition, we face the risk of claims that we are infringing third parties' intellectual property rights. Any such claim, even if it is without merit, could be expensive and time-consuming to defend and could divert the time and attention of our management. An intellectual property claim against us that is successful could cause us to cease making or selling products that incorporate the disputed intellectual property, require us to redesign our products, which may not be feasible or cost effective, and require us to enter into costly royalty or licensing arrangements, any of which could have a material adverse effect on our business, financial condition and results of operations.

***If we are unable to continue to enhance existing products and/or technology and develop and market, including via our digital marketing strategy, new or enhanced products that respond to customer needs and preferences, we may experience a decrease in demand for our products and our business could suffer.***

We seek to generate net sales growth through enhancement of existing products and development of new products and through digital strategies and marketing. We may not be able to compete as effectively with our competitors, and ultimately satisfy the needs and preferences of our customers, unless we can continue to enhance existing products and technologies and develop new innovative products and marketing strategies for the markets in which we compete. Product development requires significant financial, technological, and other resources. Product improvements and new product introductions also require significant research, planning, design, development, engineering, and testing at the technological, product, and manufacturing process levels, and we may not be able to timely develop and introduce product improvements or new products. Our competitors' new products may beat our products to market, be higher quality or more reliable, be more effective with more features and/or less expensive than our products,

obtain better market acceptance, or render our products obsolete. Any new products that we develop may not receive market acceptance or otherwise generate any meaningful net sales or profits for us relative to our expectations based on, among other things, existing and anticipated investments in manufacturing capacity and commitments to fund advertising, marketing, promotional programs, and research and development.

***We depend on our ability to attract, develop and retain highly qualified personnel.***

Our ability to meet our strategic objectives and otherwise grow our business will depend to a significant extent on the continued contributions of our leadership team. Our future success will also depend in large part on our ability to identify, attract, and retain other highly qualified managerial, technical, sales and marketing, operations, and customer service personnel. Competition for these individuals in our manufacturing markets is intense and supply is limited. Since we operate in a competitive labor market, there is a risk that market increases in compensation could have an adverse effect on our business. We may not succeed in identifying, attracting, or retaining qualified personnel on a cost-effective basis. The loss or interruption of services of any of our key personnel, inability to identify, attract, or retain qualified personnel in the future, delays in hiring qualified personnel, or any employee work slowdowns, strikes, or similar actions could make it difficult for us to conduct and manage our business and meet key objectives, which could harm our business, financial condition and results of operations.

***We conduct business internationally, which exposes us to additional risks.***

Our ability to successfully conduct operations in, and source products and materials from, international markets is affected by many of the same risks we face in our U.S. operations, as well as unique costs and difficulties of managing international operations. Our international operations, which accounted for 19.3% of our net sales in 2020, expose us to certain additional risks, including:

- difficulty in staffing international subsidiary operations;
- different political, economic and regulatory conditions;
- local laws and customs;
- violations of anti-bribery and anti-corruption laws, such as the United States Foreign Corrupt Practices Act;
- violations of economic sanctions laws, such as the regulations enforced by the U.S. Department of The Treasury’s Office of Foreign Assets Control;
- currency fluctuations;
- limitations on our ability to enforce legal rights and remedies with third parties or partners outside the United States;
- adverse tax consequences; and
- dependence on other economies.

For foreign-sourced products, we may be subject to certain trade restrictions that would prevent us from obtaining products. There is also a greater risk that we may not be able to access products in a timely and efficient manner. Fluctuations in other factors relating to international trade, such as tariffs, transportation costs and inflation are additional risks for our international operations.

***We rely on information technology systems to support our business operations. A significant disturbance or breach of our technological infrastructure could adversely affect our financial condition and results of operations. Additionally, failure to maintain the security of confidential information could damage our reputation and expose us to litigation.***

Information technology supports several aspects of our business, including among others, product sourcing, pricing, customer service, transaction processing, financial reporting, collections and cost management. Our ability to operate effectively on a day-to-day basis and accurately report our results depends on a solid technological infrastructure, which is inherently susceptible to internal and external threats. We are vulnerable to interruption by fire, natural disasters, power loss, telecommunication failures, internet

failures, security breaches and other catastrophic events. Exposure to various types of cyber-attacks such as malware, computer viruses, worms or other malicious acts, as well as human error, could also potentially disrupt our operations or result in a significant interruption in the delivery of our goods and services.

Advances in computer and software capabilities, encryption technology and other discoveries increase the complexity of our technological environment, including how each interact with our various software platforms. Such advances could delay or hinder our ability to process transactions or could compromise the integrity of our data, resulting in a material adverse impact on our financial condition and results of operations. We also may experience occasional system interruptions and delays that make our information systems unavailable or slow to respond, including the interaction of our information systems with those of third parties. A lack of sophistication or reliability of our information systems could adversely impact our operations and customer service and could require major repairs or replacements, resulting in significant costs and foregone sales.

In addition, we may not have the necessary resources to enhance existing information systems or implement new systems where necessary to handle our growth and changing needs, and may experience unanticipated delays, complications and expenses in implementing and integrating our systems. Any interruptions in operations would adversely affect our ability to properly allocate resources and deliver our products, which could result in customer dissatisfaction. The failure to successfully implement and maintain information systems could have an adverse effect on our ability to obtain new business, retain existing business and maintain or increase our sales and profit margins.

***We process, store and use personal information and other data, which subjects us to governmental regulation and other legal obligations related to privacy, and violation of these privacy obligations could result in a claim for damages, regulatory action, loss of business, or unfavorable publicity.***

We receive, store and process personal information and other customer information, or personal information and other data from and about our customers and our employees. There are numerous laws, as well as regulations and industry guidelines, regarding privacy and the storing, use, processing, and disclosure and protection of personal information, the scope of which are changing, subject to differing interpretations, and may be inconsistent among countries or conflict with other rules. Additionally, laws, regulations, and standards covering marketing and advertising activities conducted by telephone, email, mobile devices, and the internet, may be applicable to our business, such as the Telephone Consumer Protection Act and the Controlling the Assault of Non-Solicited Pornography And Marketing Act, and similar state consumer protection laws. We generally seek to comply with industry standards and are subject to the terms of our own privacy policies and privacy-related obligations to third parties. We strive to comply with all applicable laws, policies, legal obligations and industry codes of conduct relating to privacy and data protection to the extent possible. However, it is possible that these obligations may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or regulations, making enforcement, and thus compliance requirements, ambiguous, uncertain, and potentially inconsistent. Any failure or perceived failure by us to comply with our privacy policies, privacy-related obligations to customers or other third parties, or our privacy-related legal obligations, or any compromise of security that results in the unauthorized access to or unintended release of personally identifiable information or other customer data, may result in governmental enforcement actions, litigation, or public statements against us by consumer advocacy groups or others. Any of these events could cause us to incur significant costs in investigating and defending such claims and, if found liable, pay significant damages. Further, these proceedings and any subsequent adverse outcomes may cause our customers to lose trust in us, which could have an adverse effect on our reputation and business.

We also expect that there will continue to be new laws, regulations and industry standards concerning privacy, data protection and information security proposed and enacted in various jurisdictions. The United States, Canada, Australia, New Zealand, the European Union, the United Kingdom and other countries in which we operate are increasingly adopting or revising privacy, information security and data protection laws and regulations that could have a significant impact on our current and planned privacy, data protection and information security-related practices, our collection, use, sharing, retention and safeguarding of customer, consumer and/or employee information, as well as any other third-party information we receive,

and some of our current or planned business activities. Any significant change to applicable laws, regulations or industry practices regarding the use or disclosure of personal information could result in increased compliance costs.

Any of the foregoing could materially adversely affect our brand, reputation, business, results of operations, and financial condition.

***Our insurance coverage may be inadequate to protect against the potential hazards inherent to our business.***

We maintain property, business interruption, product liability and casualty insurance coverage, but such insurance may not provide adequate coverage against potential claims, including losses resulting from interruptions in our production capability or product liability claims relating to the products we manufacture. Premiums and deductibles for some of our insurance policies have been increasing and may, in the future, increase substantially. In some instances, some types of insurance may become available only for reduced amounts of coverage, if at all. Our insurers could also deny coverage for claims. In addition, we self-insure health benefits, and although we have stop-loss policy in place to limit exposure, we may be adversely impacted by unfavorable claims experience. If the number or severity of health claims increases, or we are required to accrue or pay additional amounts because the claims prove to be more severe than our original assessment, our operating results would be adversely affected. Our future health claims expense might exceed historical levels, which could reduce our earnings. If we were to incur a significant liability for which we were not fully insured or that our insurers disputed or for which we self-insure, our business, financial condition and results of operations could be materially adversely affected.

***We continuously evaluate and may in the future enter into additional strategic transactions. Any such transaction could happen at any time, be material to our business and take any number of forms, including, for example, an acquisition, merger, sale of certain of our assets, refinancing, or other recapitalization or material strategic transaction. Evaluating potential transactions and integrating completed ones may divert the attention of our management from ordinary operating matters.***

The success of potential acquisitions or mergers will depend, in part, on our ability to realize the anticipated growth opportunities and cost synergies through the successful integration of the businesses we acquire with our existing business, including the recent acquisition of GLI in October 2020 and the recent purchase of a 28% equity interest in Premier Pools & Spas. Even if we are successful in integrating acquired businesses, these integrations may not result in the realization of the full benefit of any anticipated growth opportunities or cost synergies or that these benefits will be realized within the expected time frames. We may have difficulty implementing systems of internal controls in acquired businesses or equity investees that may not have such systems in place, or merging different accounting and financial reporting systems with ours. In addition, acquired businesses may have unanticipated liabilities or contingencies.

We may, from time to time, consider disposing of assets. We may not be able to dispose of any such assets on terms that are attractive to us, or at all, which could materially adversely impact our financial condition or results of operation. In addition, to the extent we consummate an agreement for the sale and disposition of an asset or asset group, we may experience operational difficulties segregating them from our retained assets and operations, which could impact the execution or timing for such dispositions and could result in disruptions to our operations and/or claims for damages, among other things.

If we complete an acquisition, merger, sale of certain assets, refinancing, recapitalization or material strategic transaction, we may require additional financing that could result in an increase in the aggregate amount and/or cost of our debt. The aggregate principal amount of our debt that we may issue may be significant. Moreover, the terms of any debt financing may be expensive.

***An interruption of our production capability at one or more of our manufacturing facilities from accident, calamity or other causes, or events affecting the global economy, could adversely affect our business and results of operations.***

We manufacture our products at a limited number of manufacturing facilities, and shifting production rapidly to another facility in the event of a loss of one of or a portion of one of our manufacturing facilities could lead to increased costs. A temporary or permanent loss of the use of one or more of our

manufacturing facilities due to accidents, fire, explosions, labor issues, tornadoes, other weather conditions, natural disasters, condemnation, cancellation or non-renewals of leases, terrorist attacks or other acts of violence or war or otherwise could have a material adverse effect on our operating costs. An interruption in our production capabilities could also require us to make substantial capital expenditures to replace damaged or destroyed facilities or equipment. Any of these events could result in substantial repair costs and higher operating costs.

***The nature of our business subjects us to compliance with employment, environmental, health, transportation, safety and other governmental regulations.***

We are subject to regulation under federal, state, local and international employment, environmental, health, transportation and safety requirements, which govern such things as the manufacture of fiberglass pools, which is our key product. These laws regulate, among other things, air emissions, the discharge or release of materials into the environment, the handling and disposal of wastes, remediation of contaminated sites, worker health and safety and the impact of products on human health and safety and the environment. These laws also require us to obtain and maintain certificates, registrations, licenses, permits, and other regulatory approvals in order to conduct regulated activities, including the construction and operation of our facilities. Our products must also comply with local, state and international building codes and safety rules and regulations.

Failure to comply with these laws and regulations by us, our employees, our dealers and distributors and other business partners, including failure to obtain and maintain all required certificates, registrations, licenses, permits, and other regulatory approvals, may result in investigations, the assessment of administrative, civil and criminal fines, damages, delays, seizures, disgorgements, penalties or the imposition of injunctive relief. In particular, spills or other releases of regulated substances could expose us to material losses, expenditures and liabilities under applicable environmental laws and regulations. Under certain of such laws and regulations, we could be subject to strict, joint and several liability for the removal or remediation of previously released materials or property contamination, regardless of whether we were responsible for the release or contamination and even if our operations met previous standards in the industry at the time they were conducted. Moreover, compliance with such laws and regulations in the future could prove to be costly. Although we presently do not expect to incur any capital or other expenditures relating to regulatory matters in amounts that may be material to us, we may be required to make such expenditures in the future. These laws and regulations have changed substantially and rapidly and we anticipate that there will be continuing changes.

The clear trend in environmental, health, transportation and safety regulations is to place more restrictions and limitations on activities that impact the environment, such as emission of air pollutants. Increasingly, strict restrictions and limitations have resulted in higher operating costs for us and it is possible that the costs of compliance with such laws and regulations will continue to increase. Our attempts to anticipate future regulatory requirements that might be imposed and our plans to remain in compliance with changing regulations and to minimize the costs of such compliance may not be as effective as we anticipate.

**Risks Related to Our Industry**

***We face competition both from within our industry and from other outdoor living products and if we are not able to compete effectively, our prospects for future success will be jeopardized.***

Within our industry, we directly compete against various regional and local pool manufacturing companies. Outside of our industry, we compete indirectly with alternative suppliers of big ticket consumer discretionary outdoor living products, such as decks and patios, and with other companies who rely on discretionary homeowner expenditures, such as home remodelers. Given the density and demand for pools, some geographic markets that we serve tend to have a higher concentration of competitors than others, particularly California, Texas, Florida and Arizona and Australia. In addition, new competitors may emerge.

If one or more of our competitors were to merge, the change in the competitive landscape could adversely affect our competitive position. Consolidation by industry participants could increase their

resources and result in competitors with expanded market share, larger customer bases, greater diversified product offerings and greater technological and marketing expertise, which may allow them to compete more effectively against us. In addition, our competitors may develop products that are superior to our products (on a price-to-value basis or otherwise) or may adapt more quickly to new technologies or evolving customer requirements. If we do not compete effectively, our net sales, margins, and profitability and our future prospects for success may be harmed.

***Changes in trade policies, including the imposition of tariffs, could negatively impact our business, financial condition and results of operations.***

The current U.S. administration has signaled support for, and in some instances has taken action with respect to, major changes to certain trade policies, such as the imposition of tariffs on imported products and the withdrawal from or renegotiation of certain trade agreements, including the North American Free Trade Agreement. For example, the United States has increased tariffs on certain imports from China, as well as on steel and aluminum products imported from various countries. More specifically, in March 2018, the United States imposed a 25% tariff on steel imports pursuant to Section 301 of the Trade Act of 1974 and has imposed additional tariffs on steel imports pursuant to Section 232 of the Trade Expansion Act of 1962. These tariffs could result in interruptions in the supply chain and impact costs and our gross margins. We procure certain raw materials we use in the manufacturing of our products directly or indirectly from outside of the United States. The imposition of tariffs and other potential changes in U.S. trade policy could increase the cost or limit the availability of raw materials, which could hurt our competitive position and adversely impact our business, financial condition and results of operations. If we are unable to pass price increases on to our customer base or otherwise mitigate the costs, our operating results could be materially adversely affected.

**Risks Related to Our Indebtedness**

***Our substantial indebtedness could adversely affect our financial condition.***

We have a significant amount of indebtedness. Following this offering and the use of proceeds described herein, we will have $242.6 million of indebtedness in the form of the Amended Term Loan outstanding under the Credit Agreement and $30.0 million of availability under the Revolving Credit Facility under the Credit Agreement. Our obligations under the Credit Agreement are secured by substantially all of our and our subsidiaries' assets. Subject to the limits contained in the Credit Agreement, we may be able to incur substantial additional debt from time to time to finance capital expenditures, investments, acquisitions, or for other purposes. If we do incur substantial additional debt, the risks related to our high level of debt could intensify. Specifically, our high level of indebtedness could have important consequences, including:

- limiting our ability to obtain additional financing to fund capital expenditures, investments, acquisitions or other general corporate requirements;
- requiring a substantial portion of our cash flow to be dedicated to payments to service our indebtedness instead of other purposes, thereby reducing the amount of cash flow available for capital expenditures, investments, acquisitions and other general corporate purposes;
- increasing our vulnerability to and the potential impact of adverse changes in general economic, industry and competitive conditions;
- limiting our flexibility in planning for and reacting to changes in the industry in which we compete;
- placing us at a disadvantage compared to other, less leveraged competitors or competitors with comparable debt at more favorable interest rates; and
- increasing our costs of borrowing.

In addition, the financial and other covenants we agreed to in the Credit Agreement may limit our ability to incur additional indebtedness, make investments, and engage in other transactions, and the leverage may cause potential lenders to be less willing to loan funds to us in the future.

***We may be unable to generate sufficient cash flow to satisfy our significant debt service obligations, which would adversely affect our financial condition and results of operations.***

Our ability to make principal and interest payments on and to refinance our indebtedness will depend on our ability to generate cash in the future. This, to a certain extent, is subject to general economic, financial, competitive, legislative, regulatory, and other factors that are beyond our control. If our business does not generate sufficient cash flow from operations, in the amounts projected or at all, or if future borrowings are not available to us in amounts sufficient to fund our other liquidity needs, our financial condition and results of operations may be adversely affected. If we cannot generate sufficient cash flow from operations to make scheduled principal amortization and interest payments on our debt obligations in the future, we may need to refinance all or a portion of our indebtedness on or before maturity, sell assets, delay capital expenditures, or seek additional equity investments. If we are unable to refinance any of our indebtedness on commercially reasonable terms or at all or to effect any other action relating to our indebtedness on satisfactory terms or at all, our business may be harmed.

***Our Credit Agreement has restrictive terms and our failure to comply with any of these terms could put us in default, which would have an adverse effect on our business and prospects.***

Unless and until we repay all outstanding borrowings under our Credit Agreement we will remain subject to the restrictive terms of these borrowings. The Credit Agreement contains a number of covenants, with the most significant financial covenant being the First Lien Net Leverage Ratio, as defined in the Credit Agreement. These covenants limit the ability of certain of our subsidiaries to, among other things:

- sell assets;
- engage in mergers, acquisitions, and other business combinations;
- declare dividends or redeem or repurchase capital stock;
- incur, assume, or permit to exist additional indebtedness or guarantees;
- make loans and investments;
- incur liens; and
- enter into transactions with affiliates.

The Credit Agreement also requires us to maintain the First Lien Net Leverage Ratio, as defined in the Credit Agreement. Our ability to meet these financial ratios can be affected by events beyond our control, and we may not satisfy such a test. A breach of these covenants could result in a default under the Credit Agreement. By reason of cross-acceleration or cross-default provisions, other indebtedness may then become immediately due and payable. Our assets or cash flows may not be sufficient to fully repay borrowings under our outstanding debt instruments if accelerated upon an event of default. If amounts owed under the Credit Agreement are accelerated because of a default and we are unable to pay such amounts, the investors may have the right to assume control of substantially all of the assets securing the Credit Agreement.

No assurance can be given that any refinancing or additional financing will be possible when needed or that we will be able to negotiate acceptable terms. In addition, our access to capital is affected by prevailing conditions in the financial and capital markets and other factors beyond our control. There can be no assurance that market conditions will be favorable at the times that we require new or additional financing. In addition, the Credit Agreement contains restrictive covenants that limit our subsidiaries from making dividend payments, loans or advances to the Company, unless certain conditions are met. Our failure to comply with such covenants may result in default, which could result in the acceleration of all our debt.

***Our indebtedness is variable rate, subjecting us to interest rate risk, which could cause our indebtedness service obligations to increase significantly.***

Borrowings under the Credit Agreement accrue interest at variable rates and expose us to interest rate risk. Interest rates may fluctuate in the future. As a result, although we hedged most of our interest rate exposure under the Credit Agreement, interest rates on the Credit Agreement or other variable rate debt obligations could be higher or lower than current levels. If interest rates increase, our debt service obligations

on our variable rate indebtedness would increase even though the amount borrowed remained the same, and our net income and cash flows, including cash available for servicing our indebtedness, would correspondingly decrease.

***Developments with respect to the London Interbank Offered Rate ("LIBOR") may affect our borrowings under our debt facilities.***

On July 27, 2017, the United Kingdom's Financial Conduct Authority ("FCA") announced that it expects, by no later than the end of 2021, to cease taking steps aimed at ensuring the continuing availability of LIBOR in its current form. The FCA's announcement was stated to be aimed at encouraging market participants to use other benchmarks or reference rates in place of LIBOR. On November 24, 2017, the FCA announced that the panel banks that submit information to ICE Benchmark Administration Limited ("IBA"), as administrator of LIBOR, have undertaken to continue to do so until the end of 2021. If IBA continues to calculate and publish LIBOR up to the end of 2021, and if it does so after that time, there can be no certainty as to the basis on which it will do so.

Our Credit Agreement provides that interest may be based on LIBOR and for the use of an alternate rate to LIBOR in the event LIBOR is phased-out; however, uncertainty remains as to any such replacement rate and any such replacement rate may be higher or lower than LIBOR may have been. The establishment of alternative reference rates or implementation of any other potential changes may lead to an increase in our borrowing costs.

**Risks Related to this Offering and Ownership of Our Common Stock**

***Our stock price may be volatile, and you may not be able to resell our common stock at or above the price you paid.***

Our stock price may be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control, including:

- a slowdown in the housing market or the general economy;
- U.S. and international regulatory, political and economic factors unrelated to our performance;
- market conditions in the broader stock market, including in relation to the COVID-19 pandemic;
- actual or anticipated quarterly or annual variations in our results of operations from those of our competitors;
- actual or anticipated changes in our growth rate relative to our competitors;
- changes in net sales or earnings estimates, or changes in recommendations or withdrawal of research coverage, by equity research analysts;
- fluctuations in the values of companies perceived by investors to be comparable to us;
- competition from existing technologies and products or new technologies and products that may emerge;
- developments with respect to intellectual property rights;
- sales, or the anticipation of sales, of our common stock by us, our insiders or our other stockholders, including upon the expiration of contractual lock-up agreements;
- our commencement of, or involvement in, litigation or governmental investigations;
- additions or departures of key management or technical personnel;
- changes in governmental regulations applicable to the market we serve;
- guidance, if any, that we may provide to the public, any changes in this guidance or our failure to meet this guidance;
- tax developments;

- announcements by us or our competitors of new products or services, significant contracts, commercial relationships, capital commitments or acquisitions;
- public response to press releases or other public announcements by us or third parties, including our filings with the Securities and Exchange Commission (the "SEC");
- default under agreements governing our indebtedness;
- exchange rate fluctuations;
- other events or factors, including those from natural disasters, war, actors of terrorism or responses to these events; and
- the realization of any risks described under this "Risk Factors" section, or other risks that may materialize in the future.

These and other factors, many of which are beyond our control, may cause our operating results and the market price and demand for our common stock to fluctuate substantially. While we believe that operating results for any particular quarter are not necessarily a meaningful indication of future results, fluctuations in our quarterly operating results may negatively affect the market price and liquidity of our stock. In addition, in the past, when the market price of a stock has been volatile, holders of that stock have sometimes instituted securities class action litigation against the company that issued the stock. If any of our stockholders brought a lawsuit against us, we could incur substantial costs defending the lawsuit. Such a lawsuit could also divert the time and attention of our management from our business, which could significantly harm our profitability and reputation.

In addition, the stock markets, and the market for growth stocks in particular, have from time to time experienced price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may significantly affect the market price of our common stock, regardless of our actual operating performance. You may not realize any return on your investment in us and may lose some or all of your investment.

***We will incur increased costs as a result of operating as a public company and our management will be required to devote substantial time to new compliance initiatives and corporate governance practices.***

As a public company, we will incur significant legal, accounting, administrative and other costs and expenses that we have not previously incurred or have experience with as a private company. We will be subject to the reporting requirements of the Exchange Act, which will require, among other things, that we file with the SEC annual, quarterly and current reports with respect to our business and financial condition. In addition, the Sarbanes-Oxley Act and rules subsequently implemented by the SEC and NASDAQ impose numerous requirements on public companies, including establishment and maintenance of effective disclosure controls and procedures and internal control over financial reporting and corporate governance practices. Further, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the SEC has adopted additional rules and regulations in these areas, such as mandatory "say on pay" voting requirements that will apply to us when we cease to be an emerging growth company. Shareholder activism, the political environment and government intervention and regulatory reform may lead to substantial new regulations and disclosure obligations, which may lead to additional compliance costs and may impact the manner in which we operate our business in ways we cannot currently anticipate. Our management and other personnel will need to devote a substantial amount of time to compliance with these laws and regulations. These requirements have increased and will continue to increase our legal, accounting and financial compliance costs and have made and will continue to make some activities more time consuming and costly. For example, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to incur substantial costs to maintain the same or similar coverage. These rules and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors or our board committees or as executive officers.

For as long as we remain an "emerging growth company" as defined in the JOBS Act, we intend to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies" including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, reduced

disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

Under the JOBS Act, "emerging growth companies" can delay adopting new or revised accounting standards until such time as those standards apply to private companies.

After we are no longer an "emerging growth company," we expect to incur additional management time and cost to comply with the more stringent reporting requirements applicable to companies that are deemed accelerated filers or large accelerated filers, including complying with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act.

The increased costs will decrease our net income or increase our net loss, and may require us to reduce costs in other areas of our business or increase the prices of our products. We cannot predict or estimate the amount or timing of additional costs we may incur to respond to these requirements and appropriately training our employees and management. However, these rules and regulations are often subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices.

***We are an "emerging growth company," and the reduced disclosure requirements applicable to such companies could make our common stock less attractive to investors.***

We are an "emerging growth company," as defined in the JOBS Act enacted in April 2012, and may remain an "emerging growth company" until the last day of the year following the fifth anniversary of the completion of this offering. However, if certain events occur prior to the end of such five-year period, including if we become a "large accelerated filer," our annual gross revenues equals or exceeds an amount specified by regulation (currently $1.07 billion) or we issue more than $1.0 billion of non-convertible debt in any three-year period, we will cease to be an emerging growth company prior to the end of such five-year period. For as long as we remain an "emerging growth company," we are permitted and intend to rely on exemptions from certain disclosure requirements that are applicable to other public companies that are not "emerging growth companies." These exemptions include:

- being permitted to provide only two years of audited financial statements, in addition to any required unaudited interim financial statements, with correspondingly reduced "Management's Discussion and Analysis of Financial Condition and Results of Operations" disclosure;
- not being required to comply with the auditor attestation requirements in the assessment of our internal control over financial reporting;
- reduced disclosure obligations regarding executive compensation; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We have taken advantage of reduced reporting burdens in this prospectus. In particular, in this prospectus, we have provided only two years of audited financial statements and have not included all of the executive compensation related information that would be required if we were not an emerging growth company. We cannot predict whether investors will find our common stock less attractive if we rely on these exemptions. In addition, the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards, delaying the adoption of these accounting standards until they would apply to private companies. We have elected to take advantage of this extended transition period and therefore will not be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result of any choices to reduce future disclosure, there may be a less active trading market for our common stock and our stock price may be more volatile and it may be difficult for us to raise additional capital if and when we need it.

***We are a "controlled company" within the meaning of the NASDAQ rules and, as a result, qualify for and intend to rely on exemptions from certain corporate governance requirements.***

Following this offering, the Pamplona Fund and the Wynnchurch Funds will continue to control a majority of the voting power of our outstanding voting stock, and as a result we will be a controlled company within the meaning of the NASDAQ corporate governance standards. Under the NASDAQ rules, a company of which more than 50% of the voting power is held by another person or group of persons acting together is a controlled company and may elect not to comply with certain corporate governance requirements, including the requirements that:

- a majority of the board of directors consist of independent directors;
- the nominating and corporate governance committee be composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities;
- the compensation committee be composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities; and
- there be an annual performance evaluation of the nominating and corporate governance and compensation committees.

We intend to utilize these exemptions as long as we remain a controlled company. Accordingly, you may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of NASDAQ. After we cease to be a "controlled company," we will be required to comply with the above referenced requirements within one year.

***Our Principal Stockholders will continue to have significant influence over us after this offering, including control over decisions that require the approval of stockholders, which could limit your ability to influence the outcome of matters submitted to stockholders for a vote.***

Upon the completion of this offering, assuming a public offering price of $20.00 per share (the midpoint of the range set forth on the cover page of this prospectus), affiliates of our Principal Stockholders will together own approximately 68.2% of the outstanding shares of our common stock (or 65.8% if the underwriters exercise their option to purchase additional shares in full). As long as affiliates of our Principal Stockholders own or control a majority of our outstanding voting power, our Principal Stockholders and their affiliates will have the ability to exercise substantial control over all corporate actions requiring stockholder approval, irrespective of how our other stockholders may vote, including:

- the election and removal of directors and the size of our board of directors;
- any amendment of our articles of incorporation or bylaws; or
- the approval of mergers and other significant corporate transactions, including a sale of substantially all of our assets. See "Certain Relationships and Related Party Transactions—Stockholders' Agreement" for further information.

In addition, our Principal Stockholders will have certain board nomination rights that will enable them to exercise substantial control over all corporate actions. Pamplona will have the right to nominate to our board of directors a number of designees on a sliding scale depending on Pamplona's affiliates' ownership of our common stock, ranging from Pamplona being able to nominate at least a majority of the total number of directors so long as its affiliates beneficially own at least 50% of the shares of our common stock to Pamplona being able to nominate at least 10% of the total number of directors as long as its affiliates beneficially own at least 5%. For so long as Wynnchurch owns at least 5% of our common stock, Wynnchurch will have the right to appoint one director.

Moreover, ownership of our shares by affiliates of our Principal Stockholders may also adversely affect the trading price for our common stock to the extent investors perceive disadvantages in owning shares of a company with a controlling shareholder. For example, the concentration of ownership held by our Principal Stockholders could delay, defer, or prevent a change in control of our company or impede a merger, takeover, or other business combination which may otherwise be favorable for us. In addition, our Principal Stockholders are in the business of making investments in companies and may, from time to time, acquire interests in businesses that directly or indirectly compete with our business, as well as businesses that are

significant existing or potential customers. Many of the companies in which our Principal Stockholders invest are franchisors and may compete with us for access to suitable locations, experienced management and qualified and well-capitalized franchisees. Our Principal Stockholders may acquire or seek to acquire assets complementary to our business that we seek to acquire and, as a result, those acquisition opportunities may not be available to us or may be more expensive for us to pursue, and as a result, the interests of our Principal Stockholders may not coincide with the interests of our other stockholders. So long as our Principal Stockholders continue to directly or indirectly own a significant amount of our equity, even if such amount is less than 50%, our Principal Stockholders will continue to be able to substantially influence or effectively control our ability to enter into corporate transactions.

***Our organizational documents and Delaware law may impede or discourage a takeover, which could deprive our investors of the opportunity to receive a premium on their shares.***

Provisions of our certificate of incorporation and bylaws may make it more difficult for, or prevent a third party from, acquiring control of us without the approval of our board of directors. These provisions include:

- providing that our board of directors will be divided into three classes, with each class of directors serving staggered three-year terms;
- providing for the removal of directors only for cause and only upon the affirmative vote of the holders of at least 66⅔% in voting power of all the then-outstanding shares of stock of the Company entitled to vote thereon, voting together as a single class, if less than a majority of the voting power of our outstanding common stock is beneficially owned by our Principal Stockholders;
- empowering only the board to fill any vacancy on our board of directors (other than in respect of our Principal Stockholders' directors (as defined below)), whether such vacancy occurs as a result of an increase in the number of directors or otherwise, if less than a majority of the voting power of our outstanding common stock is beneficially owned by our Principal Stockholders;
- authorizing the issuance of "blank check" preferred stock without any need for action by stockholders;
- prohibiting stockholders from acting by written consent if less than a majority of the voting power of our outstanding common stock is beneficially owned by our Principal Stockholders;
- to the extent permitted by law, prohibiting stockholders from calling a special meeting of stockholders if less than a majority of the voting power of our outstanding common stock is beneficially owned by our Principal Stockholders; and
- establishing advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

Additionally, our certificate of incorporation provides that we are not governed by Section 203 of the Delaware General Corporation Law (the "DGCL"), which, in the absence of such provisions, would have imposed additional requirements regarding mergers and other business combinations. However, our certificate of incorporation will include a provision that restricts us from engaging in any business combination with an interested stockholder for three years following the date that person becomes an interested stockholder, but such restrictions shall not apply to any business combination between our Principal Stockholders and any affiliate thereof or their direct and indirect transferees, on the one hand, and us, on the other.

Any issuance by us of preferred stock could delay or prevent a change in control of us. Our board of directors will have the authority to cause us to issue, without any further vote or action by the stockholders, shares of preferred stock, par value $0.0001 per share, in one or more series, to designate the number of shares constituting any series, and to fix the rights, preferences, privileges, and restrictions thereof, including dividend rights, voting rights, rights and terms of redemption, redemption price or prices, and liquidation preferences of such series. The issuance of shares of our preferred stock may have the effect of delaying, deferring, or preventing a change in control without further action by the stockholders, even where stockholders are offered a premium for their shares.

In addition, as long as our Principal Stockholders beneficially own at least a majority of the voting power of our outstanding common stock, our Principal Stockholders will be able to control all matters

requiring stockholder approval, including the election of directors, amendment of our certificate of incorporation and certain corporate transactions. Together, these certificate of incorporation, bylaw and statutory provisions could make the removal of management more difficult and may discourage transactions that otherwise could involve payment of a premium over prevailing market prices for our common stock. Furthermore, the existence of the foregoing provisions, as well as the significant common stock beneficially owned by our Principal Stockholders and their right to nominate a specified number of directors in certain circumstances, could limit the price that investors might be willing to pay in the future for shares of our common stock. They could also deter potential acquirers of us, thereby reducing the likelihood that you could receive a premium for your common stock in an acquisition. For a further discussion of these and other such anti-takeover provisions, see "Description of Capital Stock—Anti-Takeover Effects of Our Certificate of Incorporation and Bylaws and Certain Provisions of Delaware Law."

***Our certificate of incorporation will contain a provision renouncing our interest and expectancy in certain corporate opportunities.***

Under our certificate of incorporation, none of our Principal Stockholders, any affiliates of our Principal Stockholders, or any of their respective officers, directors, agents, stockholders, members or partners, will have any duty to refrain from engaging, directly or indirectly, in the same business activities, similar business activities, or lines of business in which we operate. In addition, our certificate of incorporation provides that, to the fullest extent permitted by law, no officer or director of ours who is also an officer, director, employee, managing director or other affiliate of our Principal Stockholders will be liable to us or our stockholders for breach of any fiduciary duty by reason of the fact that any such individual directs a corporate opportunity to any Principal Stockholder, instead of us, or does not communicate information regarding a corporate opportunity to us that the officer, director, employee, managing director, or other affiliate has directed to a Principal Stockholder. For instance, a director of our company who also serves as a director, officer, or employee of one of our Principal Stockholders or any of their portfolio companies, funds, or other affiliates may pursue certain acquisitions or other opportunities that may be complementary to our business and, as a result, such acquisition or other opportunities may not be available to us. Upon consummation of this offering, our board of directors will consist of nine members, six of whom will be our Principal Stockholders' directors. These potential conflicts of interest could have a material adverse effect on our business, financial condition, results of operations, or prospects if attractive corporate opportunities are allocated by one of our Principal Stockholders to itself or its affiliated funds, the portfolio companies owned by such funds or any affiliates of a Principal Stockholder instead of to us. A description of our obligations related to corporate opportunities under our certificate of incorporation are more fully described in "Description of Capital Stock—Anti-Takeover Effects of Our Certificate of Incorporation and Bylaws and Certain Provisions of Delaware Law—Conflicts of Interest."

***No public market for our stock currently exists, and an active public trading market may not develop or be sustained following this offering.***

Prior to this offering, there has been no public market or active private market for our stock. Although our stock has been approved for listing on NASDAQ, an active trading market may not develop following the completion of this offering or, if developed, may not be sustained. The lack of an active market may impair your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active market may also reduce the market price of your shares. An inactive market may also impair our ability to raise capital by selling stock and may impair our ability to acquire other companies or technologies by using our stock as consideration.

The initial public offering price for our stock will be determined through negotiations among us and the underwriters, and may not bear any relationship to the market price at which our stock will trade after this offering or to any other established criteria of the value of our business. The price of our stock that will prevail in the market after this offering may be higher or lower than the price you pay, depending on many factors, many of which are beyond our control and may not be related to our operating performance.

***Our ability to raise capital in the future may be limited.***

Our business and operations may consume resources faster than we anticipate. In the future, we may need to raise additional funds through the issuance of new equity securities, debt or a combination of both.

Additional financing may not be available on favorable terms or at all. If adequate funds are not available on acceptable terms, we may be unable to fund our capital requirements. If we issue debt securities, the debt holders would have rights senior to holders of our common stock to make claims on our assets and the terms of any debt could restrict our operations, including our ability to pay dividends on our common stock. If we issue additional equity securities or securities convertible into equity securities, existing stockholders will experience dilution and the new equity securities could have rights senior to those of our common stock. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, you bear the risk of our future securities offerings reducing the market price of our common stock and diluting your interest.

***We may invest or spend the proceeds of this offering in ways with which you may not agree or which may not yield a return.***

Our management will have broad discretion to use the net proceeds we receive from this offering, and you will be relying on its judgment regarding the application of these proceeds. We expect to use the net proceeds from this offering as described under the heading "Use of Proceeds." We may also use a portion of the net proceeds to acquire or invest in complementary businesses, technologies or other assets. Our management will have considerable discretion in the application of the net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. The net proceeds to us from this offering may be invested with a view towards long-term benefits for our stockholders, and this may not increase our operating results or the market value of our stock. Until the net proceeds are used, they may be placed in investments that do not produce significant income or that may lose value.

***If we fail to maintain an effective system of internal controls, our ability to produce timely and accurate financial statements or comply with applicable regulations could be impaired.***

As a public company, we will be subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, and the rules and regulations of NASDAQ. We expect that the requirements of these rules and regulations will increase our legal, accounting and financial compliance costs, make some activities more difficult, time-consuming and costly and place significant strain on our personnel, systems and resources.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures over financial reporting. We are continuing to develop and refine our disclosure controls, internal control over financial reporting and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we will file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that information required to be disclosed in reports under the Exchange Act is accumulated and communicated to our principal executive and financial officers.

Our current controls and any new controls we develop may become inadequate because of growth in our business. Further, weaknesses in our internal controls may be discovered in the future. Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior financial reporting periods. Any failure to implement and maintain effective internal controls also could adversely affect the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that we will be required to include in our periodic reports we will file with the SEC under Section 404 of the Sarbanes-Oxley Act once we cease to be an emerging growth company. Ineffective disclosure controls and procedures and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the market price of our stock.

We have expended and anticipate we will continue to expend significant resources, and we expect to provide significant management oversight, to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting. Any failure to maintain the adequacy of our internal controls, or consequent inability to produce accurate financial statements on a timely

basis, could increase our operating costs and could materially impair our ability to operate our business and negatively impact our share price. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on NASDAQ.

We are not currently required to comply with the SEC rules that implement Sections 302 and 404 of the Sarbanes-Oxley Act, and we are therefore not required to make a formal assessment of the effectiveness of our internal control over financial reporting for that purpose. Upon becoming a public company, we will be required to comply with certain of these rules, which will require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of our internal control over financial reporting. To comply with the requirements of being a public company, we will need to undertake various actions, such as implementing new internal controls and procedures. Although we will be required to disclose changes made in our internal controls and procedures on a quarterly basis, we are not required to make our first annual assessment of our internal control over financial reporting pursuant to Section 404 until the year following our first annual report required to be filed with the SEC, or for the year ending December 31, 2022. Our independent registered public accounting firm is not required to formally attest to the effectiveness of our internal control over financial reporting until after we are no longer an emerging growth company. At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our controls are documented, designed or operating.

***Securities analysts may not publish favorable research or reports about our business or may publish no information at all, which could cause our stock price or trading volume to decline.***

The trading market for our common stock will be influenced to some extent by the research and reports that industry or financial analysts publish about us and our business. We do not control these analysts. As a newly public company, we may be slow to attract research coverage and the analysts who publish information about our common stock may have had relatively little experience with our company, which could affect their ability to accurately forecast our results and could make it more likely that we fail to meet their estimates. In the event we obtain securities or industry analyst coverage, if any of the analysts who cover us provide inaccurate or unfavorable research or issue an adverse opinion regarding our stock price, our stock price could decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports covering us, we could lose visibility in the market, which in turn could cause our stock price or trading volume to decline.

***We do not anticipate paying any cash dividends, and accordingly, stockholders must rely on stock appreciation for any return on their investment.***

We do not currently anticipate declaring any cash dividends to holders of our common stock. Consequently, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash dividends should not invest in our common stock.

***We are a holding company and rely on dividends, distributions and other payments, advances and transfers of funds from our subsidiaries to meet our obligations.***

We are a holding company that does not conduct any business operations of our own. As a result, we are largely dependent upon cash dividends and distributions and other transfers, including for payments in respect of our indebtedness, from our subsidiaries to meet our obligations. The agreements governing the indebtedness of our subsidiaries impose restrictions on our subsidiaries' ability to pay dividends or other distributions to us. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources." Each of our subsidiaries is a distinct legal entity, and under certain circumstances legal and contractual restrictions may limit our ability to obtain cash from them and we may be limited in our ability to cause any future joint ventures to distribute their earnings to us. The deterioration of the earnings from, or other available assets of, our subsidiaries for any reason could also limit or impair their ability to pay dividends or other distributions to us.

***Our certificate of incorporation will provide that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.***

Our certificate of incorporation will provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware is the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, employees or agents to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or of our certificate of incorporation or our bylaws or (iv) any action asserting a claim related to or involving the Company that is governed by the internal affairs doctrine. However, the exclusive forum provision will not apply to suits brought to enforce any liability or duty created by the Securities Act of 1933, as amended (the "Securities Act"), the Exchange Act, or any other claim for which the federal courts have exclusive jurisdiction. The forum selection provisions in our certificate of incorporation also provide that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. We recognize that the forum selection clause in our certificate of incorporation may impose additional litigation costs on stockholders in pursuing any such claims, particularly if the stockholders do not reside in or near the State of Delaware. Additionally, the forum selection clause in our certificate of incorporation may limit our stockholders' ability to bring a claim in a forum that they find favorable for disputes with us or our directors, officers or employees, which may discourage such lawsuits against us and our directors, officers and employees even though an action, if successful, might benefit our stockholders. The Court of Chancery of the State of Delaware may also reach different judgments or results than would other courts, including courts where a stockholder considering an action may be located or would otherwise choose to bring the action, and such judgments may be more or less favorable to us than our stockholders.

Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and, to the fullest extent permitted by law, to have consented to the provisions of our certificate of incorporation described above. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. However, the enforceability of similar forum provisions (including exclusive federal forum provisions for actions, suits or proceedings asserting a cause of action arising under the Securities Act) in other companies' organizational documents has been challenged in legal proceedings and there is uncertainty as to whether courts would enforce the exclusive forum provisions in our certificate of incorporation. If a court were to find the choice of forum provision contained in our certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could materially adversely affect our business, financial condition and results of operations.

***If you invest in our common stock, you will experience dilution to the extent of the difference between the initial public offering price per share of our common stock and the as further adjusted net tangible book value per share of our common stock.***

Purchasers of our common stock in this offering will experience immediate and substantial dilution in our as further adjusted net tangible book value per share to the extent of the difference between the initial public offering price per share of our common stock and the as further adjusted net tangible book value per share of our common stock. After giving effect to the Reorganization, the 2021 Financing Transactions, our draw on our Revolving Credit Facility, this offering and the application of the net proceeds from this offering, our as further adjusted net tangible book value would have been approximately $(104.9) million, or $(0.87) per share, representing an immediate increase in net tangible book value of $1.86 per share to existing stockholders and an immediate dilution in our as further adjusted net tangible book value of $20.87 per share to new investors in this offering. For a further description of the dilution that you will experience immediately after the closing of this offering, see "Dilution."

***Future sales, or the perception of future sales, of our common stock may depress the price of our common stock. In addition, a significant portion of our common stock is restricted from immediate resale but may be sold into the market in the near future. This could cause the market price of our common stock to drop significantly, even if our business is doing well.***

If we sell, or any of our stockholders sells, a large number of shares of our common stock, or if we issue a large number of shares in connection with future acquisitions, financings or other circumstances, the market price of our common stock could decline significantly. Moreover, the perception in the public market that we or our stockholders might sell shares of our common stock could depress the market price of those shares.

We cannot predict the size of future issuances of our common stock or the effect, if any, that future issuances or sales of our shares will have on the market price of such shares. Sales of substantial amounts of our common stock, including sales by significant stockholders, and shares issued in connection with any additional acquisition, may adversely affect prevailing market prices for our common stock. Possible sales also may make it more difficult for us to sell equity or equity-related securities in the future at a time and price we deem necessary or appropriate. See “Shares Eligible for Future Sale.”

After this offering, we will have 120,426,397 shares of common stock outstanding. We, all of our directors, executive officers, and certain of our stockholders have agreed to a 180-day lock-up period (subject to certain exceptions) provided under agreements executed in connection with this offering. In addition, Barclays Capital Inc., in its sole discretion, may release all or some portion of the common stock subject to lock-up agreements at any time and for any reason. We also intend to file a Form S-8 under the Securities Act, to register all common stock that we may issue under our equity compensation plans. Moreover, certain stockholders have certain demand registration rights that could require us to file registration statements in connection with sales of our common stock by such stockholder. See “Certain Relationships and Related Party Transactions—Registration Rights Agreement.” Such sales by such stockholder could be significant. Once we register these shares, they can be freely sold in the public market upon issuance, subject to the lock-up agreements described in the “Underwriting” section of this prospectus. As restrictions on resale end, the market price of our common stock could decline if the holders of currently restricted shares sell them or are perceived by the market as intending to sell them or are released from the restrictions of the lock-up agreements prior to their expiration, which may make it more difficult for you to sell your common stock at a time and price that you deem appropriate.

## Cautionary Note Regarding Forward-Looking Statements

This prospectus contains forward-looking statements, which involve risks and uncertainties. These forward-looking statements are generally identified by the use of forward-looking terminology, including the terms “anticipate,” “believe,” “confident,” “continue,” “could,” “estimate,” “expect,” “intend,” “likely,” “may,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “target,” “will,” “would” and, in each case, their negative or other various or comparable terminology. All statements other than statements of historical facts contained in this prospectus, including statements regarding our strategy, future operations, future financial position, future net sales, projected costs, prospects, plans, objectives of management and expected market growth are forward-looking statements. The forward-looking statements are contained principally in the sections entitled “Prospectus Summary,” “Risk Factors,” “Use of Proceeds,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and “Business” and include, among other things, statements relating to:

- our strategy, outlook and growth prospects;
- our operational and financial targets and dividend policy;
- general economic trends and trends in the industry and markets; and
- the competitive environment in which we operate.

These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. Important factors that could cause our results to vary from expectations include, but are not limited to:

- secular shifts in consumer demand for swimming pools and spending on outdoor living spaces;
- slow pace of material conversion from concrete pools to fiberglass pools in the pool industry;
- general economic conditions and uncertainties affecting markets in which we operate and economic volatility that could adversely impact our business, including the COVID-19 pandemic;
- changes in access to consumer credit or increases in interest rates impacting consumers’ ability to finance their purchases of pools;
- the impact of weather on our business;
- our ability to attract new customers and retain existing customers;
- our ability to sustain further growth and to manage it effectively;
- the ability of our suppliers to continue to deliver the quantity or quality of materials sufficient to meet our needs to manufacture our products;
- the availability and cost of third-party transportation services for our products and raw materials;
- product quality issues;
- our ability to successfully defend litigation brought against us;
- our ability to adequately obtain, maintain, protect and enforce our intellectual property and proprietary rights and claims of intellectual property and proprietary right infringement, misappropriation or other violation by competitors and third parties;
- failure to hire and retain qualified employees and personnel;
- exposure to risks associated with international sales and operations, including foreign currency exchange rates, corruption and instability;
- security breaches, cyber-attacks and other interruptions to our and our third-party service providers’ technological and physical infrastructures;
- catastrophic events, including war, terrorism and other international conflicts, public health issues or natural catastrophes and accidents;

- risk of increased regulation of our operations, particularly related to environmental laws;
- fluctuations in our operating results;
- inability to compete successfully against current and future competitors; and
- other risks, uncertainties and factors set forth in this prospectus, including those set forth under "Risk Factors."

These forward-looking statements reflect our views with respect to future events as of the date of this prospectus and are based on assumptions and subject to risks and uncertainties. Given these uncertainties, you should not place undue reliance on these forward-looking statements. These forward-looking statements represent our estimates and assumptions only as of the date of this prospectus and, except as required by law, we undertake no obligation to update or review publicly any forward-looking statements, whether as a result of new information, future events or otherwise after the date of this prospectus. We anticipate that subsequent events and developments will cause our views to change. You should read this prospectus and the documents filed as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from what we expect. Our forward-looking statements do not reflect the potential impact of any future acquisitions, merger, dispositions, joint ventures or investments we may undertake. We qualify all of our forward-looking statements by these cautionary statements.

## Use of Proceeds

We estimate that our net proceeds from this offering will be approximately $365.7 million (or approximately $421.5 million if the underwriters exercise their option to purchase additional shares in full), after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, based on an assumed initial public offering price of $20.00 per share (the midpoint of the range set forth on the cover page of this prospectus).

A $1.00 increase (decrease) in the assumed initial public offering price of $20.00 per share (the midpoint of the range set forth on the cover page of this prospectus) would increase (decrease) the net proceeds to us from this offering by approximately $18.6 million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. An increase (decrease) of 1,000,000 shares in the number of shares offered by us as set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by $18.6 million, assuming no change in the assumed initial public offering price and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

We will use $152.7 million of the net proceeds from this offering to repay $152.7 million of the Amended Term Loan under our Credit Agreement. In February 2021, we used $175.0 million that we borrowed under our Credit Agreement to repay a loan to our Parent in the amount of $64.9 million and to pay a $110.0 million dividend to our Parent. Amounts paid to our current executive officers and directors as part of the 2021 Financing Transactions were approximately $2.2 million. Amounts paid to our Sponsors as part of the 2021 Financing Transactions were approximately $163.8 million. The Amended Term Loan bears interest at (1) a base rate equal to the highest of (i) the Federal Funds Rate, plus 1/2 of 1.00%, (ii) the "prime rate" published in the Money Rates section of the Wall Street Journal and (iii) LIBOR plus 1.00% (2) plus a loan margin, of (i) 6.00% for Eurocurrency Rate Loans and (ii) 5.00% for Base Rate Loans. The Amended Term Loan has a maturity date of June 18, 2025. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Our Indebtedness."

We will use $16.0 million of our net proceeds from this offering to repay the $16.0 million outstanding on the Revolving Credit Facility. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Our Indebtedness" for a description of the terms of the Revolving Credit Facility. The Revolving Credit Facility allows for either Eurocurrency borrowings, which bear interest ranging from 4.50% to 4.75%, or U.S. dollar base rate borrowings, which bear interest ranging from 3.50% to 3.75% depending on the First Lien Net Leverage Ratio, as defined in the Credit Agreement. The Revolving Credit Facility matures on December 18, 2023.

We will use approximately $172.0 million of our net proceeds from this offering to repurchase 8,829,191 shares of our common stock from the Principal Stockholders and 418,121 shares of common stock from a current employee who is not an executive officer or a director of the Company (or if the underwriters exercise their option to purchase additional shares in full, approximately $227.8 million of our net proceeds from this offering to repurchase 11,693,545 shares of common stock from the Principal Stockholders and 553,767 shares of common stock from a current employee who is not an executive officer or a director of the Company) at a price per share equal to the price per share paid by the underwriters to us for shares of our common stock in this offering. See "Certain Relationships and Related Party Transactions —Purchases from Equityholders."

We will use $25.0 million of our net proceeds for general corporate purposes, including to generate funds for working capital.

## Dividend Policy

We currently do not intend to pay cash dividends on our common stock. However, we may, in the future, decide to pay dividends on our common stock. Any declaration and payment of cash dividends in the future, if any, will be at the discretion of our board of directors and will depend upon such factors as earnings levels, cash flows, capital requirements, levels of indebtedness, restrictions imposed by applicable law, our overall financial condition, restrictions in our debt agreements and any other factors deemed relevant by our board of directors.

As a holding company, our ability to pay dividends depends on our receipt of cash dividends from our operating subsidiaries. Our ability to pay dividends will therefore be restricted as a result of restrictions on their ability to pay dividends to us under our Credit Agreement and under other current and future indebtedness that we or they may incur. See “Risk Factors—Risks Relating to this Offering and Ownership of our Common Stock” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources.”

## Capitalization

The following table sets forth our cash and our capitalization as of December 31, 2020 on:

- an actual basis;
- an as adjusted basis to give effect to (i) the Reorganization, (ii) the 2021 Financing Transactions, and (iii) our draw of $16.0 million on our Revolving Credit Facility subsequent to December 31, 2020; and
- an as further adjusted basis to give effect to the adjustments set forth above and (i) the issuance and sale of 20,000,000 shares of our common stock in this offering at an assumed initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), after deducting estimated underwriting discounts and commissions payable by us and (ii) the application of the net proceeds of this offering as described under "Use of Proceeds."

The as further adjusted information below is illustrative only, and our cash and our capitalization following the completion of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. You should read this table together with the information included elsewhere in this prospectus, including "Prospectus Summary—Summary Consolidated Financial and Other Data," "Use of Proceeds," "Selected Historical Consolidated Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and our consolidated financial statements and the related notes.

| | As of December 31, 2020 | | |
|---|---|---|---|
| | Actual | As Adjusted | As Further Adjusted |
| | (in thousands, except share and per share data) | | |
| Cash | $ 59,310 | $ 74,180 | $ 99,181 |
| Long-term debt, including current portion: | | | |
| Amended Term Loan[1] | 221,496 | 395,337 | 242,637 |
| Revolving Credit Facility[2] | — | 16,000 | — |
| Parent Note[3] | 64,938 | — | — |
| Total debt, net of discount and debt issuance costs | 286,434 | 411,337 | 242,637 |
| Stockholders' equity: | | | |
| Preferred stock, $0.0001 par value; no shares authorized, issued or outstanding, actual or as adjusted; 100,000,000 shares authorized, no shares issued or outstanding, as further adjusted | — | — | — |
| Common stock, $0.0001 par value; 500,000,000 shares authorized, 109,673,709 issued and outstanding, actual and as adjusted; 900,000,000 shares authorized, 120,426,397 shares issued and outstanding, as further adjusted | 11 | 11 | 12 |
| Additional paid-in capital[4] | 200,541 | 156,270 | 349,969 |
| Retained earnings (accumulated deficit)[4] | 13,765 | (51,997) | (51,997) |
| Accumulated other comprehensive income | 2,354 | 2,354 | 2,354 |
| Total stockholders' equity | 216,671 | 106,638 | 300,338 |
| Total capitalization | $503,105 | $517,975 | $542,975 |

(1) On January 25, 2021, in connection with the 2021 Financing Transactions, we entered into a third amendment to the Term Loan to borrow an additional $175.0 million. For a further description and definition of the Amended Term Loan, see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Our Indebtedness."

(2) As of December 31, 2020, no amount was drawn, and we had $30.0 million of availability under the Revolving Credit Facility. As of the date of this registration statement, $16.0 million was drawn, and after giving effect to the proceeds from this offering we will have $30.0 million of availability under the

Revolving Credit Facility. For a further description and definition of the Revolving Credit Facility, see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Our Indebtedness."

(3) The Parent Note bore interest at 0.15% per annum and was due on October 20, 2023. The Parent Note was settled in full on February 2, 2021 with the proceeds from the Amended Term Loan.

(4) Additional paid-in capital and retained earnings (accumulated deficit) were reduced by $96.2 million and $13.8 million, respectively, on an as adjusted basis, to reflect the $110.0 million dividend paid to Parent in connection with the 2021 Financing Transactions.

A $1.00 increase (decrease) in the assumed initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus) would increase (decrease) the as further adjusted amount of each of cash, additional paid-in capital, total stockholders' equity and total capitalization by $18.6 million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. An increase (decrease) of 1,000,000 shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase (decrease) the as further adjusted amount of each of cash, additional paid-in capital, total stockholders' equity and total capitalization by $18.6 million, assuming no change in the assumed initial public offering price per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The information presented in the table above is based on the number of shares of our common stock outstanding as of December 31, 2020, and:

- excludes 4,830,086 shares of common stock reserved for issuance under the Omnibus Incentive Plan, including stock options to purchase 842,524 shares of our common stock at an exercise price equal to the price to the public in this offering to be issued to certain employees in connection with this offering and 325,753 shares of common stock underlying restricted stock units to be granted to certain of our employees and directors in connection with this offering.

## Dilution

If you invest in our common stock in this offering, your ownership interest will be diluted immediately to the extent of the difference between the initial public offering price per share of our common stock and the as further adjusted net tangible book value per share of our common stock after this offering.

Our historical net tangible book value (deficit) as of December 31, 2020 was $(189.6) million or $(1.73) per share of our common stock. Our historical net tangible book value (deficit) represents the amount of our total tangible assets less our total liabilities. Historical net tangible book value (deficit) per share represents historical net tangible book value (deficit) divided by the number of shares of common stock outstanding as of December 31, 2020.

Our as adjusted net tangible book value (deficit) as of December 31, 2020 was $(299.6) million or $(2.73) per share of our common stock, based on the total number of shares of our common stock outstanding, as adjusted, as of December 31, 2020 after giving effect to (i) the Reorganization, (ii) the 2021 Financing Transactions and (iii) our draw of $16.0 million on our Revolving Credit Facility subsequent to December 31, 2020. As adjusted net tangible book value (deficit) represents the amount of our total tangible assets less our total liabilities, after giving effect to (i) the Reorganization, (ii) the 2021 Financing Transactions and (iii) our draw of $16.0 million on our Revolving Credit Facility subsequent to December 31, 2020. As adjusted net tangible book value (deficit) per share represents as adjusted net tangible book value (deficit) divided by the aggregate number of shares of our common stock outstanding as of December 31, 2020 after giving effect to (i) the Reorganization, (ii) the 2021 Financing Transactions and (iii) our draw of $16.0 million on our Revolving Credit Facility subsequent to December 31, 2020.

After giving further effect to our issuance and sale of 20,000,000 shares of our common stock in this offering at an assumed initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, and the application of the net proceeds of this offering as described under “Use of Proceeds,” our as further adjusted net tangible book value as of December 31, 2020 would have been approximately $(104.9) million, or approximately $(0.87) per share. This represents an immediate increase in as further adjusted net tangible book value of $1.86 per share to our existing stockholders and an immediate dilution of $20.87 per share to new investors purchasing shares of common stock in this offering. Dilution per share to new investors purchasing common stock in this offering is determined by subtracting as further adjusted net tangible book value (deficit) per share after this offering from the initial public offering price per share of common stock.

The following table illustrates the dilution per share of our common stock, assuming the underwriters do not exercise their option to purchase additional shares of our common stock:

| | | |
|---|---|---|
| Assumed initial public offering price per share | | $20.00 |
| Historical net tangible book value (deficit) per share as of December 31, 2020 | $ (1.73) | |
| Increase in as adjusted net tangible book value (deficit) per share attributable to the Reorganization, the 2021 Financing Transactions and our draw of $16.0 million on our Revolving Credit Facility subsequent to December 31, 2020 | (1.00) | |
| As adjusted net tangible book value per share before this offering | (2.73) | |
| Increase in as adjusted net tangible book value per share attributable to new investors purchasing common stock in this offering | 1.86 | |
| As further adjusted net tangible book value per share immediately after this offering | | (0.87) |
| Dilution per share to new investors purchasing common stock in this offering | | $20.87 |

The dilution information described above is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing. A $1.00 increase (decrease) in the assumed initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), would increase (decrease) our as further adjusted net tangible book value per share after this offering by $0.15 and dilution per share to new investors purchasing common stock in

this offering by $0.85, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. An increase of 1,000,000 shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase our as further adjusted net tangible book value per share after this offering by $0.16 and decrease the dilution per share to new investors purchasing common stock in this offering by $(0.16), assuming no change in the assumed initial public offering price per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. A decrease of 1,000,000 shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would decrease our as further adjusted net tangible book value per share after this offering by $(0.16) and increase the dilution per share to new investors purchasing common stock in this offering by $0.16, assuming no change in the assumed initial public offering price and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their option to purchase additional shares in full, our as further adjusted net tangible book value per share after this offering would be $(0.87), representing no change in the as further adjusted net tangible book value per share to existing stockholders and no change in the as further adjusted net tangible book value per share to new investors purchasing common stock in this offering, assuming an initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The following table summarizes, as of December 31, 2020, on the as further adjusted basis described above, the total number of shares of common stock owned by existing stockholders and to be owned by new investors, the total consideration paid, and the average price per share paid by our existing stockholders and to be paid by new investors in this offering at the assumed initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. As the table shows, new investors purchasing common stock in this offering will pay an average price per share substantially higher than our existing stockholders paid.

| | Shares Purchased | | Total Consideration | | Average Price |
|---|---|---|---|---|---|
| | Number | Percentage | Amount | Percentage | Per Share |
| Existing stockholders | 100,426,397 | 83.4% | $200,552,000 | 33.4% | $ 2.00 |
| New investors | 20,000,000 | 16.6 | 400,000,000 | 66.6 | $20.00 |
| Total | 120,426,397 | 100.0% | $600,552,000 | 100.0% | |

A $1.00 increase (decrease) in the assumed initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus) would increase (decrease) the total consideration paid by new investors by $20.0 million and, in the case of an increase, would increase the percentage of total consideration paid by new investors by 1.1 percentage points and, in the case of a decrease, would decrease the percentage of total consideration paid by new investors by 1.1 percentage points, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same. An increase (decrease) of 1,000,000 shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase (decrease) the total consideration paid by new investors by $20.0 million and, in the case of an increase, would increase the percentage of total consideration paid by new investors by 1.1 percentage points and, in the case of a decrease, would decrease the percentage of total consideration paid by new investors by 1.1 percentage points, assuming no change in the assumed initial public offering price.

The table above assumes no exercise of the underwriters' option to purchase additional shares in this offering. If the underwriters were to fully exercise their option to purchase additional shares of our common stock, the percentage of common stock held by existing investors would be reduced to 80.9% of the total number of shares of our common stock outstanding after this offering, and the percentage of shares of common stock held by new investors would be increased to 19.1% of the total number of shares of our common stock outstanding after this offering.

The foregoing tables and calculations are based on 109,673,709 shares of our common stock outstanding as of April 13, 2021, and except as otherwise indicated:

- exclude 4,830,086 shares of common stock reserved for issuance under the Omnibus Incentive Plan, including stock options to purchase 842,524 shares of our common stock at an exercise price equal to the price to the public in this offering to be issued to certain employees in connection with this offering and 325,753 shares of common stock underlying restricted stock units to be granted to certain of our employees and directors in connection with this offering;
- give effect to the completion of the Reorganization prior to the closing of this offering, as a result of which there will be an aggregate of 109,673,709 shares of common stock outstanding (including 8,328,344 shares of restricted stock which will be issued under the Omnibus Incentive Plan) based on an assumed initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus) as further described in the section titled “Reorganization”; and
- assume an initial public offering price of $20.00 per share of common stock, the midpoint of the price range set forth on the cover page of this prospectus.

We may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities could result in further dilution to our stockholders.

## Selected Historical Consolidated Financial Data

The following tables present our selected historical consolidated financial data for the periods indicated. We have derived our historical consolidated statement of operations data for the years ended December 31, 2016 and 2017, for the period from January 1, 2018 through December 18, 2018 (Predecessor) and for the period from December 19, 2018 through December 31, 2018 (Successor) from our unaudited consolidated financial statements not appearing in this prospectus. We have derived the selected historical consolidated statement of operations data and the selected historical consolidated statement of cash flows data for the years ended December 31, 2019 and 2020 (Successor) and our selected historical consolidated balance sheet data as of December 31, 2019 and 2020 (Successor) from our audited consolidated financial statements included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that should be expected in the future.

The following summary consolidated financial and other data should be read in conjunction with the sections titled "Prospectus Summary—Summary Consolidated Financial and Other Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our audited consolidated financial statements and the related notes included elsewhere in this prospectus.

**Consolidated Statements of Operations Data:**
*(in thousands, except share and per share data)*

| | Predecessor | | | Successor[1] | | |
|---|---|---|---|---|---|---|
| | Year ended December 31, | | Period of January 1, 2018 through December 18, | Period of December 19, 2018 through December 31, | Year ended December 31, | |
| | 2016 (unaudited) | 2017 (unaudited) | 2018 (unaudited) | 2018 (unaudited) | 2019[2] | 2020[2] |
| Net sales | $247,496 | $265,247 | $285,838 | $ 1,374 | $ 317,975 | $ 403,389 |
| Cost of sales | 168,021 | 178,761 | 190,834 | 2,881 | 219,819 | 260,616 |
| Gross profit | 79,475 | 86,486 | 95,004 | (1,507) | 98,156 | 142,773 |
| Selling, general and administrative expense | 47,268 | 43,931 | 67,466 | 2,689 | 57,388 | 85,527 |
| Amortization | 8,990 | 8,288 | 7,992 | 1,068 | 15,643 | 17,347 |
| Income (loss) from operations | 23,217 | 34,267 | 19,546 | (5,264) | 25,125 | 39,899 |
| Other expense (income): | | | | | | |
| Interest expense | 14,550 | 14,143 | 11,116 | 664 | 22,639 | 18,251 |
| Other expense (income), net | 47 | (1,596) | 2,312 | 85 | (300) | (1,111) |
| Total other expense (income), net | 14,597 | 12,547 | 13,428 | 749 | 22,339 | 17,140 |
| Income (loss) before income taxes | 8,620 | 21,720 | 6,118 | (6,013) | 2,786 | 22,759 |
| Income tax (benefit) expense | 5,720 | (13,516) | 4,229 | (981) | (4,671) | 6,776 |
| Net income (loss) | $ 2,900 | $ 35,236 | $ 1,889 | $ (5,032) | $ 7,457 | $ 15,983 |
| Net income (loss) per share attributable to common stockholders:[3] | | | | | | |
| Basic and diluted | | | | $ (0.05) | $ 0.07 | $ 0.14 |
| Weighted-average common shares outstanding:[3] | | | | | | |
| Basic and diluted | | | | 109,673,709 | 109,673,709 | 116,469,884 |
| Pro forma net loss per share attributable to common stockholders:[4] | | | | | | |
| Basic and diluted | | | | | | $ (0.31) |
| Pro forma weighted-average common shares outstanding:[4] | | | | | | |
| Basic and diluted | | | | | | 121,279,040 |

**Consolidated Statements of Cash Flows Data:**
*(in thousands)*

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Net cash provided by operating activities | $ 35,655 | $ 63,161 |
| Net cash used in investing activities | (27,083) | (115,805) |
| Net cash provided by financing activities | 16,551 | 54,302 |

**Consolidated Balance Sheets Data:**
*(in thousands)*

| | As of December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Cash | $ 56,655 | $ 59,310 |
| Working capital[5] | 77,496 | 73,389 |
| Total assets | 525,711 | 646,676 |
| Total debt[6] | 223,223 | 286,434 |
| Total liabilities | 331,916 | 430,005 |
| Total stockholders' equity | 193,795 | 216,671 |

(1) Our operating results and financial position for the years ended December 31, 2019 and 2020, and for the period from December 19, 2018 through December 31, 2018, the Successor periods, are impacted by the Acquisition. Due to the Acquisition and the application of purchase accounting, the Successor and Predecessor periods are not necessarily comparable.

(2) Our operating results and financial position for the years ended December 31, 2019 and 2020 were impacted by the adoption of ASC 606. We used the modified retrospective method of adoption. Results for reporting periods beginning January 1, 2019 are presented under ASC 606, while prior period amounts are not adjusted and continue to be reported in accordance with the historical accounting guidance under ASC 605. See Note 2, Summary of Significant Accounting Policies, to our audited consolidated financial statements included elsewhere in this prospectus for more information.

(3) See Note 18, Net Income Per Share, to our consolidated financial statements included elsewhere in this prospectus for additional information regarding the calculation of basic and diluted income per share attributable to common stockholders.

(4) Pro forma net loss per share, basic and diluted, is computed by dividing pro forma net loss of $37.9 million by 121,279,040 pro forma weighted-average shares outstanding. For the year ended December 31, 2020, pro forma net loss gives effect to (i) the immediate recognition of $52.0 million of stock-based compensation expense upon the Reorganization due to the accelerated vesting and incremental fair value resulting from modifications made to the profits interest units' awards and (ii) the incremental interest expense of $1.9 million resulting from the additional $175.0 million borrowed under the Amended Term Loan as part of the 2021 Financing Transactions, reduced by the application of $152.7 million of the net proceeds to repay $152.7 million of the Amended Term Loan under our Credit Agreement, as if the offering had occurred on January 1, 2020, as set forth under "Use of Proceeds." For the year ended December 31, 2020, pro forma weighted-average shares outstanding gives effect to the issuance of 13,137,500 shares of common stock, which is the number of shares that would be attributable to the proceeds used to (i) repay $152.7 million of the Amended Term Loan under our Credit Agreement, (ii) repay the $16.0 million outstanding on our Revolving Credit Facility as described in "Use of Proceeds" and (iii) pay the portion of the dividend to Parent in excess of net income for the year ended December 31, 2020 of $94.1 million, at an assumed initial public offering price of $20.00 per share (the midpoint of the price range set forth on the cover page of this prospectus). Pro forma weighted-average shares outstanding also gives effect to a reduction of 8,328,344 shares, which reflects the restricted stock issued to our shareholders as part of the Reorganization. We issued 9,247,312 shares of common stock, of which the proceeds received were used to repurchase the same number of shares and therefore, the use of those proceeds to repurchase shares did not impact pro forma weighted-average shares outstanding. This pro forma per share information is presented for informational purposes only and does not purport to represent what our net income (loss) or net income (loss) per share actually would have been had the Reorganization, the offering and use of proceeds to repay $152.7 million of the Amended Term Loan under our Credit Agreement, repay the $16.0 million outstanding on our Revolving Credit Facility, repurchase shares of common stock as described in "Use of Proceeds" or pay the dividend to Parent occurred on January 1, 2020, or to project our net income (loss) or net income (loss) per share for any future period. The pro forma per share

information does not give effect to the new rate of interest that would be applicable to the extent the third amendment to the Credit Agreement was in effect on January 1, 2020.

(5) Working capital is defined as current assets minus current liabilities.

(6) Total debt includes current and non-current portion of long-term debt, net of discount and debt issuance costs and the Parent Note.

## Management's Discussion and Analysis of Financial Condition and Results of Operations

*You should read the following discussion and analysis of our financial condition and results of operations in conjunction with the section of this prospectus titled "Selected Historical Consolidated Financial Data" and our consolidated financial statements and the related notes to the consolidated financial statements appearing at the end of this prospectus. This discussion contains forward-looking statements that involve risk, assumptions and uncertainties, such as statements of our plans, objectives, expectations, intentions and forecasts. Our actual results and the timing of selected events could differ materially from those discussed in these forward-looking statements as a result of several factors, including those set forth under the section of this prospectus titled "Risk Factors" and elsewhere in this prospectus. You should carefully read the "Risk Factors" to gain an understanding of the important factors that could cause actual results to differ materially from our forward-looking statements. Please also see the section of this prospectus titled "Cautionary Note Regarding Forward-Looking Statements."*

### Overview

We are the largest designer, manufacturer and marketer of in-ground residential swimming pools in North America, Australia and New Zealand. We hold the #1 market position in North America in every product category in which we compete. We believe that we are the most sought-after brand in the pool industry and the only pool company that has established a direct relationship with the homeowner. We are Latham, The Pool Company™.

With an operating history that spans over 60 years, we offer the industry's broadest portfolio of pools and related products, including in-ground swimming pools, pool liners and pool covers. In 2020, we sold over 8,700 fiberglass pools in the United States, which we believe represents approximately one out of every ten in-ground swimming pools sold in the United States.

We have a heritage of innovation. In an industry that has traditionally marketed on a business-to-business basis (pool manufacturer to dealer), we pioneered the first "direct-to-homeowner" digital and social marketing strategy that has transformed the homeowner's purchase journey. Through this marketing strategy, we are able to create demand for our pools and generate and provide high quality, purchase-ready consumer leads to our dealer partners. In 2020, the first year in which all elements of our digital and social marketing strategy were available to homeowners, we have delivered over 45,000 consumer leads to our dealer network, representing growth of 210% over the prior year.

Partnership with our dealers is integral to our collective success, and we have enjoyed long-tenured relationships averaging over 14 years. In 2020, we sold to over 6,000 dealers; we also entered into a new and exclusive long-term strategic partnership with the nation's largest franchised dealer network. We support our dealer network with business development tools, co-branded marketing programs and in-house training, as well as a coast-to-coast operations platform consisting of over 2,000 employees across 32 facilities. The broad geographic reach of our manufacturing and distribution network allows us to deliver a fiberglass pool in a cost-effective manner to approximately 95% of the U.S. population in two days. No other competitor in the residential in-ground swimming pool industry has more than three manufacturing facilities.

The full resources of our company are dedicated to designing and manufacturing high-quality pool products with the homeowner in mind, and positioning ourselves as a value-added partner to our dealers. As a result of this approach, 2020 marked our 11$^{th}$ consecutive year of net sales growth and Adjusted EBITDA margin expansion. Net income does not adhere to this trend.

We conduct our business as one operating and reportable segment that designs, manufactures and markets in-ground swimming pools, liners and covers.

### Key Factors Affecting our Performance

Our results of operations and financial condition are affected by the following factors, which reflect our operating philosophy and focus on designing, manufacturing and marketing high quality and innovative pools and pool covers for the in-ground swimming pool market.

***Volume of Products Sold***

Our net sales depend primarily on the volume of products we sell during any given period, and volume is affected by the following items, among others:

- *Sales, distribution and marketing:* While we have traditionally relied on our dealers and distributors to raise awareness of our products, we pioneered the first "direct-to-homeowner" digital and social marketing strategy that has transformed the homeowner's purchase journey. Through this marketing strategy, we are able to create demand for our pools and generate and provide high quality, purchase-ready consumer leads to our dealer partners.

  In order to strengthen our relationship with our loyal dealer partners, we have implemented "Latham Grand," a key dealer strategy whereby we have secured exclusivity from over 250 of our largest dealers, which also includes the nation's largest franchised dealer network, Premier Pools & Spas. We also have a strong distribution network as a result of over 450 distributor branch locations that represent our products. Through our significant investments in partnerships with dealers and distributors and our consumer-oriented marketing efforts, we have created both a "push and pull" demand dynamic for our products in the marketplace. We invest in our exclusive dealers through localized marketing spend, co-branding opportunities, tailored offerings and priority lead generation. We also provide our dealers with enhanced product literature, in-store display samples and other initiatives to drive sales. We have directed a significant portion of our advertising spend to digital channels, including social media and search advertising. Our improved digital marketing engine has the ability to strategically target market spend and generate leads in territories where dealers have capacity to install more pools, markets where we are underpenetrated, or simply into the largest in-ground swimming pool markets. Our volume of product sales in a given period will be impacted by changes in our distribution platform, and by our ability to generate leads for our dealers.
- *Material conversion:* We have continued to increase sales of our products through our focused efforts to drive material conversion and market penetration of our products, specifically our fiberglass pools, which continue to take market share from traditional concrete pools and enable dramatically improved economics for consumers, dealers and for pool installers. We believe that this will be a long-term trend toward material conversion from traditional concrete pools. We believe that our fiberglass pools offer a compelling value proposition due to their lower up-front and lifecycle cost of ownership, less maintenance, higher quality, lower usage of harsh chemicals, quicker installation and more convenient experience, compared to products manufactured from traditional materials, and we anticipate that sales of our fiberglass pool products will continue to benefit from material conversion. The success of our efforts to drive conversion during any given period will impact the volume of our products sold during that period.
- *Product Innovation*: We continue to develop and introduce innovative products to accelerate material conversion and expand our markets. The continuous evolution and expansion of our product portfolio is critical to our sales growth, expanding market share and overall success. Our broad product offering allows dealers and distributors to offer consumers a wide variety of innovative pool shapes, depths and lengths. Specifically, our innovative fiberglass pool offering employs the most durable components, consisting of a carbon fiber, Kevlar and ceramic fiberglass build. Our use of innovative technology and premium materials result in long-lasting products that not only require lower up-front costs, but also save homeowners time and money from continuous maintenance throughout the product lifecycle. We believe that new products will enhance our ability to compete with traditional materials at a variety of price points, and we expect to continue to devote significant resources to developing innovative new products. The volume of our products sold during a given period will depend in part on our successfully introducing new products that generate additional demand, as well as the extent to which new products may impact our sales of existing products.
- *Economic conditions*: Demand for our products is affected by a number of economic factors impacting our customers and consumers. The in-ground swimming pool market depends in part on home equity financing, and accordingly, the level of equity in homes will affect consumers' ability to obtain a home equity line of credit and engage in backyard renovations that would result in purchases of our products. Demand for our products is also affected by the level of interest rates and the availability of credit, consumer confidence and spending, housing affordability, demographic

trends, employment levels and other macroeconomic factors that may influence the extent to which consumers engage in renovations to their backyard, including pool installation projects to enhance the outdoor living spaces of their homes.

- *Seasonality and weather:* Although we generally have demand for our products throughout the year, our business is seasonal, and weather is one of the principal external factors affecting the business. In general, net sales and net income are highest during spring and summer, representing the peak months of swimming pool use, pool installation and remodeling and repair activities. Calendar years having severe weather also may play a role in affecting sales growth, as particularly rainy or cold years tend to slow the volume of sales, including as a result of complicating conditions for pool installations. Catastrophic events, such as hurricanes, tornadoes, and earthquakes, can cause interruptions to our operations and these scenarios are at least partially mitigated by our geographic diversity, both across the United States and through international markets.

***Pricing***

In general, our products are priced to be competitive in the in-ground swimming pool market and to keep in line with changes in our input costs.

***Cost of Materials***

Raw material costs, including costs of PVC, galvanized steel, fiberglass, aluminum, carbon fiber, Kevlar fiber, various resins, gelcoat, polypropylene fabric, ceramic and roving, represent a majority of our cost of sales. Our contracts with key suppliers are typically negotiated on an annual basis. The cost of the raw materials used in our manufacturing processes is subject to volatility and has been affected by changes in supply and demand. We have no fixed-price contracts with any of our major vendors. We have not entered into hedges of our raw material costs at this time, but we may choose to enter into such hedges in the future.

Prices for spot market purchases are negotiated on a continuous basis in line with current market prices. Other than occasional strategic purchases of larger quantities of certain raw materials, we generally buy materials on an as-needed basis. Changes in prices of our raw materials have a direct impact on our cost of sales.

***Acquisitions and Partnerships***

On May 31, 2019, we acquired Narellan, a fiberglass pool manufacturer based in Australia with existing operations in Australia, New Zealand and Canada. The acquisition expanded our market share giving us a broader geographical footprint and an increase in dealer and franchise relationships.

On October 22, 2020, we acquired GLI, which specializes in manufacturing custom vinyl pool liners and safety covers. The acquisition expanded our liner and safety cover product offerings.

The consolidated financial statements include the results of operations of the Narellan and GLI acquisitions since their respective acquisition dates. The total purchase consideration was allocated to the assets acquired and liabilities assumed at their estimated fair values as of the date of acquisition, as determined by management. The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed has been recorded as goodwill.

On October 30, 2020, we entered into a long-term strategic partnership with and acquired a 28% equity interest in Premier Pools & Spas, a pool builder focusing on in-ground swimming pools. The purpose of this investment in Premier Pools & Spas is to help expand our sales and distribution channels. Our investment in Premier Pools & Spas is reflected as an equity method investment on our consolidated balance sheet as of December 31, 2020, and our proportionate share of earnings or losses of Premier Pools & Spas is recognized in earnings (losses) from equity method investment in our consolidated statement of operations on a three-month lag. Accordingly, our consolidated statement of operations for the year ended December 31, 2020 does not reflect any proportionate share of earnings or losses of Premier Pools & Spas.

***Product Mix***

We seek to continue to enhance our gross margins by improving the mix of products we sell, improving efficiency across our operations, including by investing in, and expanding, our digitally-enabled lead sourcing

capabilities, expanding our specialized training opportunities, such as "Latham University," and sales support initiatives, such as localized digital marketing spend, co-branding, enhanced product literature, in-store display samples and social media initiatives.

***Impact of COVID-19 Pandemic***

On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic and recommended containment and mitigation measures worldwide. In response to the COVID-19 pandemic, federal, state and local governments put in place travel restrictions, quarantines, "shelter-in-place" orders, and various other restrictive measures in an attempt to control the spread of the disease. Such restrictions or orders have resulted in, and continue to result in, business closures, work stoppages, slowdowns and delays, among other measures that affect our operations, as well as customer demand and the operations of our suppliers.

Since the onset of the COVID-19 pandemic, we have been focused on protecting our employees' health and safety, meeting our customers' needs as they navigate an uncertain financial and operating environment, working closely with our suppliers to protect our ongoing business operations and rapidly adjusting our short-, medium- and long-term operational plans to proactively and effectively respond to the current and potential future public health crises. While the COVID-19 pandemic presents very serious concerns for our business and operations, our employees and their families, our customers and our suppliers, we believe that we are adapting well to the wide-ranging changes that the global economy is currently undergoing, and we remain confident that we will continue to maintain business continuity, produce and sell our products safely and in compliance with applicable laws and governmental orders and mandates, maintain our robust and flexible supply chains and be in a strong position to maintain financial flexibility in the event of a potentially extended economic downturn.

To mitigate the impact of the COVID-19 pandemic on our business, we increased frequency and intensity of cleaning of our properties, implemented policies to enable our factory employees to work flexible working hours, shifted our corporate employees to remote work, temporarily stopped hiring, temporarily cut salaries (which cuts we repaid to our employees later in the year), and have greatly reduced travel for our employees. Substantially all of our plants have remained operational throughout the pandemic and we have not experienced any significant supply issues. We did not experience any significant impacts on our liquidity as a result of the COVID-19 pandemic.

Following a significant slow-down in orders in March and April of 2020 as some of our dealers shut down during the peak season, we have seen a sustained increase in demand for our products during 2020. We believe that the COVID-19 pandemic accelerated the secular trend of growing demand for pools by homeowners in the United States. Stay-at-home directives and remote work increased consumer focus on the home environment and safety. A significant portion of travel and leisure spending was redirected to home-related investments as people spent more time at home. We believe that the COVID-19 pandemic was a driver of lasting changes in consumer behavior that favors home-related spending, and we believe that these changes support short-term momentum growth, as well as long-term growth, in demand for pools.

Although we have implemented measures to mitigate the impact of the COVID-19 pandemic on our business, financial condition and results of operations, we expect that these measures may not fully mitigate the impact of the COVID-19 pandemic on our business, financial condition and results of operations. We cannot predict the degree to, or the period over, which we will be affected by the pandemic and resulting governmental and other measures. The global impact of the COVID-19 pandemic continues to rapidly evolve, and we will continue to monitor the situation closely. As the COVID-19 pandemic continues, it may also have the effect of heightening many of the risks described in "Risk Factors" in this prospectus. See "Risk Factors—Risks Related to Our Operations—The current outbreak of the COVID-19, or the future outbreak of any other highly infectious or contagious diseases, has caused, and will continue to cause, disruption to our business and operations" for a further discussion of the adverse impacts of the COVID-19 pandemic on our business.

**Key Performance Indicators**

***Adjusted EBITDA and Adjusted EBITDA Margin***

We use Adjusted EBITDA and Adjusted EBITDA margin to supplement GAAP measures of performance to evaluate the effectiveness of our business strategies, to make budgeting decisions, to

establish our annual management incentive bonus plan compensation and to compare our performance against that of other peer companies using similar measures. We define Adjusted EBITDA as net income (loss) plus (i) depreciation and amortization, (ii) interest expense, (iii) income tax (benefit) expense, (iv) loss on sale and disposal of property and equipment, (v) restructuring charges, (vi) management fees, (vii) stock-based compensation expense, (viii) other expense (income), net, (ix) other non-cash items, (x) strategic initiative costs, (xi) acquisition and integration related costs, (xii) other, (xiii) IPO costs, and (xiv) COVID-19-related expenses (income). We believe excluding these items allows for better comparison of our financial results across reporting periods.

We define Adjusted EBITDA margin as Adjusted EBITDA divided by net sales. Our definitions of Adjusted EBITDA and Adjusted EBITDA margin may not be comparable to similarly titled measures of other companies.

We believe Adjusted EBITDA and Adjusted EBITDA margin are useful measurements for investors as they help identify underlying trends that could otherwise be masked by certain expenses that we do not consider indicative of our ongoing operating performance. We also use Adjusted EBITDA and Adjusted EBITDA margin for planning purposes, assessing our financial performance, and other strategic decisions. For a discussion of Adjusted EBITDA and Adjusted EBITDA margin and the limitations on their use, and the reconciliation of Adjusted EBITDA to net income, the most directly comparable GAAP financial measure, and our calculation of Adjusted EBITDA margin see "—Non-GAAP Financial Measures" below.

**Key Components of Results of Operations**

***Net Sales***

We derive our revenue from the design, manufacture and sale of in-ground swimming pools, pool covers and liners. We sell fiberglass pools, which are one-piece manufactured fiberglass pools that are ready to be installed in a consumer's backyard and custom vinyl pools, which are manufactured pools that are made out of non-corrosive steel or composite polymer frame, on top of which a vinyl liner is installed. We sell liners for the interior surface of vinyl pools (including pools that were not manufactured by us). We also sell all-season covers, which are winterizing mesh and solid pool covers that protect pools against debris and cold or inclement weather and automatic safety covers for pools that can be operated with a switch.

Our sales are made through one-step and two-step business-to-business distribution channels. In our one-step distribution channel, we sell our products directly to dealers who, in turn, sell our products to consumers. In our two-step distribution channel, we sell our products to distributors who warehouse our products and sell them on to dealers, who ultimately sell our products to consumers.

Each product shipped is considered to be one performance obligation. With the exception of our extended service warranties and our custom product contracts, we recognize our revenue when control of our promised goods is transferred to our customers, either upon shipment or arrival at our customer's destination depending upon the terms of the purchase order. Sales are recognized net of any estimated rebates, cash discounts or other sales incentives. Revenue that is derived from our extended service warranties, which are separately priced and sold, is recognized over the term of the contracts. Revenue from custom products is recognized over time utilizing an input method that compares the cost of cumulative work-in-process to date to the most current estimates for the entire cost of the performance obligation. Custom products are generally delivered to the customer within three days of receipt of the purchase order. See "—Critical Accounting Policies and Estimates—Revenue Recognition."

***Cost of Sales***

Cost of sales includes the cost of materials and all costs to make products saleable, such as materials, labor, inbound freight, including inter-plant freight, purchasing and receiving costs, operating lease costs related to our distribution and manufacturing facilities, and warehousing and distributions costs. Cost of sales also includes depreciation expense associated with assets used to manufacture our products and make them saleable and warranty costs. We record warranty costs within cost of sales at the time product revenue is recognized based on historical experience and any specific warranty issues that have been identified. Shipping and handling costs associated with outbound freight are included in cost of sales when the related

revenue is recognized. The components of our cost of sales may not be comparable to our peers. The changes in our cost of sales generally correspond with the changes in net sales and may be impacted by any significant fluctuations in the cost of the components of our cost of sales.

***Gross Profit and Gross Margin***

Gross profit is calculated as net sales less cost of sales. Gross profit is dependent upon several factors, such as changes in the volume and the relative sales mix among product lines, prices of raw materials and the average price of our products sold and plant performance, among other factors.

Gross margin is gross profit as a percentage of our net sales. Gross margin is dependent upon several factors, such as changes in prices of raw materials, the volume and relative sales mix among product lines, the average price of our products sold and plant performance, among other factors. Gross margin is also impacted by the costs of distribution and occupancy costs, which can vary.

Our gross profit is variable in nature and generally follows changes in net sales. The components of our cost of sales may not be comparable to the components of cost of sales or similar measures of other companies. As a result, our gross profit and gross margin may not be comparable to similar data made available by other companies.

In the near term, we expect that we will sustain our increasing gross margin as a result of a continued shift in our product mix.

***Selling, General and Administrative Expense***

Selling, general and administrative expense primarily consists of personnel costs, such as salaries, incentive plan costs, and health and welfare benefits, as well as other costs, including sales and marketing, technology infrastructure, research and development, finance, legal, human resources, marketing and advertising, facility costs such as operating lease costs for our corporate office, allowances for bad debt, professional services costs, and insurance expense.

We expect that our selling, general and administrative expense will increase in future periods due to additional legal, finance, insurance and other expenses that we expect to incur as a result of being a public company, including compliance with the Sarbanes-Oxley Act. Any increase in future incentive awards or other stock-based compensation will also increase our personnel expense included in selling, general and administrative expense. However, we expect our selling, general and administrative expense to decrease as a percentage of net sales over the long term as our net sales increase and we realize economies of scale.

***Amortization***

Amortization consists of any amortization from acquired intangible assets through business combinations, including patented technology, trade names and trademarks, pool designs, franchise relationships and dealer relationships. We expect our amortization may increase as we expand our operations through acquisitions of additional businesses in the future.

***Interest Expense***

Interest expense primarily consists of any cash interest on outstanding borrowings under our Amended Term Loan and our Revolving Credit Facility, as well as the non-cash amortization of debt issuance costs and original issue discount. For a further description and definition of Amended Term Loan and Revolving Credit Facility, see “—Our Indebtedness.”

***Other Expense (Income), Net***

Other expense (income), net consists primarily of foreign currency transaction gains and losses associated with our international subsidiaries and changes in the fair value of the contingent consideration recorded in connection with the acquisition of Narellan, which was settled in September 2020. Foreign currency transaction gains and losses primarily result from intercompany purchases of a short-term

nature denominated in currencies other than the functional currency of the legal entity in which the transaction is recorded.

***Income Tax (Benefit) Expense***

We are subject to income taxes in the various jurisdictions in which we operate. Our income taxes are estimated based on taxable income earned in each jurisdiction. We file a federal consolidated tax return inclusive of all U.S. entities, and several consolidated state tax returns and separate state tax returns. We also file Canadian, Australian and New Zealand tax returns for our Canadian, Australian and New Zealand entities. Our effective tax rate varies depending on the proportion of domestic to foreign earnings, the realizability of any deferred tax assets and liabilities, and changes in tax rates and laws in any jurisdictions in which we operate.

***Net Income***

Net income is our income after considering our expense (benefit) from income taxes.

**Results of Operations**

***Year ended December 31, 2020 Compared to Year ended December 31, 2019***

The following table summarizes our results of operations for the years ended December 31, 2020 and 2019:

| | Year Ended December 31, | | | | | |
|---|---|---|---|---|---|---|
| | 2019 | % of Net Sales | 2020 | % of Net Sales | Change Amount | Change % of Net Sales |
| | (dollars in thousands) | | | | | |
| Net sales | $317,975 | 100% | $403,389 | 100% | $85,414 | 0% |
| Cost of sales | 219,819 | 69.1% | 260,616 | 64.6% | 40,797 | (4.5)% |
| Gross profit | 98,156 | 30.9% | 142,773 | 35.4% | 44,617 | 4.5% |
| Selling, general and administrative expense | 57,388 | 18.0% | 85,527 | 21.2% | 28,139 | 3.2% |
| Amortization | 15,643 | 4.9% | 17,347 | 4.3% | 1,704 | (0.6)% |
| Income from operations | 25,125 | 7.9% | 39,899 | 9.9% | 14,774 | 2.0% |
| Other expense (income): | | | | | | |
| Interest expense | 22,639 | 7.1% | 18,251 | 4.5% | (4,388) | (2.6)% |
| Other expense (income), net | (300) | 0.1% | (1,111) | 0.3% | (811) | 0.2% |
| Total other expense (income), net | 22,339 | 7.0% | 17,140 | 4.2% | (5,199) | (2.8)% |
| Income before income taxes | 2,786 | 0.9% | 22,759 | 5.6% | 19,973 | 4.8% |
| Income tax (benefit) expense | (4,671) | 1.5% | 6,776 | 1.7% | 11,447 | 0.2% |
| Net income | $ 7,457 | 2.3% | $ 15,983 | 4.0% | $ 8,526 | 1.6% |
| Adjusted EBITDA | $ 61,050 | 19.2% | $ 83,836 | 20.8% | $22,786 | 1.6% |

***Net Sales***

Net sales was $403.4 million for the year ended December 31, 2020, compared to $318.0 million for the year ended December 31, 2019. The $85.4 million, or 26.9%, increase in net sales was due to a $83.8 million increase from volume and a $1.6 million increase from pricing. The $83.8 million volume increase across our product lines primarily related to in-ground pools, of which $17.4 million was due to having a full year of Narellan and two months of GLI in our net sales. Net sales increased from our acquisition of Narellan by $9.8 million and acquisition of GLI by $7.6 million, as compared to our net sales for the year ended December 31, 2019. The increase in total net sales across our product lines was $62.4 million for in-ground swimming pools, $13.5 million for covers and $9.5 million for liners.

***Cost of Sales***

Cost of sales was $260.6 million for the year ended December 31, 2020, compared to $219.8 million for the year ended December 31, 2019, and decreased by 4.5% as a percentage of net sales. The $40.8 million, or 18.6% increase in cost of sales was primarily the result of the overall increase in sales volume and an increase in freight expense of $5.6 million as a result of the shift in product mix driven by in-ground pools, partially offset by deflation in the cost of our raw material purchases. Cost of sales as a percentage of net sales decreased by 4.5% primarily due a favorable shift in our product mix within our in-ground swimming pools product line.

***Gross Profit and Gross Margin***

Gross profit was $142.8 million for the year ended December 31, 2020, compared to $98.2 million for the year ended December 31, 2019. The $44.6 million, or 45.5% increase in gross profit was primarily due to an aggregate increase in net sales from both volume and price increases. Gross margin increased by 4.5% to 35.4% for the year ended December 31, 2020 compared to 30.9% for the year ended December 31, 2019. The increase in gross margin was primarily due to a favorable shift in product mix within our in-ground swimming pools product line, price increases across our product lines, as well as improved manufacturing efficiencies from our productivity programs, compared to the year ended December 31, 2019.

***Selling, General and Administrative Expense***

Selling, general and administrative expense was $85.5 million for the year ended December 31, 2020, compared to $57.4 million for the year ended December 31, 2019, and increased as a percentage of net sales by 3.2%. The $28.1 million, or 49.0% increase in selling, general and administrative expense was primarily due to a $12.2 million increase in employee-related costs driven by increased management incentive plan payouts and an increase in headcount particularly for customer services activities; a $5.3 million increase primarily related to our enhanced lead generation program for our dealers; a $3.6 million increase in transaction-related costs, primarily related to our acquisition of GLI, our equity investment in Premier Pools & Spas and costs incurred in connection with this offering; and a $4.3 million increase as result of having a full year of Narellan and two months of GLI in our selling, general and administrative expense.

***Amortization***

Amortization was $17.3 million for the year ended December 31, 2020, compared to $15.6 million for the year ended December 31, 2019. The $1.7 million, or 10.9% increase in amortization was due to the increase in our definite-lived intangible assets resulting from our acquisitions of Narellan and GLI in May 2019 and October 2020, respectively.

***Interest Expense***

Interest expense was $18.3 million for the year ended December 31, 2020, compared to $22.6 million for the year ended December 31, 2019. The $4.4 million, or 19.4% decrease in interest expense was primarily due to a decrease in the average LIBOR rate of 1.5%, compared to the year ended December 31, 2019.

***Other Expense (Income), Net***

Other expense (income), net was $(1.1) million for the year ended December 31, 2020, compared to $(0.3) million for the year ended December 31, 2019. The $(0.8) million increase in other expense (income), net was due to a $1.6 million favorable change in the fair value of the Narellan contingent consideration, which was settled in September 2020, offset by a $0.8 million unfavorable change in net foreign currency transaction gains and losses associated with our international subsidiaries, compared to the year ended December 2019.

***Income Tax (Benefit) Expense***

Income tax (benefit) expense was $6.8 million for the year ended December 31, 2020, compared to $(4.7) million for the year ended December 31, 2019. Our effective tax rate was 29.8% for the year ended

December 31, 2020, compared to (168.0)% for the year ended December 31, 2019. The income tax (benefit) expense of $6.8 million for the year ended December 31, 2020 was primarily due to the Federal statutory tax expense of $4.8 million and $0.3 million state tax expense based on our income before income taxes. The income tax (benefit) expense of $(4.7) million for the year ended December 31, 2019 was primarily due to a $(15.6) million benefit related to tax restructuring in Canada and a $(1.9) million net benefit on state income taxes, both partially offset by an increase in uncertain tax positions of $9.7 million. The change in our effective tax rate reflected an increase in income tax expense resulting from the increase in our income before income taxes and the absence of the $(15.6) million nonrecurring Canadian tax restructuring benefit, compared to the year ended December 31, 2019.

***Net Income***

Net income was $16.0 million for the year ended December 31, 2020, compared to $7.5 million for the year ended December 31, 2019. The $8.5 million, or 114.3% increase in net income was primarily due to the factors described above.

***Net Income Margin***

Net income margin was 4.0% for the year ended December 31, 2020, compared to 2.3% for the year ended December 31, 2019. The 1.7% increase in net income margin was due to an $8.5 million increase in net income and an $85.4 million increase in net sales, compared to the year ended December 31, 2019 due to the factors described above.

***Adjusted EBITDA***

Adjusted EBITDA was $83.8 million for the year ended December 31, 2020, compared to $61.1 million for the year ended December 31, 2019. The $22.8 million, or 37.3% increase in Adjusted EBITDA was primarily due to a $15.6 million increase in earnings before interest expense and income tax (benefit) expense, as well as a $5.3 million increase in strategic initiative costs, which represents fees paid to external consultants for our strategic business transformation initiatives, including our rebranding initiative, and a $1.7 million increase in legal, accounting and professional fees incurred in connection with this offering that are not capitalizable, compared to the year ended December 31, 2019.

***Adjusted EBITDA Margin***

Adjusted EBITDA margin was 20.8% for the year ended December 31, 2020, compared to 19.2% for the year ended December 31, 2019. The 1.6% increase in Adjusted EBITDA margin was primarily due to a $22.8 million increase in Adjusted EBITDA and an $85.4 million increase in net sales, compared to the year ended December 31, 2019.

**Non-GAAP Financial Measures**

We track our non-GAAP financial measures to monitor and manage our underlying financial performance. The following discussion includes the presentation of Adjusted EBITDA and Adjusted EBITDA margin, which are non-GAAP financial measures that exclude the impact of certain costs, losses and gains that are required to be included in our profit and loss measures under GAAP. Although we believe these measures are useful to investors and analysts for the same reasons it is useful to management, as discussed below, these measures are neither a substitute for, nor superior to, U.S. GAAP financial measures or disclosures. Other companies may calculate similarly-titled non-GAAP measures differently, limiting their usefulness as comparative measures. To address these limitations, we have reconciled Adjusted EBITDA to the applicable most comparable GAAP measure, net income, throughout this prospectus.

***Adjusted EBITDA and Adjusted EBITDA Margin***

Adjusted EBITDA and Adjusted EBITDA margin are key metrics used by management and our board of directors to assess our financial performance. Adjusted EBITDA and Adjusted EBITDA margin are also frequently used by analysts, investors and other interested parties to evaluate companies in our industry, when considered alongside other GAAP measures. We use Adjusted EBITDA and Adjusted EBITDA margin

to supplement GAAP measures of performance to evaluate the effectiveness of our business strategies, to make budgeting decisions and to compare our performance against that of other companies using similar measures. We have presented Adjusted EBITDA and Adjusted EBITDA margin solely as supplemental disclosures because we believe they allow for a more complete analysis of results of operations and assist investors and analysts in comparing our operating performance across reporting periods on a consistent basis by excluding items that we do not believe are indicative of our core operating performance, such as (i) depreciation and amortization, (ii) interest expense, (iii) income tax (benefit) expense, (iv) loss on sale and disposal of property and equipment, (v) restructuring charges, (vi) management fees, (vii) stock-based compensation expense, (viii) other expense (income), net, (ix) other non-cash items, (x) strategic initiative costs, (xi) acquisition and integration related costs, (xii) other, (xiii) IPO costs, and (xiv) COVID-19-related expenses (income).

Adjusted EBITDA and Adjusted EBITDA margin are non-GAAP financial measures and should not be considered as alternatives to net income as a measure of financial performance or any other performance measure derived in accordance with GAAP, and they should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. You are encouraged to evaluate these adjustments and the reasons we consider them appropriate for supplemental analysis. In evaluating Adjusted EBITDA and Adjusted EBITDA margin, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. There can be no assurance that we will not modify the presentation of Adjusted EBITDA and Adjusted EBITDA margin following this offering, and any such modification may be material. Our presentation of Adjusted EBITDA and Adjusted EBITDA margin should not be construed to imply that our future results will be unaffected by any such adjustments. In addition, other companies, including companies in our industry, may not calculate Adjusted EBITDA and Adjusted EBITDA margin at all or may calculate Adjusted EBITDA and Adjusted EBITDA margin differently and accordingly, are not necessarily comparable to similarly entitled measures of other companies, which reduces the usefulness of Adjusted EBITDA and Adjusted EBITDA margin as tools for comparison.

Adjusted EBITDA and Adjusted EBITDA margin have their limitations as analytical tools, and you should not consider them in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are that Adjusted EBITDA and Adjusted EBITDA margin:

- do not reflect every expenditure, future requirements for capital expenditures or contractual commitments;
- do not reflect changes in our working capital needs;
- do not reflect the interest expense, or the amounts necessary to service interest or principal payments, on our outstanding debt;
- do not reflect income tax (benefit) expense, and because the payment of taxes is part of our operations, tax expense is a necessary element of our costs and ability to operate;
- do not reflect non-cash equity compensation, which will remain a key element of our overall equitybased compensation package; and
- do not reflect the impact of earnings or charges resulting from matters we consider not to be indicative of our ongoing operations.

Although depreciation and amortization are eliminated in the calculation of Adjusted EBITDA and Adjusted EBITDA margin, the assets being depreciated and amortized will often have to be replaced in the future, and Adjusted EBITDA and Adjusted EBITDA margin do not reflect any costs of such replacements.

Management compensates for these limitations by primarily relying on our GAAP results, while using Adjusted EBITDA and Adjusted EBITDA margin as supplements to the corresponding GAAP financial measures.

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

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| | (in thousands) | |
| Net income | $ 7,457 | $ 15,983 |
| Depreciation and amortization | 21,659 | 25,365 |
| Interest expense | 22,639 | 18,251 |
| Income tax (benefit) expense | (4,671) | 6,776 |
| Loss on sale and disposal of property and equipment | 680 | 332 |
| Restructuring charges[(a)] | 980 | 1,265 |
| Management fees[(b)] | 500 | — |
| Stock-based compensation expense | 808 | 1,827 |
| Other expense (income), net[(c)] | (300) | (1,111) |
| Other non-cash items[(d)] | 6,331 | 1,338 |
| Strategic initiative costs[(e)] | 964 | 6,264 |
| Acquisition and integration related costs[(f)] | 3,612 | 5,497 |
| Other[(g)] | 391 | 1,007 |
| IPO costs[(h)] | — | 1,731 |
| COVID-19-related expenses (income)[(i)] | — | (689) |
| Adjusted EBITDA | $ 61,050 | $ 83,836 |
| Net sales | $317,975 | $403,389 |
| Net income margin | 2.3% | 4.0% |
| Adjusted EBITDA margin | 19.2% | 20.8% |

(a) Represents the cost of shutting down production and warehouse facilities in Decatur, Georgia and Mississauga, Ontario, Canada, including the cost to transfer and dispose of property and equipment and involuntary workforce reductions. Also includes severance and other costs for our executive management changes.

(b) Represents management fees paid to our Principal Stockholders in accordance with our expense reimbursement arrangement, which will terminate as of the effective date of our initial public offering.

(c) Represents foreign currency transaction (gains) and losses associated with our international subsidiaries and changes in the fair value of the contingent consideration recorded in connection with the acquisition of Narellan, which was settled in September 2020.

(d) Represents non-cash adjustments to record the step-up in the fair value of inventory related to the Acquisition, the acquisition of Narellan and the acquisition of GLI, which are amortized through cost of sales in the consolidated statements of operations. Also includes non-cash adjustments related to our frozen defined benefit pension plans, which were terminated in December 2020.

(e) Represents fees paid to external consultants for our strategic initiatives, including our rebranding initiative.

(f) Represents acquisition and integration costs primarily related to the acquisition of Narellan, the acquisition of GLI, the equity investment in Premier Pools & Spas, as well as other costs related to a transaction that was abandoned.

(g) Other costs consist of other discrete items as determined by management, including fees paid to external consultants for tax restructuring, the cost for legal defense of a specified matter, the cost incurred related to our production facility fire in Picton, Australia in 2020, and other items.

(h) Represents items management believes are not indicative of ongoing operating performance. These expenses are primarily composed of legal, accounting and professional fees incurred in connection with this offering that are not capitalizable, which are included within selling, general and administrative expense.

(i) Represents temporary cleaning, equipment and salary costs incurred in response to the COVID-19 pandemic, offset by government grants received in the United States, Canada and New Zealand.

**Liquidity and Capital Resources**

***Overview***

Our primary sources of liquidity are net cash provided by operating activities and availability under our Revolving Credit Facility. Historically, we have funded working capital requirements, capital expenditures, payments related to acquisitions, and debt service requirements with internally generated cash on hand and through our Amended Term Loan and Revolving Credit Facility (each as defined below under "—Our Indebtedness") and through the issuance of shares of our common stock. Our primary cash needs are to fund working capital, capital expenditures, debt service requirements and any acquisitions we may undertake. As of December 31, 2020, we had $59.3 million of cash, $221.5 million of outstanding borrowings and an additional $30.0 million of availability under our Revolving Credit Facility, which was undrawn.

Our primary working capital requirements are for the purchase of inventory, payroll, rent, facility costs and other selling, general and administrative costs. Our working capital requirements fluctuate during the year, driven primarily by seasonality and the timing of raw material purchases. Our capital expenditures are primarily related to growth, including production capacity, storage and delivery equipment. We are in the midst of a multi-year capital plan to invest in our facilities, technology and systems, including investments to expand our fiberglass manufacturing capacity. We expect to fund these capital expenditures from net cash provided by operating activities.

Following this offering, we believe that the $25.0 million of net proceeds from this offering, our existing cash, cash generated from operations and availability under our Revolving Credit Facility, will be adequate to fund our operating expenses and capital expenditure requirements over the next 12 months. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we expect.

***Our Indebtedness***

*Revolving Credit Facility*

On December 18, 2018, Latham Pool Products entered into an agreement (the "Credit Agreement") with Nomura Corporate Funding Americas, LLC ("Nomura") that included a revolving line of credit (the "Revolver") and letters of credit ("Letters of Credit" or collectively with the Revolver, the "Revolving Credit Facility"), as well as a Term Loan (as described and defined below). The Revolving Credit Facility is utilized to finance ongoing general corporate and working capital needs with the Revolver of up to $30.0 million. The Revolving Credit Facility matures on December 18, 2023.

The Revolving Credit Facility allows for either Eurocurrency borrowings, which bear interest ranging from 4.50% to 4.75%, or U.S. dollar base rate borrowings, which bear interest ranging from 3.50% to 3.75% depending on the First Lien Net Leverage Ratio, as defined in the Credit Agreement. A commitment fee accrues on any unused portion of the commitments under the Revolving Credit Facility. The commitment fee is due and payable quarterly in arrears and is equal to the applicable margin times the actual daily amount by which the $30.0 million initial commitment exceeds the sum of the outstanding borrowings under our Revolving Credit Facility. The applicable margin ranges from 0.375% to 0.500% as determined by our First Lien Net Leverage Ratio as defined in the Credit Agreement.

We are required to meet certain financial covenants, including maintaining specific liquidity measurements. There are also negative covenants, including certain restrictions on our ability to incur additional indebtedness, create liens, make investments, consolidate or merge with other entities, enter into transactions with affiliates and make prepayments.

We will use $16.0 million of our net proceeds from this offering to repay the $16.0 million outstanding on the Revolving Credit Facility. The amount repaid under the Revolving Credit Facility can be reborrowed.

*Term Loan Facility*

Pursuant to the Credit Agreement, Latham Pool Products also borrowed $215.0 million in term loans (the "Term Loan"). The Term Loan was amended on May 29, 2019, to provide additional borrowings of $23.0 million, which was accounted for as a modification to the Term Loan, to fund our acquisition of Narellan (the "First Amendment"). On October 14, 2020, we amended the First Amendment to provide additional borrowings of $20.0 million, which was accounted for as new debt (the "Second Amendment"). The Second Amendment was further amended on January 25, 2021, to provide an additional incremental term loan of $175.0 million (the "Third Amendment"). We accounted for $165.0 million of the borrowings under the Third Amendment as new debt and $10.0 million of the borrowings under the Third Amendment as a debt modification. We recorded an aggregate of $1.2 million of debt issuance costs as a direct reduction to the carrying amount of long-term debt on the consolidated balance sheet. On January 25, 2021, Latham Pool Products borrowed the incremental term loan, and the proceeds were used on February 2, 2021 to repay the Parent Note in full and to make a $110.0 million dividend to our Parent. The Term Loan, collectively with the First Amendment, Second Amendment and Third Amendment, are referred to as the "Amended Term Loan."

The Amended Term Loan bears interest at (1) a base rate equal to the highest of (i) the Federal Funds Rate, as defined in the Credit Agreement, plus ½ of 1.00%, (ii) the "prime rate" published in the Money Rates section of the Wall Street Journal and (iii) LIBOR plus 1.00% (2) plus a Loan Margin, as defined in the Credit Agreement, of (i) 6.00% for Eurocurrency Rate Loans and (ii) 5.00% for Base Rate Loans, as defined in the Credit Agreement. The Amended Term Loan has a maturity date of June 18, 2025. Interest and principal payments are due quarterly. Principal payments under the First Amendment were calculated as 0.629% of the outstanding principal balance. In connection with the Second Amendment, we were required to make a $1.6 million in principal payment for the partial period of October 14, 2020 through December 31, 2020.

In connection with the Third Amendment, we are required to repay the outstanding principal balance of the Amended Term Loan in fixed quarterly payments of $5.8 million commencing March 31, 2021. In connection with the Amended Term Loan, we are subject to various financial reporting, financial and other covenants, including maintaining specific liquidity measurements.

Under the Amended Term Loan, we are required to make mandatory prepayments based on our excess cash flow for the year, as follows (as a percentage of our excess cash flow for the year):

| Leverage Ratio | Mandatory Prepayment Percentage |
|---|---|
| > 3.50:1.00 | 90% |
| > 3.00:1.00 and ≤ 3.50:1.00 | 75% |
| > 2.50:1.00 and ≤ 3.00:1.00 | 50% |
| > 2.00:1.00 and ≤ 2.50:1.00 | 25% |
| ≤ 2.00:1.00 | 0% |

The Leverage Ratio in the table above is defined, as of any date of determination, as the ratio of the aggregate principal amount of indebtedness at such date to consolidated earnings before interest, taxes, depreciation and amortization.

There was no estimated mandatory prepayment to be paid as of December 31, 2020.

The obligations under the Credit Agreement are guaranteed by certain of our wholly owned subsidiaries as defined in the security agreement. The obligations under the Credit Agreement are secured by substantially all of the guarantors' tangible and intangible assets, including, but not limited to, their accounts receivables, equipment, intellectual property, inventory, cash and cash equivalents, deposit accounts and security accounts. The Credit Agreement also restricts payments and other distributions unless certain conditions are met, which could restrict our ability to pay dividends.

As of December 31, 2020, we were in compliance with all covenants under the Revolving Credit Facility and the Amended Term Loan.

We will use a portion of the net proceeds of this offering to repay $152.7 million of the Amended Term Loan.

***Cash Flows***

The following table summarizes our sources and uses of cash for each of the periods presented:

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| | (in thousands) | |
| Net cash provided by operating activities | $ 35,655 | $ 63,161 |
| Net cash used in investing activities | (27,083) | (115,805) |
| Net cash provided by financing activities | 16,551 | 54,302 |
| Effect of exchange rate changes on cash | (956) | 997 |
| Net increase in cash | $ 24,167 | $ 2,655 |

*Operating Activities*

During the year ended December 31, 2020, operating activities provided $63.2 million of cash. Net income, after adjustments for non-cash items, provided cash of $42.1 million. Cash provided by operating activities was further driven by changes in our operating assets and liabilities of $21.1 million. Net cash provided by changes in our operating assets and liabilities for the year ended December 31, 2020 consisted primarily of an $17.7 million increase in accrued expenses and other current liabilities, a $12.6 million increase in accounts payable and a $9.5 million decrease in trade receivables, partially offset by a $17.0 million increase in inventories and a $4.2 million increase in income tax receivable. The changes in accrued expenses and other current liabilities and accounts payable were primarily due to the increase and timing of payments for rebate accruals, the increase in accrued incentives related to the management incentive bonus plan and GLI acquisition-related fees. The change in trade receivables was driven by the timing of inventory shipments. The increase in inventories was primarily due to increased production in response to customer demand. The increase in income tax receivable was due to estimated tax payments made in in excess of the actual annual tax provision.

During the year ended December 31, 2019, operating activities provided $35.7 million of cash. Net income, after adjustments for non-cash items, provided cash of $30.3 million. Cash provided by operating activities was further driven by changes in our operating assets and liabilities of $5.4 million. Net cash provided by changes in our operating assets and liabilities for the year ended December 31, 2019 consisted primarily of a $13.0 million decrease in inventories, a $1.5 million decrease in prepaid expenses and other current assets and a $0.7 million increase in accrued expenses and other current liabilities, partially offset by a $7.1 million increase in trade receivables, a $2.3 million decrease in accounts payable and a $0.5 million increase in income tax receivable. The decrease in inventories was primarily due to an increase in net sales as compared to 2018, which resulted in increased inventory shipments in December of 2019. Additionally, inventories decreased as a result of decreases in steel pricing during 2019. The decrease in prepaid and other current assets was primarily due to a decrease in the capitalization of trade show expenses as a result of our adoption of ASC 606 using the modified retrospective method. The changes in accounts payable, accrued expenses and other current liabilities were primarily due to the timing of vendor payments, the change in trade receivables was driven by decreased cash collections during 2019.

*Investing Activities*

During the year ended December 31, 2020, investing activities used $115.8 million of cash, consisting of the acquisition of GLI of $74.7 million, the equity investment in Premier Pools & Spas of $25.4 million and the purchase of property and equipment for $16.3 million, partially offset by proceeds from the sale of

property and equipment of $0.6 million. The purchase of property and equipment was to expand capacity for inventory production in order to meet increasing customer demand.

During the year ended December 31, 2019, investing activities used $27.1 million of cash, consisting of the acquisition of Narellan of $20.2 million and purchases of property and equipment of $8.2 million, partially offset by proceeds from the sale of property and equipment of $1.3 million.

*Financing Activities*

During the year ended December 31, 2020, financing activities provided $54.3 million of cash, primarily consisting of proceeds from the issuance of common stock of $64.9 million, proceeds from long-term debt borrowings of $20.0 million and proceeds from capital contributions from Parent of $0.6 million, partially offset by payments on long-term debt borrowings of $24.0 million and payments to settle the Narellan contingent consideration of $6.6 million.

During the year ended December 31, 2019, financing activities provided $16.6 million of cash, consisting of proceeds from long-term debt borrowings of $22.3 million and proceeds from capital contributions of $0.3 million, partially offset by payments on long-term debt borrowings of $5.8 million and distributions to the Parent of $0.2 million.

**Contractual Obligations**

The following table summarizes our contractual obligations as of December 31, 2020 and the effects that such obligations are expected to have on our liquidity and cash flows in future periods:

| | Payments Due by Period | | | | |
|---|---|---|---|---|---|
| | Total | Less than 1 Year | 1 to 3 Years | 4 to 5 Years | More than 5 Years |
| Long-term indebtedness, excluding interest[1][5] | $293,085 | $13,042 | $ 91,022 | $189,021 | $ — |
| Interest on long-term indebtedness[2][5] | 64,593 | 15,940 | 29,282 | 19,371 | — |
| Operating lease obligations[3] | 29,329 | 6,484 | 10,426 | 7,325 | 5,094 |
| Total[4] | $387,007 | $35,466 | $130,730 | $215,717 | $5,094 |

(1) We are required to pay a commitment fee equal to the applicable margin times the actual daily amount by which the $30.0 million initial commitment of our Revolving Credit Facility exceeds the sum of the outstanding borrowings under the Revolving Credit Facility and outstanding letters of credit obligations. The applicable margin ranges from 0.375% to 0.500% as determined by our First Lien Net Leverage Ratio, as defined in the Credit Agreement. Under the Second Amendment, we were required to repay the outstanding principal balance of the Term Loan in fixed quarterly payments of $3.3 million commencing March 31, 2021 through maturity. Our Parent Note requires us to pay $64.9 million and matures on October 20, 2023 with no principal payments due until maturity. We repaid the Parent Note in full on February 2, 2021.

(2) Interest on long-term debt includes interest on our Amended Term Loan. The Amended Term Loan bears interest at (1) a base rate equal to the highest of (i) the Federal Funds Rate, as defined in the Credit Agreement, plus ½ of 1.00%, (ii) the “prime rate” published in the Money Rates section of the Wall Street Journal and (iii) LIBOR plus 1.00% (2) plus a Loan Margin, as defined in the Credit Agreement, of (i) 6.00% for Eurocurrency Rate Loans and (ii) 5.00% for Base Rate Loans, as defined in the Credit Agreement. For purposes of this table, we have assumed an interest rate of 7.14% on the Amended Term Loan for all future periods, which is the rate as of December 31, 2020. Interest on the Parent Note accrues at an annual rate of 0.15%. This table does not reflect any interest on the Revolving Credit Facility as the Company did not have any amounts outstanding under the Revolving Credit Facility as of December 31, 2020.

(3) Operating lease obligations relate to our office, distribution and manufacturing facilities. All of these obligations require cash payments to be made by us over varying periods generally with terms of five years or less. Certain leases are renewable at our option.

(4) We have excluded the amount of the liability for uncertain tax benefits as of December 31, 2020 in the table above. As of December 31, 2020, we had $5.4 million of uncertain tax liabilities, excluding interest and penalties, related to uncertain tax positions. The timing of future cash outflows associated with our liabilities for uncertain tax liabilities is highly uncertain. As such, we are unable to make reasonably reliable estimates of the period of cash settlement with the respective tax authority.

(5) Long-term indebtedness and interest on long-term indebtedness changed materially due to the Third Amendment dated January 25, 2021, which increased the outstanding principal balance of the Term Loan by $175.0 million. A portion of these proceeds were used to pay down the Parent Note in its entirety on February 2, 2021, which would have matured on October 20, 2023. The Third Amendment did not change the Term Loan's maturity date of June 18, 2025, at which time the remaining principal is due. The Third Amendment increased the fixed quarterly principal payments from $3.3 million under the Second Amendment to $5.8 million. Due to the increased principal payments under the Amended Term Loan and the settlement of the Parent Note, the required principal payments reflected in this table would be $23.0 million in the next year, $46.1 million in the next one to three years, and $334.0 million in the next four to five years. At the new assumed interest rate of 7.73% as of January 25, 2021, the interest payments reflected in this table would be $28.1 million in the next year, $51.3 million in the next one to three years, and $34.1 million in the next four to five years.

As of the date of this prospectus, there were no material changes to our contractual obligations with the exception of long-term indebtedness. See "—Our Indebtedness."

**Critical Accounting Policies and Estimates**

Our consolidated financial statements are prepared in accordance with generally accepted accounting principles in the United States. Throughout the preparation of these financial statements, we have made estimates and assumptions that impact the reported amounts of assets, liabilities and the disclosure of contingent liabilities at the date of the financial statements and revenues and expenses during the reporting period. These estimates are based on historical results, trends and other assumptions we believe to be reasonable. We evaluate these estimates on an ongoing basis. Actual results may differ from estimates.

Our significant accounting policies are presented in Note 2 of our consolidated financial statements. We believe that the following critical accounting policies affect the most significant estimates and management judgments used in preparation of the consolidated financial statements.

***Revenue Recognition***

We adopted ASC 606 using the modified retrospective method. We generate the majority of our revenue from the sale of our products through business-to-business distribution channels and dealers.

With the exception of our extended service warranties and our custom product contracts, we recognize our revenue at a point in time when control of the promised goods is transferred to our customers, and in an amount that reflects the consideration we expect to be entitled to in exchange for those goods. Control of the goods is considered to have been transferred upon shipping or upon arrival at the customer's destination, depending on the terms of the purchase order. Revenue that is derived from our extended service warranties, which are separately priced and sold, is recognized over the term of the contract. Revenue from custom products is recognized over time utilizing an input method that compares the cost of cumulative work-in-process to date to the most current estimates for the entire cost of the performance obligation. Custom products are generally delivered to the customer within three days of receipt of the purchase order. Each product shipped is considered to be one performance obligation. For each product shipped, the transaction price by product is specified in the purchase order.

We recognize revenue on the transaction price less any estimated rebates, cash discounts or other sales incentives. Customer rebates, cash discounts, and other sales incentives are estimated by applying the portfolio approach using the most-likely-amount method and are recorded as a reduction to revenue at the time of the initial sale.

*Customer Rebates and Cash Discounts*

We offer rebates to our customers based on factors such as the total amount of the customer's purchase and expected sales for a particular customer during the year. Rebates are estimated by applying the portfolio

approach using the most-likely-amount method and are deducted from revenue at the time of sale. Estimates are updated each reporting period and are allocated accordingly to the performance obligations of the contract (the individual products).

***Business Combinations***

We account for business combinations that are deemed to be businesses under the acquisition method of accounting. Application of this method of accounting requires that the identifiable assets acquired (including identifiable intangible assets) and liabilities assumed generally be measured and recognized at fair value as of the acquisition date. Any contingent assets acquired and contingent liabilities assumed are also recognized at fair value if we can reasonably estimate fair value during the measurement period. We remeasure any contingent liabilities at fair value in each subsequent reporting period. The excess of the purchase price over the fair value of net assets acquired is recorded as goodwill. Determining the fair value of assets acquired and liabilities assumed requires management's judgment, based on available information at the time of acquisition and subsequently obtained during a measurement period up to one year following the date of acquisition, relating to events or circumstances that existed at the acquisition date. Management's judgment relies upon estimates and assumptions related to future cash flows, discount rates, useful lives of assets, market conditions and other items. The fair value of intangible assets other than goodwill acquired in a business combination are estimated in accordance with the policy described below.

The fair value of intangible assets other than goodwill acquired in a business combination is recorded at fair value at the date of acquisition. Management values dealer relationships and franchise relationships using the multi-period excess earnings method. Under this method, the value of an intangible asset is equal to the present value of the after-tax cash flows attributable solely to the intangible asset, after making adjustments for the required return on and of the other associated assets. We value trade names, trademarks and proprietary pool designs using the relief from royalty method. The relief-from-royalty method determines the present value of the economic royalty savings associated with the ownership or possession of the trade name, trademark or proprietary pool design based on an estimated royalty rate applied to the cash flows to be generated by the business. The estimated royalty rate is determined based on the assessment of a reasonable royalty rate that a third party would negotiate in an arm's-length license agreement for the use of the trade name, trademark or proprietary pool design.

***Impairment of Goodwill***

We evaluate goodwill for impairment at least annually, or more frequently when events or changes in circumstances indicate that the carrying value may not be recoverable. We have selected the first day of the fourth fiscal quarter to perform our annual goodwill impairment testing. Historically, including for our annual impairment test conducted during the year ended December 31, 2020, we had two reporting units for the purpose of performing our goodwill impairment test. In November 2020, we made changes to our internal organizational structure, including roles and responsibilities and to our internal reporting, resulting in a change to segment management. As a result of the change in segment management and in the information that is regularly reviewed, the results of the previous two reporting units are no longer being reviewed for profitability on an individual basis. Due to these factors, we recognized a change in our reporting units effective in November 2020 and determined that only one reporting unit exists. We completed an assessment of any potential impairment for all reporting units immediately prior to and after the reporting unit change and determined that no impairment existed.

We may assess our goodwill for impairment initially using a qualitative approach, or step zero, to determine whether conditions exist to indicate that it is more likely than not that the fair value of the reporting unit is less than its carrying value. The qualitative assessment requires significant judgments by management about economic conditions including the entity's operating environment, its industry and other market considerations, entity-specific events related to financial performance or loss of key personnel and other events that could impact the reporting unit. If management concludes, based on assessment of relevant events, facts and circumstances, that it is more likely than not that the reporting unit's fair value is greater than its carrying value, no further impairment testing is required.

If our assessment of qualitative factors indicates that it is more likely than not that the fair value of the reporting unit is less than its carrying value, then a quantitative assessment is performed. We may also elect

to initially perform a quantitative analysis instead of starting with step zero. The quantitative analysis requires comparing the carrying value of the reporting unit, including goodwill, to its fair value. If the fair value of the reporting unit exceeds its carrying amount, goodwill is not considered to be impaired and no further testing is required. If the carrying amount of the reporting unit exceeds its fair value, there is an impairment of goodwill and an impairment loss is recorded. We calculate the impairment loss by comparing the fair value of the reporting unit less the carrying value, including goodwill. The goodwill impairment is limited to the carrying value of the goodwill.

We estimate the fair value of our reporting unit based on the weighting of the enterprise value derived using an income approach and a market approach. We apply a weighting of 75% to the income approach and a weighting of 25% to the market approach. Under the income approach, fair value is estimated using a discounted cash flow (the "DCF") analysis. The DCF analysis involves applying appropriate discount rates to estimated future cash flows based on forecasts of sales, costs and capital requirements. Significant estimates in the DCF method include the weighted average cost of capital, growth and profitability expectations for the business, and working capital effects. The weighted average cost of capital accounts for the time value of money and the appropriate degree of risks inherent in our business. We estimate future sales growth using a number of factors, including among others, our nature and our history, financial and economic conditions affecting us, our industry and the general company, past results and our current operations and future prospects. Forecasts of future operations are based, in part, on operating results and our expectations as to future market conditions. We deem the discount rate used in our analysis to be commensurate with the underlying uncertainties associated with achieving the estimated cash flows we project. This analysis contains uncertainties because it requires us to make assumptions and to apply judgments to estimate industry economic factors and the profitability of future business strategies. Under the market approach, fair value is estimated using the merger and acquisition ("M&A") method. The M&A method indicates our enterprise value by looking at historical prices from our completed M&A transactions and those from comparable companies to get a range of multiples. Significant estimates in the M&A method include identifying appropriate market multiples and assessing earnings before interest, income taxes, depreciation and amortization, or EBITDA, in estimating the fair value of the reporting unit.

Based on the results of our quantitative impairment test performed for our reporting units, we determined that goodwill was not impaired during the years ended December 31, 2019 and 2020. The fair value of the Narellan reporting unit exceeded its carrying value by 16.5% and 8.3% for the years ended December 31, 2019 and 2020, respectively. The fair value of the Classic reporting unit significantly exceeded its carrying value for the years ended December 31, 2019 and 2020, which we define as greater than 20%. Immediately after the reporting unit change, which resulted in our previous two reporting units no longer being reviewed for profitability on an individual basis, the fair value of our single reporting unit significantly exceeded its carrying value.

***Stock-Based Compensation***

Certain of our employees, directors and officers have been granted profits interest units ("PIUs") in the form of Class B Units in the Parent. We account for equity-based compensation for the PIUs by recognizing the fair value of equity-based compensation as an expense within selling, general and administrative expense in our consolidated statements of operations as the costs are deemed to be for our benefit. Fair value of the awards is determined at the date of grant using the option-pricing method ("OPM").

A portion of the PIUs vest in five equal annual installments, based on continued service conditions are subject to continued employment by the PIU holder. However, the Parent has a repurchase right for $0 per share until the third anniversary of the Acquisition in the event of voluntary termination or termination without cause (the "$0 Repurchase Right"). We will reverse stock-based compensation expense in the event that the Parent exercises the $0 Repurchase Right since it functions as a vesting condition. The remaining units will vest upon the consummation of a change-in-control, a performance condition, and the achievement of either a specified internal rate of return or a specific return on the Sponsor's investment, both of which are market conditions. We record stock-based compensation expense related to the time-vesting PIUs over the requisite service period. In the event of a change-in-control event, as defined in the Parent's Amended and Restated Agreement of Limited Partnership dated as of December 18, 2018, as amended, modified or restated from time to time (the "Partnership Agreement"), we will immediately

recognize the unrecognized compensation expense related to the unvested time-vesting PIUs. As the remaining units contain both performance and market conditions, compensation expense for those awards will be equal to the grant date fair value of all awards for which the performance condition is met and the requisite service period is satisfied regardless of whether the market conditions are ultimately satisfied. No compensation expense has been or will be recognized until satisfaction of the performance condition is deemed probable. We account for forfeitures of stock-based awards as they occur rather than applying an estimated forfeiture rate to stock-based compensation expense.

During the periods presented, the Parent's Class B Units were not publicly traded. As there has been no public market for the Parent's Class B Units to date, the estimated fair value of the Class B Units has been determined with input from management and the Parent's board of directors, considering as one of the factors the most recently available third-party valuations of common stock and an assessment of additional objective and subjective factors that were relevant and which may have changed from the date of the most recent valuation through the date of the grant. These third-party valuations were performed in accordance with the guidance outlined in the American Institute of Certified Public Accountants' Accounting and Valuation Guide, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*.

The Parent's Class B Units valuation was prepared using the OPM. Under the OPM methodology, we utilized a Contingent Claims Analysis, where each class of stock is modeled as a call option with the unique claim on the assets of the Parent. The Contingent Claims Analysis Model uses the risk-free rate, expected term, volatility, total equity value and strike price as inputs. The characteristics of each class of stock determine the uniqueness of each class of stock's claim on our assets, and these characteristics are modeled as distinct call options. Under this method, the equity unit has value only if the funds available for distribution to stockholders exceed the value of the liquidation preferences at the time of a liquidity event. A discount for lack of marketability of the equity unit is then applied to arrive at an indication of value for the equity unit. The OPM uses the Black-Scholes formula to price the call options. This model defines the fair values of equity units as functions of the current fair value of a company and uses assumptions such as the anticipated timing of a potential liquidity event and the estimated volatility of the equity units.

The assumptions underlying these valuations represented management's best estimate, which involved inherent uncertainties and the application of management's judgment. As a result, if we had used significantly different assumptions or estimates, the fair value of our common stock and our stock-based compensation expense could have been materially different.

Once a public trading market for our common stock has been established in connection with the closing of this offering, the fair value of our common stock will be determined based on the quoted market price of our common stock.

***Income Taxes***

Deferred tax assets and liabilities are determined based on temporary differences resulting from the different treatment of items for tax and financial reporting purposes. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to reverse. We reduce deferred taxes by a valuation allowance when we assess such deferred taxes are not more than likely to be realized. The determination of whether a deferred tax asset will be realized is made on both a jurisdictional basis and the use of our estimate of the recoverability of the deferred tax asset. In evaluating whether a valuation allowance is required under such rules, we consider all available positive and negative evidence, including our prior operating results, the nature and reason for any losses, our forecast of future taxable income in each respective tax jurisdiction and the dates on which any deferred tax assets are expected to expire. These assumptions require a significant amount of judgment, including estimates of future taxable income. As of December 31, 2019 and 2020, our valuation allowance was $12.5 million and $12.7 million, respectively. We continue to assess whether any significant changes in circumstances or assumptions have occurred that could materially affect our ability to realize deferred tax assets. We expect to release the valuation allowance when we have sufficient positive evidence, including, but not limited to, the magnitude and duration of our historical losses as compared to recent profits within taxing jurisdictions to overcome such negative evidence.

We record liabilities for uncertain income tax positions based on a two-step process. The first step is recognition, where an individual tax position is evaluated as to whether it has a likelihood of greater than 50% of being sustained upon examination based on the technical merits of the position, including resolution of any related appeals or litigation processes. The amount of the benefit that may be recognized is the largest amount that has a greater than 50% likelihood of being realized on ultimate settlement. The actual benefits ultimately realized may differ from the estimates. We classify interest and penalties related to unrecognized tax benefits as a component of income tax (benefit) expense within the consolidated statements of operations.

Although we believe that we have adequately reserved for our uncertain tax positions, we can provide no assurance that the final tax outcome of these matters will not be materially different. In future periods, changes in facts, circumstances and new information may require us to change the recognition and measurement estimates with regard to individual tax positions. Our liabilities for uncertain tax positions were $9.7 million and $9.9 million for the years ended December 31, 2019 and 2020, respectively. Changes in recognition and measurement estimates are recorded in income tax (benefit) expense and liability in the period in which such changes occur.

**Off-Balance Sheet Arrangements**

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

**Recently Issued and Adopted Accounting Pronouncements**

A description of recently issued accounting pronouncements that may potentially impact our financial position, results of operations or cash flows is disclosed in Note 2 to our consolidated financial statements appearing at the end of this prospectus.

In May 2020, the SEC issued a new rule Release No. 33-10786 (the “New Rule”), which amends the financial statement requirements for acquisitions and dispositions of businesses, including real estate operations, and related pro forma financial information. The changes include updating the tests used to determine significance and revising the pro forma financial statement information requirements. The New Rule is intended to improve the financial information about acquired or disposed businesses provided to investors, facilitate more timely access to capital and reduce the complexity and costs to prepare the disclosures. For registrant entities, the New Rule is effective for annual periods beginning after December 31, 2020. Early adoption is permitted. We early adopted the New Rule in the third quarter of 2020. The adoption of the New Rule did not have a material impact on our consolidated financial statements.

**Quantitative and Qualitative Disclosures about Market Risk**

Market risk is the potential loss that may result from market changes associated with our business or with an existing or forecasted financial transaction. The value of a financial instrument may change as a result of changes in interest rates, exchange rates, commodity prices, equity prices and other market changes. We are exposed to changes in interest rates and foreign currency exchange rates because we finance certain operations through variable rate debt instruments and denominate some of our transactions in foreign currencies. Changes in these rates may have an impact on future cash flow and earnings. We manage these risks through normal operating and financing activities.

***Interest Rate Risk***

We are subject to interest rate risk in connect with our long-term debt. Our principal interest rate risk relates to our Amended Term Loan and Revolving Credit Facility. To meet our working capital needs, we borrow periodically on our Revolving Credit Facility under the Credit Agreement. As of December 31, 2020, we had outstanding borrowings of $221.5 million under our Amended Term Loan. There was no amount outstanding as of December 31, 2020 on the Revolving Credit Facility. The Amended Term Loan and Revolving Credit Facility bear interest at variable rates. Interest rate risk associated with our Credit Agreement is managed through an interest rate swap, which we executed on April 30, 2020. The interest rate swap has an effective date of May 18, 2020 and a termination date of May 18, 2023. After inclusion of the notional amount of $200.0 million of our interest rate swap fixing a portion of the variable rate debt,

$21.5 million, or 9.7%, of our debt is subject to variable rates. An increase or decrease of 1.0% in the effective interest rate would cause an increase or decrease to interest expense of approximately $0.2 million.

***Credit Risk***

Financial instruments that subject us to concentrations of credit risk consist primarily of cash and trade receivables. We may have bank deposits in excess of insurance limits of the Federal Deposit Insurance Corporation from time to time. We also have bank deposits in international accounts. We have not historically sustained any credit losses in such accounts and believe that we are not exposed to any significant credit risk related to our cash. We routinely review the financial strength of our customers before extending credit and believe that our trade receivables credit risk exposure is limited. Generally, we do not require collateral from our customers.

During the years ended December 31, 2019 and 2020, one customer represented approximately 25.7% and 22.3% of our net sales, respectively. As of December 31, 2019 and 2020, outstanding trade receivables related to this customer were $12.0 million and $5.4 million, respectively.

***Foreign Currency Risk***

Our foreign operations are denominated in local currency, which is the functional currency and are then translated to U.S. dollars. Assets and liabilities are translated using the current rate of exchange at the balance sheet date or historical rates of exchange, as applicable. Revenue and expenses are translated using the average monthly exchange rates prevailing throughout the reporting period. The related foreign currency translation adjustments are recorded as a component of accumulated other comprehensive (income) loss in stockholders' equity.

Additionally, our Canadian subsidiaries, which have Canadian dollar functional currencies, purchase some inventory with U.S. dollars, resulting in payables that are denominated in U.S. dollars. This exposes us to the risk of fluctuations in foreign currency exchange rates until the time of payment. Transaction gains and losses associated with purchases made by Canadian subsidiaries that are denominated in currencies other than Canadian dollar are recognized as a component of other expense, net within the consolidated statements of operations.

Currently, our largest foreign currency exposure is that with respect to the Australian dollar and the Canadian dollar. We believe that a 10% change in the exchange rate between the U.S. dollar and the Australian or Canadian dollar would not materially impact our operating results or financial position. We have experienced and we will continue to experience fluctuations in our net income as a result of revaluing our assets and liabilities that are not denominated in the functional currency of the entity that recorded the asset or liability. At this time, we do not hedge our foreign currency risk.

***Inflation***

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. Our operations may be subject to inflation in the future.

**Emerging Growth Company Status**

The JOBS Act permits an "emerging growth company" such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies until those standards would otherwise apply to private companies. We have elected not to "opt out" of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, we will adopt the new or revised standard at the time private companies adopt the new or revised standard and will do so until such time that we either (i) irrevocably elect to "opt out" of such extended transition period or (ii) no longer qualify as an emerging growth company. We may choose to early adopt any new or revised accounting standards whenever such early adoption is permitted for private companies.

# Business

## Our Company

We are the largest designer, manufacturer and marketer of in-ground residential swimming pools in North America, Australia and New Zealand. We hold the #1 market position in North America in every product category in which we compete. We believe that we are the most sought-after brand in the pool industry and the only pool company that has established a direct relationship with the homeowner. We are Latham, The Pool Company™.

With an operating history that spans over 60 years, we offer the industry's broadest portfolio of pools and related products, including in-ground swimming pools, pool liners and pool covers. In 2020, we sold over 8,700 fiberglass pools in the United States, which we believe represents approximately one out of every ten in-ground swimming pools sold in the United States.

We have a heritage of innovation. In an industry that has traditionally marketed on a business-to-business basis (pool manufacturer to dealer), we pioneered the first "direct-to-homeowner" digital and social marketing strategy that has transformed the homeowner's purchase journey. Through this marketing strategy, we are able to create demand for our pools and generate and provide high quality, purchase-ready consumer leads to our dealer partners. In 2020, the first year in which all elements of our digital and social marketing strategy were available to homeowners, we have delivered over 45,000 consumer leads to our dealer network, representing growth of 210% over the prior year.

Partnership with our dealers is integral to our collective success, and we have enjoyed long-tenured relationships averaging over 14 years. In 2020, we sold to over 6,000 dealers; we also entered into a new and exclusive long-term strategic partnership with the nation's largest franchised dealer network. We support our dealer network with business development tools, co-branded marketing programs and in-house training, as well as a coast-to-coast operations platform consisting of over 2,000 employees across 32 facilities. The broad geographic reach of our manufacturing and distribution network allows us to deliver a fiberglass pool in a cost-effective manner to approximately 95% of the U.S. population in two days. No other competitor in the residential in-ground swimming pool industry has more than three manufacturing facilities.

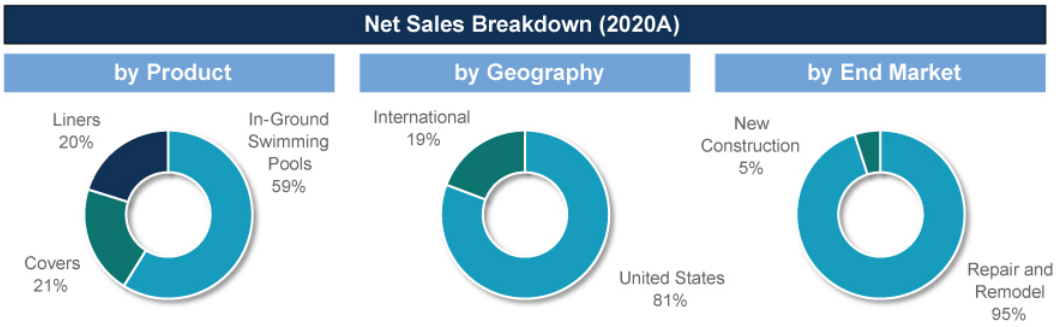
The full resources of our company are dedicated to designing and manufacturing high-quality pool products with the homeowner in mind, and positioning ourselves as a value-added partner to our dealers. As a result of this approach, 2020 marked our 11$^{th}$ consecutive year of net sales growth and Adjusted EBITDA margin expansion. Net income does not adhere to this trend.

**Value Proposition**

As summarized below, we believe that our product offering, in combination with our service capabilities, presents a compelling value proposition to both homeowners and our dealer partners.

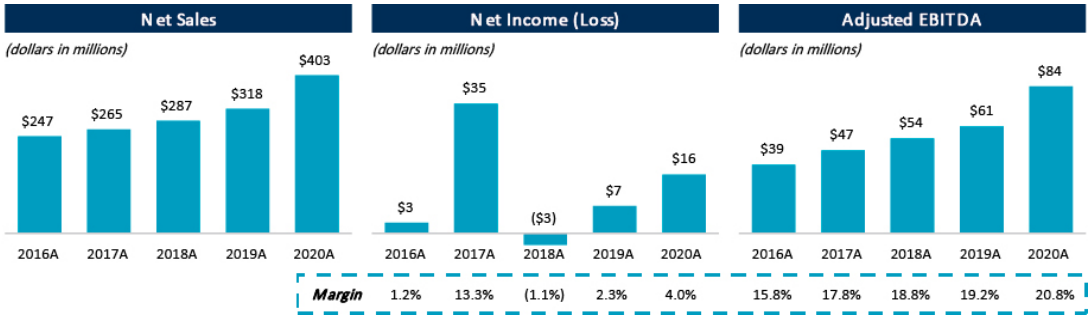
**Financial Highlights**

In 2020, we generated 59% of our net sales from residential in-ground swimming pools, the majority of which are derived from our fast-growing fiberglass pool offering. The balance of our net sales is split between our pool covers and liners product offerings. The demand for our pool covers and liners is predominantly driven by the installed base of over five million in-ground swimming pools in the United States. Our broad manufacturing and distribution capabilities allow us to serve a nationwide homeowner base with a growing presence internationally. Importantly, our exposure to the R&R category of consumer spending, 95% of our net sales in 2020, positions us well to benefit from favorable long-term demand trends driven by continued homeowner investment in outdoor living spaces, including backyard pools. The chart below illustrates our net sales in 2020 by product, geography and end market.




(1) Repair & Remodel includes purchases of pools or other products occurring more than a year after new home construction, and New Construction includes such purchases in connection with, or less than a year after, new home construction.

In 2020, we generated $403.4 million in net sales, $16.0 million in net income and $83.8 million of Adjusted EBITDA. For a discussion of our use of Adjusted EBITDA and reconciliation to net income, please refer to "Prospectus Summary—Summary Consolidated Financial and Other Data." Net sales, net income and Adjusted EBITDA grew 26.9%, 114.3% and 37.3%, respectively in 2020 as compared to 2019. From 2016 to 2020, net sales, net income and Adjusted EBITDA have grown at a CAGR of 13%, 53% and 21%, respectively. The charts below show our net sales, net income and net income margin and Adjusted EBITDA and Adjusted EBITDA margin from 2016 to 2020.



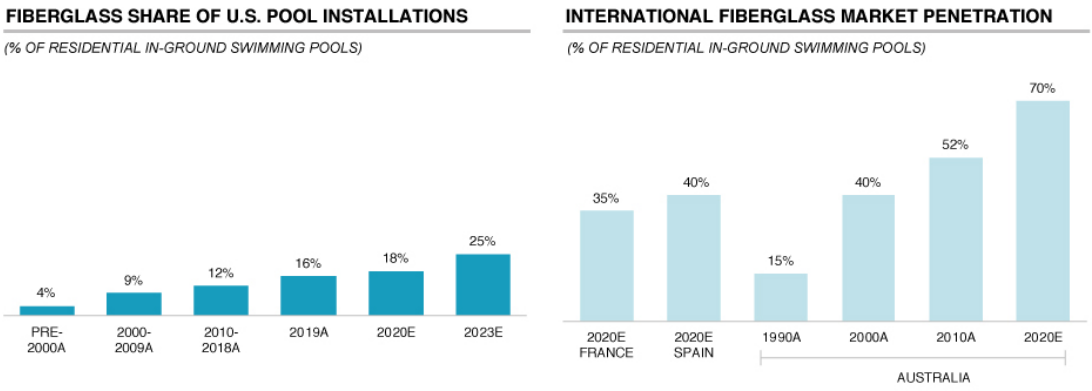

**Industry Overview**

We are the leader in the large, growing and highly-fragmented residential in-ground swimming pool industry. According to P.K. Data, total U.S. sales for residential in-ground swimming pools were $3.3 billion in 2019 (on 78,000 pool installations), and have grown at a CAGR of 8% since 2014. Despite this consistent growth, the industry still lags the twenty-year historical average of approximately 106,000 new pool installations per year.

Over the last decade, macroeconomic trends have driven an increase in reinvestment in the home, and we expect that consumers will continue to focus R&R spending on exterior living spaces as they look for

more ways to spend time outdoors. A recent consumer survey organized by a third-party research and consulting firm indicates that pool ownership is the highest ranked consumer satisfaction purchase among discretionary purchases for the home. As such, we believe demand for pools will continue to increase. Furthermore, that same consumer survey found that 3.2% of U.S. homeowners expect to purchase a pool in the next year and have already taken steps in the purchase journey. This would translate into single-year demand of nearly three million new pools. While we believe the industry lacks the capacity to address this demand in a given year, we believe it positions fiberglass pools for above market growth. In discussions with our dealers, they have indicated that they are at full capacity and have already booked the majority of their calendars in 2021. This dynamic provides us and our dealer partners with strong visibility into 2021.

Fiberglass pools are underpenetrated in the United States residential in-ground swimming pool market, relative to other geographic markets. Based on the information from the 2020 Study and May 2019 Fiberglass Study, fiberglass pools accounted for 18% of the United States residential in-ground swimming pool market in 2020, and are expected to grow to approximately 25% by 2023. As a result of material conversion away from legacy pool construction materials, growth in sales of fiberglass pools is meaningfully outpacing that of the broader in-ground swimming pool market. Despite this expected growth in the United States, fiberglass pools still have significant runway for growth relative to comparable international markets. The charts below illustrate the development of the fiberglass pool product category in the United States and fiberglass penetration of comparable foreign pool markets.




*By volume. Source: the charts above represent management's analysis and are based on the information from the May 2019 Study, 2020 Study and 2015 Study by a third-party research consulting firm, as well as P.K. Data, and their knowledge as market participants.*

Based on the information from the 2020 Study, fiberglass pools will continue to trend toward penetration rates in more mature markets, such as Australia, where the product category represents approximately 70% of the overall pool industry. In 2019, we acquired Narellan, the largest fiberglass manufacturer in Australia and one of the key drivers of fiberglass adoption in the Australian market over the last two decades. Leveraging insights gained from Narellan, we are investing to build the tools required to drive higher fiberglass penetration in the North American market.

This conversion to fiberglass pools from legacy pool construction materials is being driven by greater homeowner awareness of the benefits of fiberglass products, including:

- **Lower up-front and lifecycle costs**. Fiberglass pools cost less and have lower repair expenses compared to concrete pools.
- **Faster and easier installation**. Based on our knowledge of our dealers, we believe fiberglass pools can be installed in as little as two-to-three days, compared to three months for concrete pools.
- **Premium quality and aesthetics**. We believe our fiberglass pool offering is the most attractive swimming pool offering on the market. Our special finishing process allows for traction where you need it (such as steps) and a smooth and lustrous finish everywhere else.

- **Less chemicals**. The smooth non-porous finish of fiberglass dramatically reduces the need for harsh chemicals to treat the pool. It also allows homeowners to opt for an eye- and skin-friendly saltwater pool, without concern for corrosion.
- **Lifetime warranty**. Our fiberglass pools are guaranteed to the original purchaser for a lifetime and do not need to be resurfaced or repainted every eight to ten years like legacy materials.

Pool manufacturers have traditionally marketed to dealers rather than to homeowners. As a result, both manufacturers and homeowners have depended on dealers to educate homeowners and move them through their pool buying journey. The dealership market is highly-fragmented, consisting primarily of small, family-owned businesses. In addition, concrete pool installers face a number of challenges, particularly as a result, we believe, of many skilled tradesmen leaving the industry following the Great Recession's impact on construction. Each of these factors, paired with the long-term positive demand trends in the industry, contribute to the supply constraint in the pool market.

**Latham's Transformational "Direct-to-Homeowner" Business Model**

Latham's unique "direct-to-homeowner" marketing strategy is driving a greater understanding of the benefits of owning a pool, specifically a fiberglass pool, and generating significant consumer demand. This allows us to provide higher quality, purchase-ready leads to our dealer partners. In the traditional model, the homeowner's initial point of contact would typically be with a dealer. If the final purchase were a manufactured pool, the dealer would order that pool from the manufacturer and other pool equipment, such as pumps, controls and chemicals from other manufacturers. We are disrupting the industry with our "direct-to-homeowner" marketing approach, which positions us as the primary point of contact with the homeowner. We are helping consumers understand the variety of pool types available and illustrating the benefits of fiberglass, which is the best option for most homeowners. The key components of our homeowner-focused business model include:

- **Unique Latham Branding**: In 2019, we unified our corporate branding and consolidated legacy brands under one banner, Latham. We relaunched our website under the Latham brand in February 2020 and streamlined our go-to-market approach by making the consumer the center of our strategy. This enabled us to increase our brand awareness with homeowners and create the only consumer focused brand in a fragmented category.
- **Digital Platform**: We believe our portfolio of digital assets and capabilities allows us to generate a greater volume of cost-effective and highly qualified leads for our dealer partners while also providing a consumer-facing touchpoint for the brand. The key elements of our digital strategy were made possible by, among other things, our unparalleled national manufacturing and distribution footprint and include:
  - ***Proprietary Branded Website****:* We updated our global flagship website in February 2020 to place an emphasis on inspiration and homeowner education. The site contains proprietary content and imagery that guides homeowners along their pool buying journey. We have invested in search engine optimization which has driven significant traffic to the site. In 2020, our website recorded 3.5 million sessions, compared to just 105,000 sessions in 2018. As a result, we have generated significant consumer leads for our dealer partners.
  - ***Latham Augmented Reality Visualizer App****:* In 2019, we developed the pool industry's first augmented reality visualization mobile app. This app allows homeowners to visualize a Latham pool in their own backyard. The interactive nature allows homeowners to compare a variety of pool types and shapes and, when ready, directly contact a dealer without leaving the app. This has generated strong interest in Latham pool installations driven by approximately 50,000 downloads in 2020.
  - ***Sophisticated Social Marketing****:* As our business model has evolved, we have directed a significant portion of our advertising spend to digital channels, including social media and search advertising. Our targeted digital marketing and enhanced lead generation engine drive sales for dealers. Additionally, by meeting homeowners where they are digitally, we have been able to drastically reduce our cost per lead to approximately $44 in 2020. Given that our scalable

manufacturing platform has capacity to enhance profitability for each incremental fiberglass pool sold, the return profile for our lead generation program is highly compelling.

- **Exclusive Dealer Partnerships Powered by Homeowner Leads**: In order to strengthen our relationship with our loyal dealer partners, we have implemented "Latham Grand," a key dealer strategy whereby we have secured exclusivity from over 250 of our largest dealers. "Latham Grand" dealers benefit from priority for high-quality consumer leads, co-branding for their retail stores and partnership on local marketing initiatives. We benefit through closer partnership around volume planning and specific commitments on growth. We also support our dealer partners with "Latham University" and "Business Excellence" coaches:
  - ***"Latham University"***: Our "Latham University" program addresses the supply constraint in the pool industry by providing hands-on installation training for our dealer partners. Additionally, we provide on-site installation assistance to our new dealer partners on their initial fiberglass pool installation.
  - ***"Business Excellence" Coaches***: Our "Business Excellence" coaches provide our dealers with tailored consulting on how to improve operations and grow their businesses.

**Our Strengths**

***Leading Consumer Brand in the Residential Pool Market***

We are the leader in the North American in-ground residential swimming pool market, holding the #1 position by volume in each of our product categories, based on the information from the May 2019 Study and 2020 Study, a position that we have established throughout our 60 plus year operating history. Latham is the only consumer brand in the residential pool industry with a differentiated value proposition that includes an unmatched product portfolio, a coast-to-coast footprint of 19 manufacturing facilities and 13 distribution facilities, an experienced sales force and a network of over 250 exclusive dealer partners. Our sophisticated digital marketing targeted directly at homeowners has been instrumental in educating and empowering them, helping to drive material conversion in the pool market from traditional materials to fiberglass. In the fast-growing fiberglass pool product category of the residential in-ground swimming pool market in North America, we command over a 50% share, which is more than four times that of the second largest fiberglass competitor, based on the information from the May 2019 Study.

***"Direct-to-Homeowner" Relationship That Drives Business for Our Dealer Partners***

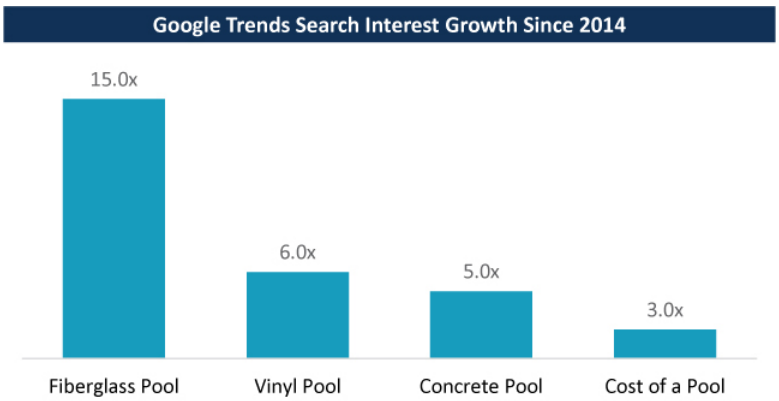
Latham is organized around our commitment to provide an exceptional homeowner experience. Our focus in recent years has been on simplifying the historically complex homeowner experience of purchasing a swimming pool. We make finding and buying the right product an amazing start to a homeowner journey that is now easy and enjoyable. We are recognized by homeowners and dealer partners for our differentiated capabilities, quality, on-trend style, design and breadth of our product portfolio and the unique homeowner-focused journey that we have created. Given the level of near continuous connectivity offered to consumers through mobile devices, businesses are adapting their marketing strategies and increasingly focusing on mobile and social media platforms. We have been at the forefront of this dynamic within our industry. Our scale enables us to reinvest more in technology and marketing than our much smaller competitors, driving a virtuous cycle whereby we are able to deliver more purchase-ready leads to our dealer partners. Over the last two years, our new digital platform has increased traffic to our website by a factor of 11 times and website visit duration has risen over 64%. To increase lead conversion, we systematically track and interact with each homeowner throughout their purchase journey.

***Serving a Large, Growing Market that is Benefiting from Material Conversion***

According to P.K. Data, over the last 20 years, the industry averaged approximately 108,000 new pool installations per year, compared to only 78,000 in 2019, and, based on our estimates, 90,000 in 2020. Given recent consumer trends, we expect demand for pools to grow to over 100,000 pools per year in each of the next three years. Fiberglass pools currently make up approximately 18% of North American residential in-ground swimming pool market and the pace of material conversion from concrete and vinyl pools to

fiberglass products is accelerating. This is due in large part to increased awareness among our consumers of the higher quality and durability of our fiberglass pools, as well as beautiful design with a lower overall cost of ownership versus concrete pools. We believe that fiberglass pools will continue to gain share in the in-ground swimming pool market, and as the leading fiberglass pool manufacturer, we are well positioned to both benefit from this growth and accelerate the pace of material conversion through our efforts. We have benefited from the sharing of best practices with our Narellan platform, which has been a key driver of fiberglass adoption in Australia, as we have driven higher penetration in the North American market.

Since 2014, we have seen a significant increase in Google search interest within our category. Interest in fiberglass pools has expanded faster than the broader in-ground swimming pool industry with a 15 times increase, demonstrating consumers' growing awareness of this great pool option.




*Source: The chart above represents management's analysis and is based on the information from the 2019 Study and 2020 Study by a third-party research consulting firm.*

***Broadest Portfolio of Branded Products Known for Quality, Durability and Aesthetics***

Our extensive portfolio of pool models is recognized by consumers and dealers for its high-quality, superior durability and aesthetic designs. From our carbon fiber, Kevlar and ceramic fiberglass build to our Ultra-Seam™ liner fabrication, our product development team consistently sets the standard for innovation in our industry. Our broad product portfolio allows dealers and distributors to offer consumers a wide variety of innovative pool shapes, features, depths and lengths, which significantly exceed our competitors' offering. Additionally, we build our fiberglass pools in a controlled environment compared to the on-site nature of our concrete pool competitors, allowing for better product quality control. Homeowners can further customize their fiberglass pools by selecting from 12 fiberglass color patterns, ranging from deep blues and whites to corals and naturals. In addition to color customization, we offer the industry's most elaborate finishes in our innovative G2 and G3 finish options, which provide deep visuals that let homeowners choose the perfect water color to complement their backyard surroundings. Our models offer a variety of swim up seating, multiple points of entry and exit, wading areas, tanning ledges and built-in steps, which are features consumers seek in more expensive custom pool designs. Our array of feature rich options across our portfolio of products are core to our strategy to provide superior design at a value to homeowners.

***Broad Reach, Regulatory Expertise and Technological Capabilities Create Significant Competitive Advantages***

Our leading position is driven by our consumer brand, geographic reach, national manufacturing platform, regulatory expertise and compelling value proposition. Our brand has become synonymous with the re-imagination of the homeowner journey in purchasing a swimming pool, created significant pull-through demand from homeowners and made our offering a critical component to profitable growth for our dealer partners. This dynamic forms a virtuous cycle that is accelerating homeowner awareness for our products and increasing dealers' desire to partner with us in order to profitably expand their businesses. Supported by our fleet of over 150 cars, trucks and trailers and team of 60 dedicated drivers, our North American network of nine fiberglass manufacturing facilities provides cost efficient delivery and service to

our network of entrenched dealer and distributor partners, including over 250 exclusive Latham Grand dealers. Notably, we are the only nationwide, multi-facility manufacturer of fiberglass swimming pools, providing us with an advantage over regional players that lack similar geographic reach and scale. The fiberglass pool manufacturing process requires significant regulatory approvals and continuous compliance. We have successfully navigated this process across our entire manufacturing footprint throughout our history. Additionally, we have filed or obtained the required permits to expand our fiberglass manufacturing capacity and are in the process of doubling it, providing us a runway for further growth. Finally, our compelling value proposition is underpinned by our ability to leverage a unique technology infrastructure to generate a significant number of purchase-ready leads for our dealer partners and drive increasing levels of consumer awareness for our products. In tandem with the training and marketing tools we provide to our dealers, our technological capabilities have been critical in solidifying our position as the leader in every major pool product sub-category in which we compete in North America.

***History of Consistent Net Sales Growth and Margin Expansion***

Our business has consistently driven growth and margin expansion over the long-term and 2020 will represent the 11th consecutive year of net sales growth and Adjusted EBITDA margin expansion. Net income does not adhere to this trend. From 2016 to 2020, we realized a net sales, net income and Adjusted EBITDA growth CAGR of 13%, 53% and 21%, respectively. Additionally, over the same period our net income margins have expanded by 280 basis points and our Adjusted EBITDA margins have expanded by 500 basis points. Our net income margin expansion and Adjusted EBITDA margin expansion has largely been driven by a mix shift towards our fastest growing fiberglass pools business, which has a materially higher margin profile than our other product categories. As our recent strategic and capital investments mature, we believe there is a significant opportunity for us to continue to drive increased fiberglass penetration rates, accelerate net sales growth and expand our margins.

***Visionary Management Team with Proven Track Record of Execution***

We have assembled a team of highly experienced and accomplished executives with public company experience and a proven track record of leading global consumer and industrial organizations. Our management team has experience with developing consumer-branded lifestyle platforms, disrupting traditional business-to-business market structures and delivering an expansive portfolio of high-quality, durable, cost-efficient products to consumers.

In a few short years, our team has pioneered a disruptive “direct-to-homeowner” marketing approach, consolidated our brands under the Latham master brand, created innovative new products and enhanced our digital platform to better focus on the overall consumer journey. Our Chief Executive Officer, Scott M. Rajeski, was appointed in 2017 after serving as the Company’s Chief Financial Officer since 2012. Scott previously served in leadership positions at GLOBALFOUNDRIES, Momentive Performance Materials and General Electric. Scott was critical in recruiting our Chairman, James E. Cline, who joined our board in early 2019 and previously served as president and chief executive officer of Trex. We believe Mr. Cline, as the former chief executive officer of Trex, has been an invaluable non-executive member of the board of directors due to his experience building the industry leader in the similarly material conversion driven composite decking industry, while also creating one of the best known brands in the building products industry. Our Chief Financial Officer, J. Mark Borseth, joined the team in 2020 after serving as president and chief executive officer of Ranpak under Rhone Capital’s ownership, as well as holding numerous leadership roles at 3M. Our Chief Marketing Officer, Joel R. Culp, was appointed in 2019 after previously serving in the same role for Wilsonart, as well as holding various leadership positions at MasterBrand, a Fortune Brands company, Uponor and Kohler. Collectively, our team has extensive experience at leading public and private companies, including Trex, Kohler, General Electric, 3M, Ingersoll Rand, Wilsonart and Ranpak.

**Our Growth Strategies**

***Utilize Leading Brand and Digital Assets to Generate Greater Homeowner Lead Volumes***

During 2019 and 2020, we have increased spending on digital strategies and marketing. Our content-rich digital platform provides homeowners with education and engagement tools that help them navigate their

pool buying journey, including an unrivaled pool visualization experience, informational videos and resources, budget calculators, and a pool expert community consisting of a blog and direct homeowner outreach. Our investment has resulted in increased web traffic and lead generation of 105,000 sessions in 2018 to 3,544,334 sessions in 2020 and 14,589 in 2018 to 45,224 in 2020, respectively. We generated over 15,000 leads in 2019 and over 45,000 leads in 2020. The implementation of our new digital strategy has resulted in superior search engine optimization performance, outpacing our next closest peer in organic traffic by five times. We have boosted leads by 210% between 2018 and 2020 for our dealers, further entrenching Latham with our dealer base and increasing switching costs. The chart below illustrates the interest in our brand and traffic to our website relative to our competitors as of September 2020.

| | Measures | Key Metrics | latham | Competitor A | Competitor B | Competitor C | Competitor D | Competitor E |
|---|---|---|---|---|---|---|---|---|
| Brand | Brand Interest | Relative Brand Interest (indexed) | 100 | 36 | 30 | 5 | 4 | 3 |
| | Brand Engagement (Facebook, Twitter, YouTube, Instagram) | Audience (k) | 42 | 5 | 2 | 22 | 30 | 4 |
| Marketing | Traffic (Visits) | Monthly Avg. of LTM (k) | 280 | 11 | 3 | 7 | 5 | 4 |
| | | YoY Growth % | 111% | 77% | 51% | (3%) | (2%) | (3%) |
| | Traffic (Unique Visitors) | Monthly Avg. of LTM (k) | 190 | 7 | 2 | 4 | 3 | 2 |
| | | YoY Growth % | 101% | 73% | 74% | (5%) | 1% | (10%) |

*Source: The chart above represents management's analysis and is based on the information from the 2020 Study by a third-party research consulting firm.*

In 2019, the average duration of a visit to our website was 2.01 minutes, and in 2020, it grew to 3.19 minutes. Our share of voice, which is a measure of how well-known our brand is compared to our competitors' brands was 54% in 2020, compared to 27% for our nearest competitor.

***Accelerate Fiberglass Material Conversion through Unique Market Positioning***

As the leader in the fiberglass pool product category, we are driving the acceleration of material conversion by educating both homeowners and dealer partners about the benefits of fiberglass. Our marketing campaigns and digital platform, including our easy to use interactive website and mobile app, inform homeowners on the benefits of fiberglass, including lower up-front and total cost of ownership, quicker installation, easier maintenance and a more convenient buying experience. The Latham Augmented Reality Pool Visualizer app allows homeowners to browse fiberglass models and select from a variety of options from their mobile device. At "Latham University," our dealer partners discover firsthand the benefits of fiberglass pools, including the ease and speed of installation versus concrete pools, which drive better economics. We also host company conferences and participate in trade shows, where we continue to drive education on the benefits of fiberglass pools. The charts below show an illustrative profit potential to installers

and cost to homeowners of installing a pool of comparable size by the type of the pool material, assuming that all other conditions are the same.

**Illustrative Installer Economics**

| | Fiberglass | Vinyl | Concrete |
|---|---|---|---|
| Total Project Time | ~1 week | ~1 month | ~3 months |
| Labor Crew | 3 people | 6 – 8 people | 8 – 10 people |
| 52-Week Install Capacity | ~125 pools | ~35 pools | ~20 pools |
| Profit per Pool | $5 – $10k | $5 – $10k | $5 – $15k |
| Potential Installer Profitability | ~$1.25mm | ~$350k | ~$300k |
| Profit Potential Ranking | #1 | #2 | #3 |

**Illustrative Homeowner Economics**

| | Fiberglass | Vinyl | Concrete |
|---|---|---|---|
| Up Front Cost | ~$54,000 | ~$37,500 | ~$75,000 |
| # of Major Repairs | - | 1 | 1 |
| 10 Year Maintenance | ~$10,500 | ~$19,000 | ~$38,100 |
| Total 10 Year Cost | ~$64,500 | ~$56,500 | ~$113,100 |
| Lifetime Warranty | ✓ | ✗ | ✗ |
| Customer Satisfaction Rank | #1 | #3 | #2 |

*Source: 2020 Study and management estimates. Assumes: certain number of working days per year with one pool building crew; certain number of days per installation of each type of pool, resulting in certain number of pool installations per year for each type of pool.*

***Secure Additional Strategic Partnerships with Priority Dealers to Gain Share***

Our approach as a true business partner with our dealers positions us to take market share in our highly-fragmented industry. We have secured exclusivity from over 250 of our top dealer partners, as well as the nation's largest franchised dealer network, Premier Pools & Spas. As the only participant with scale in the fiberglass pool product category, we intend to continue to pursue additional strategic partnerships with priority dealers in underpenetrated geographical markets that can help us accelerate our growth. We believe these exclusive relationships will continue to enable us to increase market share at the expense of the fragmented and regional universe of competitors.

***Grow Industry Capacity by Onboarding and Training New Dealer Partners***

We believe that there is a tremendous opportunity to expand the capacity of skilled dealer partners to support overall industry growth and our continued market penetration. As such, we intend to continue to use our leadership position in the industry to educate small business owners currently installing concrete pools, as well as those in related trades, about the economic opportunities available in the fiberglass product category of the pool market. We further intend to onboard, train and support them with the same emphasis we have placed on our existing dealer partnerships, including our co-branding programs, "Latham University," and our "Business Excellence" coaching designed to help them manage their growth. Leveraging our investments and management expertise, we should be able to play a key role in growing the industry's capacity back towards levels of more than 150,000 annual in-ground swimming pool installations that preceded the Great Recession.

***Expand Margins through Mix Shift Towards Fiberglass and Productivity Initiatives***

Fiberglass pools are both our highest margin and fastest growing product category. We believe that our consumer-centric marketing and compelling value proposition to our dealer partners will continue to drive consistent, long-term growth for our fiberglass pools. We have made significant manufacturing capacity investments to not only support this future growth, but also to continue to deliver the compelling margin profile of our fiberglass pool offering. We expect to increase our margins significantly as we grow into our capacity investments and our product mix continues to shift towards fiberglass pools. Additionally, we expect that our investments in people, processes and equipment aimed at enhancing our manufacturing productivity will further expand our margins. From 2018 to 2020, we have improved our net income margins by 510 basis points and our Adjusted EBITDA margins by 193 basis points through operational excellence

initiatives and we expect this trend to accelerate as we realize meaningful benefits from historical and ongoing capital and other investments in the business.

***Strategic Acquisitions that Enhance the Latham Platform***

The pool industry remains highly-fragmented, which offers attractive opportunities to utilize strategic acquisitions to drive consolidation and expand our product offering. We have historically used strategic acquisitions to expand our geographic reach within the United States and internationally, enhance our product portfolio and drive operational efficiencies. We believe that we have the opportunity to be the consolidator of choice in the industry, and we will continue to focus on acquiring high-quality, market-leading businesses with teams, capabilities, and technologies that are complementary to our existing offerings and enable us to better serve homeowners and dealer partners.

**Our Products**

Our residential pool product portfolio is highly complementary and allows us to provide a wide-range of solutions to our homeowners. Our products are recognized by homeowners, dealers and distributors for their quality, durability, performance, compelling value proposition, ease of installation and diverse style and design options. Over our history, we have leveraged our differentiated portfolio of products, manufacturing capabilities, customer service, and homeowner connectivity to develop a reputation as an innovative and dependable partner to our dealers and distributors. Additionally, the connectivity that we have built with our homeowners has provided us with the insights needed to stay ahead of homeowner demand trends that shape our market. Our broad and compelling product offering, proven ability to serve as a value added partner to our dealers and distributors and our connectivity with homeowners have been critical in achieving the leading position in every pool product category in which we compete. Below is a summary of our products.

| | In-Ground Swimming Pools | Liners | Covers |
|---|---|---|---|
| Products |  |  |  |
| Product Share | 1 | 1 | 1 |
| % of Net Sales (2020A) | 59% | 20% | 21% |
| Features / Highlights | Highly customizable product offering with superior finish, color, durability, quality and low cost of ownership | Required component for interior surface of a vinyl pool, customizable with 30+ elegant designs | Convenient and efficient pool covering system used for safety, energy and maintenance savings |

(1) As percentage of products sold in the United States. The chart above represents management's analysis and is based on the information from the 2015 Study, May 2019 Study, May 2019 Fiberglass Study and 2020 Study by a third-party research consulting firm.

***In-ground Swimming Pools***

We are the #1 fiberglass pool manufacturer by volume in North America and our over 50% share of the fiberglass pool product category within the North American residential in-ground swimming pool

market is more than four times that of the second largest fiberglass competitor, based on the information from the 2019 Study and 2020 Study. Demand for our fiberglass pools is driven by both accelerating material conversion from legacy pool construction materials and the long-term value, through lower up-front and lifecycle costs, that our pools deliver to our homeowners. We offer an extensive portfolio of fiberglass pools with customizable features that include unique colors, elaborate finishes, floor mosaics, lighting options, water features, in-floor cleaning, tanning ledges, and spillover spas. Our pools come in a variety of different sizes and are known by homeowners for their premium quality and aesthetics. Our fiberglass pools offer significant cost, installation and maintenance advantages over traditional concrete pools. Our innovative product portfolio is made up of a carbon fiber and Kevlar fiberglass build and backed by a lifetime warranty to the original purchaser, providing our homeowners with peace of mind and security. Based on our knowledge of our dealers, we believe fiberglass pools can be installed in as little as two-to-three days, compared to three months for comparable concrete pools.

While we believe that our fiberglass pools are the future of the industry, fiberglass pools do have some limitations. Due to shipping considerations, they are subject to certain size limits. Although we offer a broad portfolio of design choices, fiberglass pools can be less customizable than concrete and vinyl.

Investments in innovation and product development have led to an accelerated growth rate of our fiberglass pool sales, with increased potential for further growth and margin expansion.



We believe that we are also the leader by volume in the custom vinyl pool product category of the North American residential in-ground swimming pool market with approximately 39% share in 2020. Our

leadership has been driven by our high-quality product offering, which is fully customizable allowing homeowners to choose from a wide range of colors and features (built-in sun ledges, benches, entry systems and spillover spas), as well as our best-in-class distribution network. Our custom vinyl pools are high-quality and we believe are the most aesthetically pleasing on the market. Custom vinyl pools offer the most attractive homeowner economics when compared to any other material, and can be installed faster and withstand weather better than concrete pools. The wall system for our custom vinyl pools is built of either non-corrosive steel or composite polymer, providing ease of installation.

***Liners***

We are the #1 replacement liner manufacturer by volume in the North American residential in-ground swimming pool market, based on the information from the 2020 Study, serving a market with large, non-discretionary replacement demand. Vinyl liners are a required component for the interior surface of a vinyl pool and our liners are highly customizable in shape, size, color and pattern. For the over approximately 1.6 million vinyl pools in the United States, approximately 185,000 replacement vinyl liners are purchased every year, providing us with significant avenue to stable recurring revenue.

***Covers***

We hold the top position in the category for automatic safety covers for pools by volume in North America, based on the information from the 2020 Study. Our automatic safety covers provide increased safety and convenience for our homeowners while also driving savings by reducing energy, chemical and cleaning costs and time. Homeowners typically replace their fabric automatic safety covers every eight to ten years, providing our business with stable, recurring revenue. Additionally, more and more pool owners are buying covers as local building codes push for safer pools. We also offer the most complete automatic safety cover portfolio when compared to our competitors, as our products range in mix from affordable luxury options to premium covers. Additionally, our automatic safety covers are compatible with fiberglass, vinyl and concrete pools of almost any shape and size, driving homeowner preference for the CoverStar brand.

We are the leader in the category for all-season pool covers by volume in North America, based on the information from the 2020 Study. Our winterizing mesh and solid covers are used during the off-season, reducing maintenance requirements for our homeowners. While these covers extend the lives of our homeowners' pools, they typically need to be replaced every eight or ten years, providing us with significant replacement demand. As our covers can be used for any pool, regardless of materials, shape or size, we are able to replace covers for both our legacy homeowners and target homeowners previously served by smaller, regional players.

**Brands**

In 2019, we unified our corporate branding and consolidated legacy brands under one banner, Latham. We relaunched our website under the Latham brand in February 2020 and streamlined our go-to-market approach by making the Latham brand the center of our strategy. This enabled us to increase our brand awareness with homeowners and create the only consumer focused brand in the category. Our literature for dealers, marketing materials, our website, social media, advertising and promotion and our co-branding of dealer premises each reflect the Latham branding. Our sub-brands, which sit under the Latham master brand, include Narellan, CoverStar, and GLI, among others.

**Distribution**

Our products are sold through both one-step and two-step business-to-business distribution channels. In our one-step distribution channel, which we exclusively sell our fiberglass pools through, we sell our products directly to dealers who, in turn, sell our products to homeowners. In our two-step distribution channel, we sell our products to distributors who warehouse our products and sell them to dealers, who ultimately sell our products to homeowners.

In order to strengthen our relationship with our loyal dealer partners, we have implemented our "Latham Grand" dealer program, whereby we have secured exclusivity with over 250 of our largest dealers.

Included in this dealer population is the largest franchised dealer network, Premier Pools & Spas. We also have a strong distribution network as a result of over 450 branch locations that represent our products. Through our significant investment in partnerships with dealers and distributors and our consumer-oriented marketing efforts, we have created both a “push and pull” dynamic for our products in the marketplace.

Our Latham Grand dealers, like all of our dealers, are our customers and not our agents. Our agreements with our Latham Grand dealers provide for various benefits to the dealers, such as early access to customer leads, access to in-store advertising and exterior branding, installation training sessions, a dedicated and customized website landing page, technical support, early access to new models and other sales support. Latham Grand dealers agree to use us as their exclusive provider of fiberglass pools. Latham Grand dealers also agree, among other things, to adhere to our fiberglass handling and installation best practices, to receive fiberglass training and to meet annual targets for fiberglass pool installations. Each Latham Grand dealer agrees to operate only in specified territories and we agree to reasonably consider impacts on the dealer’s market opportunities prior to appointing additional dealers in the same territory. Our agreements with our Latham Grand dealers are generally perpetual and terminable at will by both parties.

Our exclusive supply agreement with Premier Pools & Spas governs the sales of certain of our products to Premier Pools & Spas franchisees. We agree to provide training support, marketing materials and, upon prior written request, on-site field support with respect to the first installation of a product by any franchisee of Premier Pools & Spas. We also agree to provide certain franchisees with annual allowance for use in marketing activities and marketing co-op funds, subject to certain conditions, and to provide rebates as a percentage of sales to Premier Pools & Spas.

We have long-term relationships with both our dealers and distributors and our largest distributor, which provides valuable local market support with a network of over 290 locations, accounted for 25.7% of our net sales in 2019 and 22.3% of our net sales in 2020. We have maintained a strong relationship with our largest distributor for over 25 years as well as the operators across this distributor’s nationwide network (who are responsible for daily operations and purchasing decisions). Our top ten dealer and distributor relationships accounted for 43.7% of our net sales in 2019 and 41.1% of our net sales in 2020.

**Manufacturing**

We are a global manufacturer based in the United States, delivering quality products with a competitive cost position. Our manufacturing processes require significant capital investment, footprint, expertise and time to develop. We have continuously invested the capital necessary to expand our manufacturing and improve our manufacturing processes. We will have sufficient capacity to support our planned growth for the foreseeable future once we will have completed our multi-year capital plan to invest in our facilities, technologies and systems. Once manufactured, we use our own fleet of trucks and drivers to deliver our fiberglass pools, as well as third-party common carriers to ship our other products.

***In-ground Swimming Pools***

The manufacture of fiberglass pools requires highly specialized equipment and technically skilled workforce. We manufacture fiberglass pools by applying the various layers of materials onto a mold. We have a broad and diverse mold portfolio designed to meet customer needs. As of December 2020, we had 56 mold options in our portfolio.

We use an eight-element building process to provide an industry-leading thickness and durability formula for our fiberglass pools. We also use finite element analysis, which is a computerized method for predicting how a product reacts to real-world forces, vibration, heat, fluid flow, and other physical effects. This allows us to model the fiberglass pools that we build to ensure that there are no structural weak points in the design(s). Our use of a flow controlled material delivery system allows us to ensure that we are applying the appropriate mixture of resin and material, and align the mixture to the temperature and humidity of the local environment of our production plant.

In addition to the technical know-how and equipment, the manufacturing of fiberglass pools requires local and state air permits in each of our manufacturing plants. We have existing air permits to cover our

existing fiberglass manufacturing capacity, and are working with local, state and federal agencies to increase capacity limits to support projected growth patterns in several locations.

Once produced, we use our own fleet of customized delivery trucks and full-time drivers, who require Commercial Driver License designations, to deliver the fiberglass pools to our homeowners. Our coast-to-coast network of facilities provides, on average, lower transportation costs and shorter lead times compared to smaller manufacturers in our sector. Over-highway transportation costs of fiberglass pools become increasingly expensive beyond a 400-500 mile radius, a cost that is typically passed to the homeowner. Due to our national manufacturing network, we are able to offer lower transportation costs. In addition, with our investment in our national manufacturing base, we have strategically invested in internal delivery capabilities to support demand fluctuations in the busy building season. Once our fiberglass pools are delivered, our dealers provide quality installation and support to homeowners.

The manufacture of our custom vinyl pools requires different techniques based on the product type. For our polymer wall vinyl pools, we have a facility that produces all of our polymer panels on structural foam equipment, which requires unique and specialized molds for each panel, as well as a system to inject the resin into the molds. As of December 2020, we had 48 molds for polymer wall pools in our portfolio. Our highly-engineered plastic molding machines provide us the leading edge capability to mold high-quality structural panels in custom/propriety shapes. The machines are capable of running extremely large and complex molds that are capable of product configurations that range up to 60 inches tall and 72 inches wide. For our steel panels vinyl pools, we have various processes and highly-engineered metal processing machines that have the capability to convert flat coil steel through various steps into panels that have been punched, bent, seamed, welded and stacked. The use of a multi-head “soft” tooling cartridge allows simple and fast change-over times and high tolerance performance. We also have customized jigs and equipment to produce special sized panels as needed.

We manufacture our steps for pools based on the steel and fiberglass processes described above. We also have a thermoforming machine that produces all of our thermoformed one piece drop-in steps utilizing a wide variety of specialized molds of various shapes and sizes. As of December 2020, we had 36 molds for steps in our portfolio.

***Liners***

We manufacture a complete line of both sonically and heat welded vinyl pool liners for both above and in-ground swimming pool applications, with what we believe is the highest technological processing of vinyl sonic welding in the industry. We have installed specialized machines across our liner and cover facilities in North America, which has allowed us to gain a significant advantage over the competition. Our Ultra-Seam$^{TM}$ technology provides an industry-leading capability to address seam tear or separation. We have production capacity to support custom liners at or better than the industry standard delivery window, from design to shipment.

***Covers***

Our automatic safety covers manufacturing facilities cut, sew and assemble highly engineered motorized safety covers in a build-to-order model at or above the industry standard delivery window, from design to shipment. Our automatic safety cover business leverages our capabilities around machining, cut/sew, sonic welding and assembly operations to provide a recessed/concealed covering application for in-ground swimming pool cover products. Our traveling heat welding machine provides an industry-leading seam for durability and finish. Our processing equipment offers tight tolerance, flexible manufacturing with compressed lead times across the various laser cutters, bending, assembly and test equipment. Our all-season covers are manufactured on the same equipment as our liners.

**Facilities Overview**

Our headquarters are in Latham, New York. We have manufacturing and storage facilities in the United States, Canada, New Zealand and Australia. We believe our facilities are adequate and suitable for our current needs.

| Location | Purpose | Size (Sq. ft.) | Ownership (owned or leased) |
|---|---|---|---|
| Adelaide, Australia | Storage facility | 21,097* | Leased |
| Melbourne, Australia | Storage facility and office | 5,942 | Leased |
| Picton, Australia | Fiberglass facility | 41,818 | Leased |
| Sydney, Australia | Office | 6,889 | Leased |
| Yalta, Australia | Fiberglass facility | 28,266 | Leased |
| Ajax, Canada | Fiberglass steps | 25,641 | Leased |
| Brantford, Canada | Liners, steel panels and covers facility | 113,360 | Leased |
| Kingston, Canada | Fiberglass facility | 3,600 | Leased |
| Terrebonne, Canada | Warehouse/distribution | 35,000 | Leased |
| Hamilton, New Zealand | Fiberglass facility | 18,912 | Leased |
| Hamilton, New Zealand | Mold building facility | 12,701 | Leased |
| Williams, California | Fiberglass facility | 67,734 | Leased |
| Zephyrhills, Florida | Fiberglass facility | 42,000 | Leased |
| Suwanee, Georgia | Liners and covers facility | 84,466 | Leased |
| Fort Wayne, Indiana | Liners, kits and covers facility | 161,000 | Leased |
| Plainfield, Indiana | Automatic safety covers facility | 99,288 | Leased |
| De Witt, Iowa | Fiberglass facility | 40,000 | Leased |
| Bossier City, Louisiana | Liners and covers facility | 47,334 | Leased |
| Breaux Bridge, Louisiana | Fiberglass facility | 22,463 | Leased |
| Latham, New York | Headquarters, polymer panels and thermoformed steps facility | 97,000 | Owned |
| Queensbury, New York | Fiberglass depot | 2,400 | Leased |
| Scotia, New York | Liners and covers facility | 122,543 | Leased |
| Powells Point, North Carolina | Fiberglass depot | 964 | Leased |
| Rockingham, North Carolina | Fiberglass facility | 45,330 | Owned |
| Youngstown, Ohio | Warehouse — finished products | 105,000 | Leased |
| Youngstown, Ohio | Warehouse — raw materials | 85,868 | Leased |
| Youngstown, Ohio | Liners and covers facility | 16,992 | Leased |
| Fayetteville, Tennessee | Fiberglass facility | 58,631 | Owned |
| Odessa, Texas | Fiberglass facility | 33,500 | Leased |
| Lindon, Utah | Automatic safety covers facility | 55,789 | Leased |
| Jane Lew, West Virginia | Fiberglass facility | 67,100 | Leased |
| Jane Lew, West Virginia | Storage facility and office | 18,000 | Leased |

* Land Only


**Sales and Marketing**

Traditionally we have relied heavily on a business-to-business model built on strong partnerships with our dealers and distributors to generate awareness of our products. In parallel with our recent rebranding, we pivoted to a "direct-to-homeowner" digital and social marketing strategy that puts the consumer at the center of our marketing efforts. Latham's unique "direct-to-homeowner" marketing strategy is driving a greater understanding of the benefits of owning a pool, specifically a fiberglass pool, and generating significant consumer demand. We have made meaningful investments to position Latham as the brand of choice for the homeowner.

Our continued investment in innovation, product quality and consumer engagement has been a key driver of our sales growth. We are increasingly responsible for our own lead generation, including via our online platform, mobile app and consumer hotline. This allows us to provide higher quality, purchase-ready leads to our dealer partners. Our new digital platform engages the consumer early in the pool buying process and facilitates the buying journey from inspiration and design to a Latham pool purchase. Our Latham Augmented Reality Pool Visualizer app, along with newly launched website, allow homeowners to re-imagine their outdoor living spaces and directly connects them to a dealer of our choice. For example, our website has visualization tools that allow homeowners to browse through the variety of pool shapes, sizes, colors, patterns, details and specifications that we offer to choose their pool or their pool liner. Once chosen, homeowners can save the illustrated PDF file and take it to a local dealer to purchase. In addition, our Latham Augmented Reality Pool Visualizer app provides the technology for homeowners to visualize a Latham pool in their own backyard. The interactive nature allows homeowners to compare a variety of pool types and shapes and, when ready, directly contact a dealer without leaving the app. In 2020, this has generated approximately 50,000 downloads and resulted in over 210,000 virtual pool installations.

We maintain a sales organization throughout North America, Australia and New Zealand that works with dealers and distributors and focuses on increased penetration, dealer growth and dealer share of wallet. An example of this is the launch of Latham Grand program, a valued-added program that drives dealers toward a 100% exclusive relationship with Latham. We invest in our exclusive dealers through localized marketing spend, co-branding opportunities, tailored offerings and priority lead generation. We also provide our dealers with enhanced product literature, in-store display samples and other initiatives to drive sales. We have directed a significant portion of our advertising spend to digital channels, including social media and search advertising. Our improved digital marketing engine has the ability to strategically target market

spend and generate leads in territories where dealers have capacity, under-penetrated markets and the largest in-ground swimming pool markets.

Through focused demonstrations, education, product training and other sales support efforts, we are raising the level of professionalism of our dealers to help facilitate higher lead conversion rates and quality installations, thereby driving the consumer demand. We established “Latham University” in Zephyrhills, Florida, where we provide both start-up training and continuing education on fiberglass pool advantages and best practice, sales training and pool installation to our dealers. Additionally, we provide on-site installation assistance to our new dealer partners on their initial fiberglass pool installation.

To facilitate the decision to buy, we offer warranties for our products. In addition, to assist consumers in financing their pool purchase, we connect them to specialist pool financing providers with which we partner.

**Raw Materials and Suppliers**

We utilize a centralized sourcing model that includes a dedicated team of procurement professionals so that we can coordinate and leverage our purchases across a diverse supplier base. Our centralized sourcing model leverages our growing scale within our markets to achieve competitive pricing and ensure availability. The manufacturing facilities coordinate all materials deliveries with respect to volume and timing to ensure proper alignment between consumption and working capital programs. In 2020, we purchased supplies from over 220 suppliers, with 62% of supplies being purchased from our top ten suppliers and 13% of supplies being purchased from our largest supplier.

The primary raw materials used in our products are PVC, galvanized steel, fiberglass, aluminum, Kevlar fiber, carbon fiber, various resins, gelcoat, polypropylene fabric, ceramic and roving. Our contracts with key suppliers are typically negotiated on an annual basis. The cost of the raw materials used in our manufacturing processes has historically varied and has been affected by changes in supply and demand. We have no fixed-price contracts with any of our major vendors. We have not entered into hedges of our raw material costs at this time, but we may choose to enter into such hedges in the future. Prices for spot market purchases are negotiated on a continuous basis in line with current market prices. Other than occasional strategic purchases of larger quantities of certain raw materials, we generally buy materials on an as-needed basis. Changes in prices of our raw materials have a direct impact on our cost of sales.

We strive to maintain strong and collaborative relationships with our suppliers and believe that the sources for these inputs are well-established, generally available on world markets and are in sufficient quantity. We do not undertake defined purchase agreements requiring fixed commitments or “take or pay” requirements with our suppliers. If one or more suppliers were unable to satisfy our requirements for particular raw materials, we believe alternative sources of supply would be available, although we could experience a disruption to our operations as alternative suppliers are identified and qualified and new supply arrangements are entered into. See “Risk Factors—Risks Related to Our Operations—We depend on a global network of third-party suppliers to provide components and raw materials essential to the manufacturing of our pools and price increases or deviations in the quality of the raw materials used to manufacture our products could adversely affect our net sales and operating results.”

**Competition**

We are the leader in the North American in-ground residential swimming pool market, holding the #1 position by volume in each of our product categories. We also operate in New Zealand and Australia, where fiberglass pools hold approximately 70% share of the total pool market and we hold the #1 position by volume in the category in Australia, based on the information from the April 2019 Study, and the #1 position by volume in New Zealand, according to management estimates. We compete with regional and local manufacturers. We compete on the basis of a number of considerations, including brand recognition and loyalty, quality, performance, product characteristics, marketing, product development, sales and distribution and price. We believe we compete favorably with respect to these factors through our differentiated consumer value proposition and brand, breadth and quality of our product portfolio, national manufacturing footprint in the United States, leading sales force and large network of dealers.

The main alternative to vinyl and fiberglass pools are concrete pools, which are built in the ground and are constructed by pouring concrete over steel rods to create the shell of the pool. Concrete pools are highly customizable when compared to fiberglass pools (which use a pre-manufactured shell), but they require frequent and more costly maintenance than fiberglass. In contrast to concrete pools, fiberglass pools are subject to shipping limitations and, as a result, their width cannot exceed certain size. Based on our knowledge of our dealers, we believe it takes approximately three months to install a concrete pool. We do not participate in the concrete pool market other than providing automatic safety covers and all-season covers for concrete pools. We believe that the shift in material from concrete to fiberglass that the North American in-ground swimming pool industry is undergoing will favor our products. See "Risk Factors—Risks Related to Our Industry" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Factors Affecting Our Performance—Volume of Products Sold."

**Seasonality**

Although we generally have demand for our products throughout the year, our business is seasonal, and weather is one of the principal external factors affecting the business. In general, net sales and net income are highest during spring and summer, representing the peak months of swimming pool use, pool installation and remodeling and repair activities. Calendar years having severe weather also play a role in affecting sales growth, as particularly rainy or cold years tend to slow the volume of sales, including as a result of complicating conditions for pool installations. See "Risk Factors—Risks Related to Our Operations—We are susceptible to adverse weather conditions."

**Intellectual Property**

We rely on trademark and service mark protection to protect our brands, and we have registered or applied to register many of these trademarks and service marks. In particular, we believe the Latham brand is significant to the success of our business. We also rely on a combination of unpatented proprietary know-how and trade secrets, and to a lesser extent, patents to preserve our position in the market. As we develop technologies and processes that we believe are innovative, we intend to continually assess the patentability of new intellectual property. In addition, we employ various other methods, including confidentiality and nondisclosure agreements with third parties and employees who have access to trade secrets, to protect our trade secrets and know-how. Our intellectual property rights may be challenged by third parties and may not be effective in excluding competitors from using the same or similar technologies, brands or works.

**Human Capital Resources**

As of December 31, 2020, we had 2,175 full-time employees, of whom 301 were based outside of the United States. Except for two employees in Canada who are union members, our workforce is not unionized. We are party to the collective bargaining agreement with respect to those two employees that expires in October 2022. We believe we have satisfactory relations with our employees.

We provide competitive employee wages that are consistent with employee positions, skill levels, experience, knowledge and geographic location. In the United States, we offer our employees a wide array of health, welfare and retirement benefits, which we believe are competitive relative to others in our industry. In our operations outside the United States, we offer benefits that may vary from those offered to our U.S. employees due to customary local practices and statutory requirements. In all locations, we provide time off benefits, company-paid holidays, recognition programs and career development opportunities. The principles of diversity, inclusion and equal employment opportunity guide our decision-making.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees. Our talented employees drive our mission and share core values that both stem from and define our culture, which plays an invaluable role in our execution at all levels in our organization. Our culture is based on these shared core values which we believe contribute to our success and the continued growth of the organization. These values are used in candidate screening and in employee evaluations to help reinforce their importance in our organization: respect, recognition and opportunity for employees; genuine passion for performance; relentless execution; accountability for results; culture of collaboration and transparency; aspiring to be defect-free; promoting a safety-focused and healthy work environment and value-added partnership with customers.

We are committed to providing a safe work environment for our employees. We have implemented a health and safety program to manage workplace safety hazards and to protect employees. The program encompasses performance, practices and awareness. The COVID-19 pandemic has underscored the importance of keeping our employees safe and healthy. In response to the pandemic, we have taken actions aligned with the recommendations of the Centers for Disease Control and Prevention in the United States and comparable agencies in other countries to protect our workforce so they can more safely and effectively perform their work.

**Acquisitions and Partnerships**

We were acquired by Pamplona in December 2018. We have made two acquisitions since 2018, the purchase of GLI, a competitor in vinyl liners and safety cover markets based in Ohio, in October 2020 and the purchase of Narellan, a manufacturer of fiberglass pools in Australia and New Zealand in May 2019. We also made a strategic investment in October 2020 by acquiring a 28% interest in Premier Pools & Spas, a pool builder focusing on in-ground swimming pools. We anticipate that we will continue to look to grow our portfolio of outdoor living products through further acquisitions. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Factors Affecting Our Performance—Acquisitions and Partnerships.”

**Legal Proceedings**

From time to time, we may be involved in litigation relating to claims arising out of our operations and businesses that cover a wide range of matters, including, among others, contract and employment claims, personal injury claims, product liability claims and warranty claims. Currently, there are no claims or proceedings against us that we believe will have a material adverse effect on our business, financial condition, results of operations or cash flows. However, the results of any current or future litigation cannot be predicted with certainty and, regardless of the outcome, we may incur significant costs and experience a diversion of management resources as a result of litigation.

**Environmental Laws and Regulations**

Our operations and properties are subject to extensive and frequently changing federal, state and local environmental protection and health and safety laws, regulations and ordinances. These laws, regulations and ordinances, among other matters, govern activities and operations that may have adverse environmental effects, such as discharges to air, soil and water, and establish standards for the handling of hazardous and toxic substances and the handling and disposal of solid and hazardous wastes.

Certain of our operations require environmental, health and safety permits or other approvals from governmental authorities, and certain of these permits and approvals are subject to expiration, denial, revocation or modification under various circumstances. Those requirements obligate us to obtain and maintain permits from one or more governmental agencies in order to conduct our operations. Such permits are typically issued by state agencies, but permits and approvals may also be required from federal or local governmental agencies. As with all governmental permitting processes, there is a degree of uncertainty as to whether a permit will be granted, the time it will take for a permit to be issued and the conditions that may be imposed in connection with the granting of the permit. Compliance with these laws, regulations, permits and approvals is a significant factor in our business. From time to time, we incur significant capital and operating expenditures to achieve and maintain compliance with applicable environmental, health and safety laws, regulations, permits and approvals. Our failure to comply with applicable environmental, health and safety laws and regulations or permit or approval requirements could result in substantial liabilities or civil or criminal fines or penalties or enforcement actions, including regulatory or judicial orders enjoining or curtailing operations or requiring remedial or corrective measures, installation of pollution control equipment or other actions, as well as business disruptions, which could have a material adverse effect on our business, financial condition and results of operations.

Some of the environmental laws applicable to us provide that a current or previous owner or operator of real property may be liable for the costs of removal or remediation of environmental contamination on, under, or in that property or other impacted properties. Accordingly, such liability could apply to us in connection with any of our current or former manufacturing plants or other properties. In addition, some

of these laws provide that persons who arrange, or are deemed to have arranged, for the disposal or treatment of hazardous substances may also be liable for the costs of removal or remediation of environmental contamination at the disposal or treatment site, regardless of whether the affected site is owned or operated by such person. Environmental laws, in general, often impose liability whether or not the owner, operator or arranger knew of, or caused, the presence of such environmental contamination. Also, third parties may make claims against owners or operators of properties for personal injuries, for property damage and/or for clean-up associated with releases of hazardous or toxic substances pursuant to applicable environmental laws and common law tort theories, including strict liability. Failure to comply with environmental laws or regulations could result in severe fines and penalties.

We are not aware of any environmental liabilities that would be expected to have a material adverse effect on our business, financial condition or results of operations. We believe we comply in all material respects with environmental laws and regulations and possess the permits required to operate our manufacturing and other facilities. Our environmental compliance costs in the future will depend, in part, on the nature and extent of our manufacturing activities, regulatory developments and future requirements that cannot presently be predicted.

**Health and Safety Matters**

Our health and safety policies and practices include an employee training and competency development program to regularly train, verify and encourage compliance with health and safety procedures and regulations. We regularly monitor our total recordable incident rate. We employ an environmental, health and safety director who with their team are responsible for managing, auditing and executing unified, companywide safety and compliance programs, as well as working directly with site leadership and associates on safety awareness, reports and preventative measures. The environmental, health and safety director reports directly to the Vice President of Autocovers, Environmental Health and Safety and Quality and also provides monthly updates to the Chief Operating Officer and Chief Executive Officer.

## Management

The following table sets forth the name, age and position of each of our executive officers and directors as of the date of this prospectus.

| Name | Age | Position |
|---|---|---|
| Scott M. Rajeski | 54 | Director and Chief Executive Officer |
| J. Mark Borseth | 62 | Chief Financial Officer |
| Jeff A. Leake | 59 | Chief Operating Officer |
| Joel R. Culp | 56 | Chief Marketing Officer |
| Kaushal B. Dhruv | 45 | Chief Information Officer |
| Melissa C. Feck | 49 | Chief Human Resource Officer |
| Jason A. Duva | 48 | General Counsel and Chief Administrative Officer |
| Joshua D. Cowley | 44 | Chief Commercial Officer |
| James E. Cline | 69 | Chairman and Director |
| Robert D. Evans | 61 | Director |
| Alexander L. Hawkinson | 47 | Director |
| Mark P. Laven | 67 | Vice Chairman and Director |
| Suzan Morno-Wade | 53 | Director |
| William M. Pruellage | 47 | Director |
| Andrew D. Singer | 32 | Director |
| Christopher P. O'Brien | 45 | Director |

The following are brief biographies describing the backgrounds of the executive officers and directors of the Company.

### Executive Officers

***Scott M. Rajeski*** has served as President and Chief Executive Officer of Latham Pool Products since October 2017 and as our Chief Executive Officer and Director since December 2020. He previously served as Latham Pool Products' Chief Financial Officer and Vice President since August 2012. Prior to that, Mr. Rajeski served as a director of finance at GLOBALFOUNDRIES, a semiconductor manufacturing company, from 2009 to 2012. Prior to that Mr. Rajeski was the chief financial officer for Americas of Momentive Performance Materials/GE Silicones, a former division of General Electric, from 2004 to 2009 and held various finance positions at General Electric from 1991 to 2003. Mr. Rajeski holds a Bachelor of Science degree in math and a minor in business economics from the State University of New York at Potsdam and a Master of Business Administration degree from Clarkson University. Mr. Rajeski also graduated from General Electric's Executive Finance Leadership Program and Finance Management Program, and is a certified Six Sigma Black Belt. We believe Mr. Rajeski is qualified to serve as a member of our board of directors because of his experience building and leading our business, his insight into corporate matters as our Chief Executive Officer, his extensive finance and leadership background and his extensive leadership experience in the pool industry.

***J. Mark Borseth*** has served as Chief Financial Officer of Latham Pool Products since February 2020 and as our Chief Financial Officer since December 2020. Prior to joining us, Mr. Borseth served in the roles of president and chief executive officer from October 2017 to August 2019, interim chief executive officer and chief financial officer from July 2017 to September 2017 and senior vice president and chief financial officer from 2015 to June 2017 of Ranpak, a manufacturer of paper packaging converter machines and paper products. From 2009 to 2014, Mr. Borseth served as executive vice president and chief financial officer at Constar International, a producer of polyethylene terephthalate plastic containers, leading its turn-around out of bankruptcy in January 2011 and December 2013. Prior to that, Mr. Borseth served as senior vice president and chief financial officer at Eclipse Aviation, a jet manufacturer, from 2007 to 2009. From 1984 to 2007, Mr. Borseth served in various financial and operational roles of increasing responsibility at 3M, a

multinational manufacturer, including treasurer and president and general manager of 3M Canada. Mr. Borseth holds a Bachelor of Science degree in business administration and management, and a Master of Business Administration degree from Minnesota State University, Mankato.

***Jeff A. Leake*** has served as Chief Operating Officer of Latham Pool Products since June 2020 and as our Chief Operating Officer since December 2020. Prior to joining us, Mr. Leake served as the executive vice president of integrated supply chain at Curt Holdings, LLC, a sales, marketing, engineering and distribution company of towing products and truck accessories and a division of Lippert Components, Inc., from 2017 to June 2020. From 2013 to 2017 he served as a managing director global of the supply chain practice at TBM Consulting Group, Inc., which specializes in manufacturing operations consulting and supply chain consulting for manufacturers and distributors. Mr. Leake holds both a Bachelor of Science degree in Business Administration in production/operations management and a Master of Science degree in operations research from Central Michigan University. Mr. Leake also holds certifications from the American Production and Inventory Control Society (APICS) at the Certified Production & Inventory Control Manager (CPIM) and Certified Integrated Resource Manager (CIRM) levels, as well as being a JONAH from the Goldratt Institute in Constraint Management.

***Joel R. Culp*** has served as Chief Marketing Officer of Latham Pool Products since February 2019 and as our Chief Marketing Officer since December 2020. Prior to joining us, Mr. Culp served as the executive vice president of global marketing, design and product strategy for Wilsonart, LLC, a global manufacturer and distributor of high pressure laminates and other engineered composite materials, from 2013 to 2019. From 2011 to 2013, he served as executive vice president and strategic planning for Masterbrand Cabinets Inc., a manufacturer of kitchen cabinets. Prior to that, Mr. Culp served as the senior vice president of marketing for Uponor, Inc., a manufacturing company, from 2006 to 2011 and director of marketing for Kohler Company, a manufacturing company, from 2002 to 2006. Mr. Culp holds a Bachelor of Science degree in finance from the University of Pittsburgh and a Master of Business Administration degree from Marquette University. He is also a U.S. Green Building Council LEED (Leadership in Energy and Environmental Design) Accredited Associate.

***Kaushal B. Dhruv*** has served as Chief Information Officer of Latham Pool Products since March 2020 and as our Chief Information Officer since December 2020. Prior to joining us, Mr. Dhruv served as a director technology risk management and systems integration at KPMG US, a global network of professional firms providing audit, tax and advisory services, from 2004 to 2020. Mr. Dhruv holds a Master's in Information Management degree from Syracuse University, a Master's degree in Business Management from the Martin J. Whitman School of Management at Syracuse University, a Bachelor's degree in Computer Engineering from the Pune Institute of Computer Technology, and a Diploma in electronics and telecommunications engineering from the University of Mumbai. He also is a certified project manager, certified information systems auditor, certified information systems security professional, certified in enterprise governance of IT, a certified cloud professional, certified data privacy solutions professional and certified in risk information systems and controls.

***Melissa C. Feck*** has served as Chief Human Resource Officer of Latham Pool Products since December 2018 and as our Chief Human Resource Officer since December 2020. She previously served as Latham Pool Products' Vice President Human Resources from 2016 to 2018. Prior to joining us, Ms. Feck was the vice president human resources and member education at Healthcare Association of New York State, a non-profit organization, from 2011 to 2016. Ms. Feck holds a Bachelor of Arts degree in English from the State University of New York at Albany and is a certified Senior Professional in Human Resources from HRCI®.

***Jason A. Duva*** has served as our General Counsel and Chief Administrative Officer since December 2020. Prior to joining us, Mr. Duva worked at Avid (NASDAQ: AVID), a global technology company, from February 2005 until October 2020, where he most recently served as executive vice president, chief legal and administrative officer and advisor. From January 1999 to February 2005, Mr. Duva worked as a lawyer at the Testa, Hurwitz & Thibeault, LLP law firm. Mr. Duva holds a Bachelor of Arts Degree in political science from Brown University and a juris doctor degree from Boston College Law School.

***Joshua D. Cowley*** has served as our Chief Commercial Officer since March 2021. Prior to joining us, Mr. Cowley held several executive leadership roles at Stanley Black & Decker, (NYSE: SWK), a manufacturer

of industrial tools and household hardware and provider of security products, from 2005 to 2020. Key executive roles during his tenure at Stanley Black & Decker included president & GM NA Retail and Global Licensing, president & GM Global Industrial Business, president US Sales & Marketing, and VP US Channel Marketing. Mr. Cowley also spent several years at Newell Rubbermaid (NASDAQ: NWL), a manufacturer, marketer and distributor of consumer and commercial products, from 2001 to 2005 advancing early in his career across several sales and marketing related roles within the company. Mr. Cowley holds a Bachelor of Arts in Exercise and Sports Science from the University of North Carolina.

**Non-Employee Directors**

***James E. Cline*** became a member of Latham Pool Products' board of directors on March 4, 2019 and of our board of directors on December 9, 2020. Mr. Cline became the Chairman of our board of directors on December 14, 2020. Since 2020, Mr. Cline has served as chairman of the board of Trex Company, Inc. (NYSE: TREX) ("Trex"), a manufacturer of outdoor living products. From 2015 to 2020, Mr. Cline has served as president and chief executive officer and a member of the board of directors of Trex. From 2013 to 2015, he was the senior vice president and chief financial officer of Trex. From 2008 to 2013, Mr. Cline served as vice president and chief financial officer of Trex. Prior to Trex, Mr. Cline served as the president of Harsco GasServ, a subsidiary of Harsco Corporation, a manufacturer of containment and control equipment for the global gas industry, from 2005 to 2007 and was the vice president and controller for Harsco GasServ from 1994 to 2005. In connection with the purchase of Harsco GasServ by Taylor-Wharton International LLC, which was owned by Windpoint Partners Company, Mr. Cline served as a consultant to the buyers in 2018 by providing transition management and financial services. Mr. Cline served in various capacities with the Huffy Corporation from 1976 to 1994, including as director of finance of its True Temper Hardware subsidiary, a manufacturer of lawn care and construction products. Mr. Cline holds a Bachelor of Science in Business Administration degree in accounting from Bowling Green State University. We believe Mr. Cline is qualified to serve as a member of our board of directors because of his experience as a member of the board of directors of Latham Pool Products, his extensive leadership experience and extensive experience in the consumer products industry.

***Robert D. Evans*** became a member of Latham Pool Products' board of directors on July 31, 2019 and of our board of directors on December 9, 2020. He currently serves on three boards of managers. Since 2019, Mr. Evans has served as a member of the board of managers, compensation committee and strategic alternatives committee of Quirch Foods Parent, LLC (dba Quirch Foods), a distributor, importer and exporter of food products. Since 2018, he has served as a member of the board of managers and the chair of the audit committee of Del Real Holdco, LLC (dba Del Real Foods), a food company. Additionally, since 2017, Mr. Evans has served as a member of the board of managers and a chair of the audit committee of BMark Investment Holdings, LP (dba BakeMark Foods), a distributor of quality bakery products. From 2009 to 2016, Mr. Evans served as chief financial officer of Performance Food Group Company (NYSE: PFGC), a distributor of food products. From 2005 to 2008, he was president of Black Diamond Holdings, a start-up manufacturer and retailer of eco-friendly cleaning services. From 2000 to 2004, Mr. Evans was executive vice president, finance and development of Giant Foods of Landover MD, a retail supermarket chain in the Baltimore/Washington, D.C. area. Prior to that, Mr. Evans has served as vice president of strategy and corporate development, senior vice president of North American Ready to Eat Cereals, and chief financial officer and senior vice president of Kellogg North America in the Kellogg Company, a multinational food manufacturing company, from 1998 to 2000. He also held a series of finance positions at the Frito-Lay division of PepsiCo., a multinational food, snack and beverage corporation. Mr. Evans holds a Bachelor of Arts degree from Davidson College, a Master of Business Administration degree from the University of Texas at Austin and a Master of Public Administration degree from Princeton University. We believe Mr. Evans is qualified to serve as a member of our board of directors because of his extensive experience in consumer-facing manufacturing and distribution businesses, his service as the chief financial officer of a Fortune 200 company, and his experience of serving on boards of multiple companies.

***Alexander L. Hawkinson*** became a member of Latham Pool Products' board of directors on October 16, 2020 and of our board of directors on December 9, 2020. Mr. Hawkinson was the chief product officer from 2011 to 2012 and the senior vice president and general manager of digital presence from 2010 to 2011 for ReachLocal, an online marketing and advertising provider. From 2005 to 2010, Mr. Hawkinson was the founder and chief executive office of SMBLive, a developer of social marketing platform software. Prior to

SMBLive, he served as chief executive officer of Apptix, an application service provider technology company, from 2001 to 2005. Mr. Hawkinson serves on the board of directors of ICON Health and Fitness, Inc. ("ICON Health"), a manufacturer and marketer of fitness equipment, CSC ServiceWorks, Inc. ("CSC ServiceWorks"), a provider of commercial laundry services and air vending solutions, Mural Ventures, an investment firm, Mural Advisors, a consulting company and Mural Consulting, a consulting company. Mr. Hawkinson holds a Bachelor of Science degree in cognitive science from Carnegie Mellon University. We believe Mr. Hawkinson is qualified to serve as a member of our board of directors because of his experience as a company executive and because of his experience of serving on the boards of multiple companies.

***Mark P. Laven*** became a member of Latham Pool Products' board of directors in December 2001 and a member of our board of directors on December 9, 2020. Mr. Laven became the Vice Chairman of our board of directors on December 14, 2020. From December 2001 to October 2017, Mr. Laven served as President and Chief Executive Officer of Latham Pool Products and he served as Chairman of Latham Pool Products until December 14, 2020. From 2004 to 2008, he was a member of the Board of the Association of Pool Spa Professionals, a national trade association. Mr. Laven holds a Bachelor of Science degree in Business Administration from Ithaca College. We believe Mr. Laven is qualified to serve as a member of our board of directors because of his experience building and leading our business for over 19 years, his insight into corporate matters as former Chairman of Latham Pool Products' board of directors and the previous President and Chief Executive Officer, and his extensive leadership experience in the pool industry.

***Suzan Morno-Wade*** became a member of our board of directors in March 2021. Ms. Morno-Wade has served as the chief human resources officer of Xerox, a provider of print and digital document products and services, since November 2018. She is also an executive vice president of Xerox Holdings Corporation (NYSE: XRX), the parent of Xerox, and serves as a member of the company's executive committee. Prior to this role, she served as vice president of total rewards with Xerox from 2016 to 2018, vice president human resources and vice president of compensation and governance with Hess Corporation (NYSE: HES), a global independent energy company, from 2014 to 2016 and 2005 to 2014, respectively, and as director compensation and benefits at Quantum Corporation (NASDAQ: QMCO), a leader in storing and managing digital video and other forms of unstructured data, from 1999 to 2005. Over a 20-year period, Ms. Morno-Wade has worked across a broad spectrum of industries including technology, oil and gas, industrial and consumer goods. Ms. Morno-Wade began her career in finance and holds multiple human resources certifications as well as a Bachelor of Science degree in Accounting from the University of Illinois. Ms. Morno-Wade also serves on the board of directors of A Better Chance, a nonprofit organization, focused on increasing the number of well-educated young people of color in the United States. We believe Ms. Morno-Wade is qualified to serve as a member of our board of directors because of her experience as a chief human resources officer and her extensive experience developing human capital strategies across multiple industries.

***William M. Pruellage*** became a member of our board of directors on January 20, 2021. Mr. Pruellage joined Pamplona in 2014 and has served as managing partner since 2018. Prior to Pamplona, Mr. Pruellage was the co-president of Castle Harlan, Inc., where he was employed since 1997. Prior to that, Mr. Pruellage was a mergers and acquisitions banker at Merrill Lynch. Mr. Pruellage holds a Bachelor of Science, summa cum laude, in Finance and International Business from Georgetown University. During his time at Pamplona, Mr. Pruellage served on the board of directors of several companies, including Bakemark, a manufacturer of baking ingredients, Veritext, a court reporting agency, nThrive, a payment solutions provider for the healthcare industry, and Lumos Networks (NASDAQ: LMOS), a broadband internet provider. Prior to Pamplona, Mr. Pruellage served on the board of directors of numerous companies, including Exterran (NYSE: EXTN), an oil and gas company, Ames True Temper, a manufacturer of garden products, GoldStar Foods, a food distributor, Pretium Packaging, a plastics manufacturer, Securus, a prison communications firm, RathGibson, a manufacturer of tubing and pipe, Baker & Taylor, a book distributor, Verdugt Specialty Chemicals, a chemicals company, Anchor Drilling Fluids, a drilling fluids company, and Universal Compression (NYSE: UCO), a provider of natural gas compression equipment and services. We believe Mr. Pruellage is qualified to serve as a member of our board of directors because of his extensive investment management experience and because of his experience serving on the boards of multiple companies.

***Andrew D. Singer*** became a member of Latham Pool Products' board of directors on December 6, 2018 and a member of our board of directors on December 9, 2020. Mr. Singer is a principal at Pamplona,

having joined the firm in 2013. Prior to this role, Mr. Singer worked in the mergers and acquisitions practice at Merrill Lynch with a focus on branded consumer products. During his time at Pamplona, he served on the board of several companies, including iFit (f.k.a. ICON), a leading digital fitness platform, Calyx, a tech-enabled clinical development business, Parexel, a global clinical research organization ("CRO") and Spreemo, a radiology intelligence platform. Mr. Singer holds a Bachelor of Science degree in business and enterprise management from the Calloway School of Business and Accountancy at Wake Forest University. We believe Mr. Singer is qualified to serve as a member of our board of directors because of his extensive financial services experience and consumer products knowledge.

***Christopher P. O'Brien*** became a member of Latham Pool Products' board of directors on December 18, 2018 and our board of directors on December 9, 2020. Since 2017, Mr. O'Brien has served as managing partner of Wynnchurch, a private equity firm. Since his hiring at Wynnchurch in 2000 as an associate, he was promoted to vice president, managing director, partner and then managing partner over the course of his 20 year tenure with the organization. Mr. O'Brien holds a Bachelor of Business Administration degree from the University of Notre Dame and a Masters of Business Administration from the University of Chicago Booth School of Business. During his time at Wynnchurch, he served on the board of directors of several companies, including SafeWorks, a manufacturing company, Webex, a developer of web conferencing and videoconferencing applications, NSC Minerals, a provider of bulk and retail rock salt and ice melter, US Pipe, a manufacturing company, Humanetics, a technology organization, US Manufacturing, a manufacturing company, Premier Forge, a manufacturing company, PW Forging Group, a manufacturing company, Boss Engineered Air Systems, a manufacturing company, MPL, a manufacturing company, Pro-Fab, a manufacturer and distributor of modular homes, Wolverine Advanced Materials, a manufacturing company, Eastern Metal Supply (EMS), a distributor of aluminum extrusions and related products, Critical Process Systems Group (CPS), a provider of process solutions for highly demanding industries and applications, Midland Industries, a manufacturing and distributing company, Infra Pipe Solutions, a manufacturing company, and Rosboro, a manufacturing company. We believe Mr. O'Brien is qualified to serve as a member of our board of directors because of his extensive investment management experience and because of his experience serving on the boards of multiple companies.

**Controlled Company**

We intend to apply to list the shares of our common stock offered in this offering on NASDAQ. As the Pamplona Fund and the Wynnchurch Funds will continue to control more than 50% of our combined voting power upon the completion of this offering, we will be considered a "controlled company" for the purposes of that exchange's rules and corporate governance standards. As a "controlled company," we will be permitted to, and we intend to, elect not to comply with certain corporate governance requirements, including (1) those that would otherwise require our board of directors to have a majority of independent directors, (2) those that would require that we establish a compensation committee composed entirely of independent directors and with a written charter addressing the committee's purpose and responsibilities and (3) those that would require we have a nominating and corporate governance committee comprised entirely of independent directors with a written charter addressing the committee's purpose and responsibilities, or otherwise ensure that the nominees for directors are determined or recommended to our board of directors by the independent members of our board of directors. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of these corporate governance requirements. In the event that we cease to be a "controlled company" and our shares of common stock continue to be listed on NASDAQ, we will be required to comply with these provisions within the applicable transition periods.

**Director Independence**

While we are a "controlled company" we are not required to have a majority of independent directors. As allowed under the NASDAQ rules, we intend to phase in compliance with the heightened independence requirements prior to the end of the one-year transition period after we cease to be a "controlled company." Upon consummation of this offering, we expect our independent directors, as such term is defined by the NASDAQ rules, will be James E. Cline, Robert D. Evans, William M. Pruellage, Christopher P. O'Brien, Andrew D. Singer and Suzan Morno-Wade.

**Board Composition**

Upon the consummation of this offering, our board of directors will consist of nine members. We intend to avail ourselves of the "controlled company" exception under the NASDAQ rules, which eliminates the requirements that we have a majority of independent directors on our board of directors and that we have a compensation committee and a nominating/corporate governance committee composed entirely of independent directors. We will be required, however, to have an audit committee with one independent director meeting the SEC and NASDAQ requirements for Audit Committee independence during the 90-day period beginning on the date of effectiveness of the registration statement of which this prospectus is a part. After such 90-day period and until one year from the date of effectiveness of the registration statement, we will be required to have a majority of independent directors on our audit committee. Thereafter, we will be required to have an audit committee comprised entirely of such independent directors.

If at any time we cease to be a "controlled company" under the NASDAQ rules, the board of directors will take all action necessary to comply with the applicable NASDAQ rules, including appointing a majority of independent directors to the board of directors and establishing certain committees composed entirely of independent directors, subject to a permitted "phase-in" period.

Upon the consummation of this offering, our board of directors will be divided into three classes. The members of each class will serve staggered, three-year terms (other than with respect to the initial terms of the Class I and Class II directors, which will be one and two years, respectively). Upon the expiration of the term of a class of directors, directors in that class will be elected for three-year terms at the annual meeting of stockholders in the year in which their term expires. Upon consummation of this offering:

- Mark P. Laven, Christopher P. O'Brien and James E. Cline will be Class I directors, whose initial terms will expire at the fiscal 2022 annual meeting of stockholders;
- Scott M. Rajeski, Robert D. Evans and William M. Pruellage will be Class II directors, whose initial terms will expire at the fiscal 2023 annual meeting of stockholders; and
- Alexander L. Hawkinson, Andrew D. Singer and Suzan Morno-Wade will be Class III directors, whose initial terms will expire at the fiscal 2024 annual meeting of stockholders.

Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of our directors. At each annual meeting, our stockholders will elect the successors to one class of our directors.

The authorized number of directors may be increased or decreased by our board of directors in accordance with our certificate of incorporation. At any meeting of the board of directors, except as otherwise required by law, a majority of the total number of directors then in office will constitute a quorum for all purposes.

Pamplona will have the right to designate a majority of the members of our board of directors as long as Pamplona Fund and its affiliates own at least a majority of shares of our common stock. Wynnchurch will have the right to designate one member of our board of directors as long as Wynnchurch Funds and their respective affiliates own at least 5% of shares of our common stock. Immediately following the completion of this offering, Pamplona will have the right to designate five directors to our board of directors and Wynnchurch will have the right to designate one director to our board of directors.

**Board Committees**

Following the completion of this offering, the board committees will include an audit committee, a compensation committee and a nominating and corporate governance committee. So long as Pamplona Fund and its affiliates beneficially own at least 5% of the voting power of our outstanding common stock, a number of directors nominated by Pamplona that is as proportionate (rounding up to the next whole director) to the number of members of such committee as is the number of directors that Pamplona is entitled to nominate to the number of members of our board of directors will serve on each committee of our board, subject to compliance with applicable law and the rules and regulations of NASDAQ. So long as Pamplona has the right to designate at least one director to our board of directors, Pamplona will have the right to appoint a representative as an observer to any committee of the board to which Pamplona does not

have a member representative, subject to applicable laws and the rules and regulations of NASDAQ. So long as Wynnchurch has the right to designate a director to our board of directors, Wynnchurch will have the right to appoint a representative as an observer to any committee of the board, subject to applicable laws and the rules and regulations of NASDAQ.

***Audit Committee***

Following the consummation of this offering, our audit committee will consist of James E. Cline, Robert D. Evans and Suzan Morno-Wade. Our board of directors has determined that Robert D. Evans qualifies as an "audit committee financial expert" as such term is defined in Item 407(d)(5) of Regulation S-K and that James E. Cline, Robert D. Evans and Suzan Morno-Wade are independent as defined in Rule 10A-3 of the Exchange Act and under NASDAQ listing standards. The principal duties and responsibilities of our audit committee will be as follows:

- to prepare the annual audit committee report to be included in our annual proxy statement;
- to oversee and monitor our financial reporting process;
- to oversee and monitor the integrity of our financial statements and internal control system;
- to oversee and monitor the independence, retention, performance and compensation of our independent registered public accounting firm;
- to oversee and monitor the performance, appointment and retention of our internal audit function;
- to discuss, oversee and monitor policies with respect to risk assessment and risk management;
- to oversee and monitor our compliance with legal and regulatory matters; and
- to provide regular reports to the board.

The audit committee will also have the authority to retain counsel and advisors to fulfill its responsibilities and duties and to form and delegate authority to subcommittees.

***Compensation Committee***

Following the consummation of this offering, our compensation committee will consist of Christopher P. O'Brien, James E. Cline and Andrew D. Singer (the "Compensation Committee"). The principal duties and responsibilities of the Compensation Committee will be as follows:

- to review and make recommendations to the full board of directors regarding our compensation policies and programs;
- to review and approve the compensation of our chief executive officer and other officers, including all material benefits, option or stock award grants and perquisites and all material employment agreements;
- to review and approve our incentive compensation plans, pension plans and equity-based compensation plans;
- to administer incentive compensation, pension plans and equity-based compensation plans;
- to review and approve financial and other performance targets that must be met;
- to review and make recommendations to the full board of directors regarding compensation of non-executive directors; and
- to prepare an annual compensation committee report and take such other actions as are necessary and consistent with the governing law and our organizational documents.

We intend to avail ourselves of the "controlled company" exception under the NASDAQ rules which exempts us from the requirement that we have a compensation committee composed entirely of independent directors.

***Nominating and Corporate Governance Committee***

Following the consummation of this offering, our nominating and corporate governance committee will consist of William M. Pruellage, Alexander L. Hawkinson and Mark P. Laven. The principal duties and responsibilities of the nominating and corporate governance committee will be as follows:

- to identify candidates qualified to become directors of the Company, consistent with criteria approved by our board of directors;
- to review and recommend to the board of directors a succession plan for the chief executive officer and other executive officers;
- to recommend to our board of directors nominees for election as directors at the next annual meeting of stockholders or a special meeting of stockholders at which directors are to be elected, as well as to recommend directors to serve on the committees of the board;
- to recommend to our board of directors candidates to fill vacancies and newly created directorships on the board of directors;
- to develop, review and assess annually the adequacy of the Company's corporate governance principles and guidelines and recommend to our board of directors any changes deemed appropriate; and
- to oversee the evaluation of our board of directors.

We intend to avail ourselves of the "controlled company" exception under the NASDAQ rules which exempts us from the requirement that we have a nominating and corporate governance committee composed entirely of independent directors.

**Code of Business Conduct and Ethics**

Upon the consummation of this offering, our board of directors will adopt a code of business conduct and ethics that will apply to all of our directors, officers and employees and is intended to comply with the relevant listing requirements for a code of conduct, as well as qualify as a "code of ethics" as defined by the rules and regulations of the SEC and NASDAQ. The code of business conduct and ethics will contain general guidelines for conducting our business consistent with the highest standards of business ethics. We intend to disclose future amendments to certain provisions of our code of business conduct and ethics, or waivers of such provisions applicable to any principal executive officer, principal financial officer, principal accounting officer and controller or persons performing similar functions, and our directors, on our website at https://www.lathampool.com. Following the consummation of this offering, the code of business conduct and ethics will be available on our website.

**Board Leadership Structure and Board's Role in Risk Oversight**

The board of directors has an oversight role, as a whole and also at the committee level, in overseeing management of its risks. The board of directors regularly reviews information regarding our credit, liquidity and operations, as well as the risks associated with each. Following the completion of this offering, the Compensation Committee of the board of directors will be responsible for overseeing the management of risks relating to employee compensation plans and arrangements and the audit committee of the board of directors will oversee the management of financial risks. While each committee will be responsible for evaluating certain risks and overseeing the management of such risks, the entire board of directors will be regularly informed through committee reports about such risks.

## Executive Compensation

### Introduction

This section provides an overview of our executive compensation program, including a narrative description of the material factors necessary to understand the information disclosed below under the "—Summary Compensation Table." For 2020, our named executive officers are:

- Scott M. Rajeski, our Chief Executive Officer;
- J. Mark Borseth, our Chief Financial Officer; and
- Joel R. Culp, our Chief Marketing Officer.

The compensation program for our named executive officers consists principally of the following elements: base salary; performance-based cash bonus; and equity-based incentive compensation. We also provide general employee benefits, as well as certain severance benefits upon certain terminations of employment.

### Summary of NEO Offer Letters and Employment Agreements

***Scott M. Rajeski***

We are party to an employment agreement with Scott Rajeski, dated December 17, 2018, to serve as the President and Chief Executive Officer of Latham Pool Products with a term ending November 7, 2023, unless terminated sooner.

Pursuant to his employment agreement, Mr. Rajeski is entitled to an annual base salary of $400,000 (subject to increase, but not decrease) and is eligible to participate in our Management Incentive Bonus Program as in effect from time to time. Under our bonus program, Mr. Rajeski was eligible to earn a target bonus of 100% of his annual base salary based on the achievement of pre-established financial goals and individual performance objectives for 2020. In addition, pursuant to his employment agreement, Mr. Rajeski is entitled to participate in our employee benefit, fringe and perquisite arrangements (including an automobile allowance) as in effect from time to time.

Mr. Rajeski's employment agreement includes other customary terms and conditions, including perpetual confidentiality and assignment of intellectual property provisions, and a two-year post-termination non-competition covenant and a two-year post-termination non-solicitation covenant of employees and customers.

Mr. Rajeski is also entitled to severance upon certain terminations of employment, as described below under "—Potential Payments Upon Termination of Employment or Change in Control."

***J. Mark Borseth***

We are party to an offer letter with J. Mark Borseth, dated February 7, 2020, as amended February 11, 2020, and an employment agreement with Mr. Borseth, dated February 12, 2020, as amended April 6, 2020, to serve as our Chief Financial Officer for an indefinite term.

Mr. Borseth's employment agreement provides for an annual base salary of $350,000 (subject to increase, but not decrease), and that he is eligible to participate in our Management Incentive Bonus Program as in effect from time to time. Under our bonus program, Mr. Borseth was eligible to earn a target bonus of 60% of his annual base salary based on the achievement of pre-established financial goals and individual performance objectives for 2020. Mr. Borseth's offer letter entitles him to an initial grant of Class B Units (as defined and described below under "—Equity Incentive Compensation"). In addition, pursuant to his employment agreement, Mr. Borseth is entitled to participate in our employee benefit, fringe and perquisite arrangements (including an automobile allowance) as in effect from time to time.

Mr. Borseth's employment agreement includes other customary terms and conditions, including perpetual confidentiality and assignment of intellectual property provisions, and a two-year post-termination non-competition covenant and a two-year post-termination non-solicitation covenant of employees and customers.

Mr. Borseth is also entitled to severance upon certain terminations of employment, as described below under "—Potential Payments Upon Termination of Employment or Change in Control."

***Joel R. Culp***

We are party to an offer letter with Joel R. Culp, dated January 18, 2019, and an employment agreement with Mr. Culp, dated February 11, 2019, to serve as our Chief Marketing Officer for an indefinite term.

Mr. Culp's employment agreement provides for an annual base salary of $315,000, and a target bonus of 60% of his base salary based on the achievement of pre-established financial goals and individual performance objectives for 2020. Mr. Culp's offer letter provides for a signing bonus of $150,000 payable as a lump sum upon his completion of thirty (30) days of employment with the Company and for an initial grant of Class B Units. In addition, pursuant to his employment agreement, Mr. Culp is entitled to participate in our employee benefit, fringe and perquisite arrangements (including an automobile allowance) as in effect from time to time.

Mr. Culp's employment agreement includes other customary terms and conditions, including perpetual confidentiality and assignment of intellectual property provisions, and a two-year post-termination non-competition covenant and a two-year post-termination non-solicitation covenant of employees and customers.

Mr. Culp is also entitled to severance upon certain terminations of employment, as described below under "—Potential Payments Upon Termination of Employment or Change in Control."

The employment agreements and offer letters listed above in this section are with our subsidiary Latham Pool Products.

**Base Salary**

We pay base salaries to attract, recruit and retain qualified employees. Following the consummation of this offering, we expect that our Compensation Committee will review and set base salaries of our named executive officers annually.

**Management Incentive Bonus Plan**

During 2020, our named executive officers were eligible to participate in our annual performance-based Management Incentive Bonus Plan (the "MIB Plan"). Following the completion of this offering, our Compensation Committee intends to continue the MIB Plan for eligible employees, including our named executive officers.

For 2020, the annual target bonus (as a percentage of base salary) under the MIB Plan was 100% for Mr. Rajeski and 60% for each of Mr. Borseth and Mr. Culp. The bonuses for each of our named executive officers under the MIB Plan were earned based on achievement of pre-established financial performance criteria (*i.e.*, EBITDA targets) (weighted 80% for Mr. Rajeski and 75% for Messrs. Borseth and Culp) and individual performance goals (weighted 20% for Mr. Rajeski and 25% for Messrs. Borseth and Culp). The bonuses with respect to 2020 performance for each of Messrs. Rajeski, Borseth and Culp were paid on March 11, 2021.

**Equity Incentive Compensation**

We provide equity-based incentive compensation to our named executive officers because it links our long-term results achieved for our stockholders and the rewards provided to named executive officers, thereby ensuring that such officers have a continuing stake in our long-term success. Our named executive officers have each been granted profits interests (i.e., Class B Units) of the Parent under the Partnership Agreement and award agreements. Class B Units allow the named executive officers to share in the future appreciation of the equity value of the Company. For each award of Class B Units, one-third of the Class B Units vest ratably over 5 years based on continued employment (the "Time-Vesting Class B Units"), and two-thirds of the Class B Units are eligible to vest in the event of a sale transaction based on either the cash on cash return on Pamplona's investment in the Parent or the level of internal rate of return that is achieved by Pamplona (the "Performance-Vested Class B Units"). Mr. Borseth received a grant of 239,460.40 Class B

Units which vest after one year of employment. Our named executive officers received grants of Class B Units during 2020 as shown in the "—Summary Compensation Table" and the "—Outstanding Equity Awards at Year-End 2020 Table."

Following the adoption of our 2021 Omnibus Equity Incentive Plan in connection with this offering, no further awards will be granted under the Partnership Agreement.

**Retirement Benefits**

Our named executive officers are entitled to participate in our 401(k) plan, on the same basis as our other eligible employees.

**Summary Compensation Table**

The following table sets forth information regarding the compensation paid to, awarded to or earned by our Chief Executive Officer and our two other most highly compensated executive officers for services rendered in all capacities during the year ended December 31, 2020.

| Name and Principal Position | Fiscal Year | Salary ($) | Stock Awards[1] ($) | Non-Equity Incentive Plan Compensation[2] | All Other Compensation[3] ($) | Total ($) |
|---|---|---|---|---|---|---|
| Scott M. Rajeski<br>*Chief Executive Officer* | 2020 | 400,000 | — | 800,000 | 16,551 | 1,216,551 |
| J. Mark Borseth[4]<br>*Chief Financial Officer* | 2020 | 297,260 | 546,844 | 420,000 | 60,322 | 1,324,426 |
| Joel R. Culp<br>*Chief Marketing Officer* | 2020 | 315,000 | 226,837 | 378,000 | 39,046 | 958,883 |

(1) The Class B Units represent profit interests in the Partnership which will have value only if the value of the Partnership increases following the date on which the awards of such Class B Units are granted. This amount represents a grant date fair value calculated in accordance with FASB ASC Topic 718 with respect to a grant of Class B Units. The value shown in the table above only shows the value of the Class B Units subject to time-based vesting as no expense was taken with respect to the Class B Units subject to performance-based vesting because the performance condition was not probable. There was no public market with respect to the Class B Units at the time of grant, and thus the grant date fair value was based on the fair market value as determined in accordance with the assumptions set forth in the Company's consolidated financial statements for fiscal year 2020.

(2) Amounts set forth in the Non-Equity Incentive Plan Compensation column represent cash bonuses paid pursuant to the MIB Plan to each of our named executives officers, based on the achievement of pre-established financial performance criteria (i.e., EBITDA targets) and individual performance goals. Based on 2020 performance, the MIB payout was equal to 200% of the target bonus amount.

(3) Amounts reported under All Other Compensation reflect the following:

| Name | Company 401(k) Match ($) | Company Automobile Reimbursement ($) | Relocation Reimbursement ($) | Total ($) |
|---|---|---|---|---|
| Scott M. Rajeski | 1,551 | 15,000 | — | 16,551 |
| J. Mark Borseth | 3,322 | 7,000 | 50,000 | 60,322 |
| Joel R. Culp | 1,817 | 8,400 | 28,829 | 39,046 |

(4) Mr. Borseth's employment began February 26, 2020. The Salary value represents Mr. Borseth's base salary of $350,000 prorated for the period of the year during which Mr. Borseth was employed.

**Outstanding Equity Awards Year-End 2020**

The following table provides information about the outstanding equity awards (unvested Class B Units of the Parent) held by our named executive officers as of December 31, 2020.

| Name | Grant Date | Number of Shares or Units of Stock That Have Not Vested (#)[1][4] | Market Value of Shares or Units of Stock That Have Not Vested ($)[2] | Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)[3] | Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested ($)[2] |
|---|---|---|---|---|---|
| Scott M. Rajeski | 12/20/2018 | 1,688,091 | 1,738,734 | 5,626,971 | 4,895,464 |
| J. Mark Borseth | 5/26/2020 | 703,371 | 724,472 | 1,406,742 | 1,223,866 |
| | 5/26/2020 | 239,464 | 246,648 | — | — |
| Joel R. Culp | 2/13/2020 | 422,023 | 434,683 | 1,055,057 | 917,899 |

(1) Represents unvested Time-Vesting Class B Units. See footnote (4) for Time-Vesting Class B Units vesting dates.

(2) The Class B Units represent profit interests in the Partnership which will have value only if the value of the Partnership increases following the date on which the awards of such Class B Units are granted. There is no public market for the Class B Units, accordingly, the market or payout value of the unvested Time-Vesting Class B Units is based on the value of the Time-Vesting Class B Units that were held by the Partnership as of December 31, 2020. For purposes of this table, the Time-Vesting Class B Units were valued using the per share price $1.03, which was based on the latest valuation performed by the Company on September 25, 2020.

(3) Represents the unvested Performance-Vesting Class B Units. The Performance-Vesting Class B Units vest upon a Change in Control/Pamplona Exit. There is no public market for the Class B Units, accordingly, the market or payout value of the unvested Performance-Vesting Class B Units is based on the value of the Performance-Vesting Class B Units that were held by the Partnership as of December 31, 2020. For purposes of this table, the Performance-Vesting Class B Units were valued using a per share price of $0.87, which was based on the latest valuation performed by the Company on September 25, 2020.

(4) The vesting schedules of the Time-Vesting Class B Units are as follows (subject to the named executive officer's continued employment through each applicable vesting date):

| Name | Grant Date | Vesting Schedule |
|---|---|---|
| Scott M. Rajeski | 12/20/2018 | Vests 20% per year over 5 years. Approximately 562,697 Class B Units are scheduled to vest on each of December 20, 2021, 2022 and 2023 |
| J. Mark Borseth | 5/26/2020 | Vests 20% per year over 5 years. Approximately 140,674 Class B Units are scheduled to vest on each of May 26, 2021, 2022, 2023, 2024 and 2025 |
| | 5/26/2020 | Vests 100% in May 26, 2021 |
| Joel R. Culp | 2/13/2020 | Vests 20% per year over 5 years beginning on May 11, 2019. Approximately 105,506 Class B Units are scheduled to vest on each of May 11, 2021, 2022, 2023 and 2024 |

Prior to the closing of this offering, in connection with the Reorganization, all outstanding Class B Units will be exchanged for an economically equivalent number of vested and unvested shares of the Company's common stock.

**Potential Payments upon Termination of Employment or Change in Control**

***Treatment of Incentive Equity Awards***

Upon a termination of a named executive officer's employment for any reason all of such officer's unvested Class B Units will be forfeited for no consideration. In addition, if the named executive officer's employment is terminated for cause or as a result of breaching a restrictive covenant or resigns without "good reason" prior to the third anniversary of the Acquisition, then the Parent can repurchase the Class B Units for no cost. If the named executive officer's employment is terminated without cause or resigns after the third anniversary of the Acquisition, then the Parent can repurchase the Class B Units at fair value.

***Severance Benefits under Employment Agreements and Offer Letters***

***Scott M. Rajeski***

Upon a termination of employment by us without cause or a resignation by Mr. Rajeski for good reason (each as defined in his employment agreement), Mr. Rajeski will be entitled to (i) any earned but unpaid base salary through the last day of employment; (ii) any accrued but unused paid time off up to a maximum of 80 hours; (iii) continuation of health coverage through the U.S. Consolidated Omnibus Budget Reconciliation Act of 1985, as codified at Section 601 *et seq*. of the Employee Retirement Income Security Act of 1974 and at Section 4980B of the Internal Revenue Code of 1986, as amended (the "Code"), (collectively, "COBRA") at a pro-rata cost share and (iv) any other vested benefits to which Mr. Rajeski is entitled, in accordance with the terms of the applicable plans. In addition, subject to Mr. Rajeski's execution of a separation agreement containing a general release of claims and such general release of claims becoming irrevocable, Mr. Rajeski will also be entitled to a pro rata share of any annual performance bonus to which Mr. Rajeski is entitled determined based on actual performance as of the end of the performance period and continued payment of his base salary for the lesser of (x) 12 months or (y) the remainder of the term under the employment agreement.

Upon any termination of employment, including a resignation without good reason, termination of employment due to his death or disability or termination for cause, Mr. Rajeski shall also be entitled to payment of base salary through the date of termination, accrued benefits and any other vested benefits to which Mr. Rajeski is entitled, in accordance with the terms of the applicable plans.

If any payments or benefits payable to Mr. Rajeski would be a "parachute payment" resulting in a lost tax deduction for the Company under Section 280G of the Code and excise tax to Mr. Rajeski under Section 4999 of the Code, the payments and benefits shall be reduced to the largest amount that will result in no portion of the severance payment being subject to the excise tax imposed by Section 4999 of the Code.

***J. Mark Borseth***

Upon a termination of employment by us without cause or a resignation by Mr. Borseth for good reason (each as defined in his employment agreement), Mr. Borseth will be entitled to (i) any earned but unpaid base salary through the last day of employment; (ii) any accrued but unused paid time off up to a maximum of 80 hours; (iii) continuation of health coverage through COBRA at a pro-rata cost share through the end of the 12 month period following termination and (iv) any other vested benefits to which Mr. Borseth is entitled, in accordance with the terms of the applicable plans. In addition, subject to Mr. Borseth's execution of a separation agreement containing a general release of claims and such general release of claims becoming irrevocable, Mr. Borseth will also be entitled to 12 months' base salary paid over the 12-month period following termination.

Upon any termination of employment, including a resignation without good reason, termination of employment due to his death or disability or termination for cause, Mr. Borseth shall also be entitled to payment of base salary through the date of termination, accrued benefits and any other vested benefits to which Mr. Borseth is entitled, in accordance with the terms of the applicable plans.

In addition, if Mr. Borseth is employed for one year following his commencement of employment, he will be entitled to a one-time payment of $250,000, less applicable taxes upon certain change of control events or an initial public offering in which the proceeds exceed a certain dollar amount.

If any payments or benefits payable to Mr. Borseth would be a "parachute payment" resulting in a lost tax deduction for the Company under Section 280G of the Code and excise tax to Mr. Borseth under Section 4999 of the Code, the payments and benefits shall be reduced to the largest amount that will result in no portion of the severance payment being subject to the excise tax imposed by Section 4999 of the Code.

***Joel R. Culp***

Upon a termination of employment by us without cause or a resignation by Mr. Culp for good reason (each as defined in his employment agreement), Mr. Culp will be entitled to (i) any earned but unpaid base salary through the last day of employment; (ii) any accrued but unused paid time off up to a maximum of 80 hours; (iii) continuation of health coverage through COBRA at a pro-rata cost share through the end of the 12 month period following termination and (iv) any other vested benefits to which Mr. Culp is entitled, in accordance with the terms of the applicable plans. In addition, subject to Mr. Culp's execution of a separation agreement containing a general release of claims and such general release of claims becoming irrevocable, Mr. Culp will also be entitled to nine months' base salary paid over the 12 month period following termination.

Upon any termination of employment, including a resignation without good reason, termination of employment due to his death or disability or termination for cause, Mr. Culp shall also be entitled to payment of base salary through the date of termination, accrued benefits and any other vested benefits to which Mr. Culp is entitled, in accordance with the terms of the applicable plans.

If any payments or benefits payable to Mr. Culp would be a "parachute payment" resulting in a lost tax deduction for the Company under Section 280G of the Code and excise tax to Mr. Culp under Section 4999 of the Code, the payments and benefits shall be reduced to the largest amount that will result in no portion of the severance payment being subject to the excise tax imposed by Section 4999 of the Code.

**Compensation of Directors**

We anticipate that in connection with this offering each of our non-employee directors will receive an annual director fee of $75,000 per annum and an annual equity grant of restricted stock or restricted stock units of $75,000 per annum and the chairman of the board of directors will receive an additional retainer of $100,000 per annum with 50% payable in cash and 50% payable in equity. In addition the chairman of the audit committee, compensation committee and nominating and governance committee will receive an additional retainer of $20,000, $15,000 and $10,000, respectively. In addition, each director will be reimbursed for out-of-pocket expenses in connection with his or her services and receive indemnification as a director in accordance with our indemnification policies in effect from time to time. Prior to the closing of this offering, in connection with the Reorganization, all outstanding Class B Units will be exchanged for an economically equivalent number of vested and unvested shares of the Company's common stock.

Only non-employee directors receive compensation for services on the board of directors. The compensation paid to our non-employee directors for 2020 is currently as follows:

- An award of 1,055,057 Class B Units; and
- An annual cash retainer of $100,000, with no additional fees paid for board of director and committee meetings.

Mr. Laven had previously been granted an award of Class B Units in consideration for his services as Executive Chairman and employee. As such, Mr. Laven did not receive a grant of Class B Units upon election to our board of directors.

In addition to cash compensation, each director is eligible to receive reimbursement for all reasonable travel expenses incurred in connection with attendance at meetings of the board of directors and any committees thereof, in accordance with any expense reimbursement policies in effect from time to time, and receive indemnification as a director in accordance with our indemnification policies in effect from time to time.

Messrs. Pruellage, Singer and O'Brien do not receive any compensation for their services as members of our board of directors.

***Director Compensation Table***

The following table sets forth information regarding the compensation paid to, awarded to or earned by the members of our board of directors for services rendered in all capacities during the year ended December 31, 2020.

| Name | Fiscal Year | Fees Earned ($) | Stock Awards[1] ($) | Other Compensation[2] ($) | Total ($) |
|---|---|---|---|---|---|
| James E. Cline | 2020 | 100,000 | — | — | 100,000 |
| Mark P. Laven[3] | 2020 | 200,000 | — | 148,361 | 348,361 |
| Robert D. Evans | 2020 | 100,000 | — | — | 100,000 |
| Alexander L. Hawkinson[4] | 2020 | 50,000 | 362,236 | — | 412,236 |
| Russell Gehrett | 2020 | — | — | — | — |
| Andrew D. Singer | 2020 | — | — | — | — |
| Christopher P. O'Brien | 2020 | — | — | — | — |

(1) The Class B Units represent profit interests in the Partnership which will have value only if the value of the Partnership increases following the date on which the awards of such Class B Units are granted. This amount represents a grant date fair value calculated in accordance with FASB ASC Topic 718 with respect to a grant of Class B Units. The value shown in the table above only shows the value of the Class B Units subject to time-based vesting as no expense was taken with respect to the Class B Units subject to performance-based vesting because the performance condition was not probable. There was no public market with respect to the Class B Units at the time of grant, and thus the grant date fair value was based on the fair market value as determined in accordance with the assumptions set forth in the Company's consolidated financial statements for fiscal year 2020.

The following table provides information about the outstanding Class B Units of the Parent (which, prior to the closing of this offering, will be exchanged for an economically equivalent number of restricted and unrestricted shares of the Company's common stock) held by our directors as of December 31, 2020:

| Name | Grant Date | Number of Shares or Units of Stock That Have Not Vested (#) |
|---|---|---|
| James E. Cline | 3/4/2019 | 281,349 |
| Mark P. Laven | 12/20/2018 | 422,023 |
| Robert D. Evans | 9/1/2019 | 281,349 |
| Alexander L. Hawkinson | 10/16/2020 | 351,686 |

(2) Under the MIB Plan, Mr. Laven was eligible to earn a target annual incentive bonus of 36% of his base salary of $200,000. Based on 2020 performance, the MIB payout was equal to 200% of target, resulting in an annual incentive bonus for Mr. Laven equal to $144,000. Mr. Laven received $4,361 of additional compensation from employer matching contributions to his 401(k).

(3) Mr. Laven's term as a member on the board of directors began December 14, 2020, but he did not receive compensation for his services rendered as a member of the board of directors during 2020. The Fees Earned value represents compensation earned as Executive Chairman and employee.

(4) Mr. Hawkinson's term as a member on the board of directors began October 16, 2020. The Fees Earned value represents the prorated value of the quarterly payment made to Mr. Hawkinson.

**Post-IPO Equity Compensation Plan**

***IPO Equity Grants***

In connection with this offering, we intend to grant equity awards under the 2021 Omnibus Incentive Plan (a description of which is provided below) to certain directors, employees and other service providers, including the named executive officers, consisting of restricted stock units with an approximate aggregate grant date value of $6.5 million and stock options with an approximate aggregate grant date value of $6.4 million. The number of restricted stock units that will be issued will be equal to the grant date value divided by our public offering price, and the number of stock options that will be issued will be equal to the grant date value of such stock options divided by the Black-Scholes value of an option to purchase one share of our common stock. In particular, it is anticipated that our named executive officers will, in the aggregate, receive new equity awards of 262,913 stock options with Messrs. Rajeski, Borseth and Culp receiving 131,621, 69,101 and 62,191 stock options, respectively. The foregoing amounts with respect to the named executive officers are based on the midpoint of the estimated public offering price range set forth on the cover page of this prospectus. The stock options granted to the named executive officers will vest 25% annually on each anniversary of the date of grant subject in all cases to continued employment on the applicable vesting date. The foregoing numbers do not take into account the restricted stock which will be issued to former holders of profits interests including our named executive officers in connection with the Reorganization.

***2021 Omnibus Incentive Plan***

In connection with this offering, our board of directors will adopt, with the approval of our stockholders, our 2021 Omnibus Incentive Plan (the "Omnibus Incentive Plan") to become effective in connection with the consummation of this offering. This summary is qualified in its entirety by reference to the Omnibus Incentive Plan.

*Administration*. The Compensation Committee will administer the Omnibus Incentive Plan. The Compensation Committee will have the authority to determine the terms and conditions of any agreements evidencing any awards granted under the Omnibus Incentive Plan and to adopt, alter and repeal rules, guidelines and practices relating to the Omnibus Incentive Plan. The Compensation Committee will have full discretion to administer and interpret the Omnibus Incentive Plan and to adopt such rules, regulations and procedures as it deems necessary or advisable and to determine, among other things, the time or times at which the awards may be exercised and whether and under what circumstances an award may be exercised.

*Eligibility*. Any current or prospective employees, directors, officers, consultants or advisors of the Company or its affiliates who are selected by the Compensation Committee will be eligible for awards under the Omnibus Incentive Plan. The Compensation Committee will have the sole and complete authority to determine who will be granted an award under the Omnibus Incentive Plan.

*Number of Shares Authorized*. Pursuant to the Omnibus Incentive Plan, we have reserved an aggregate 13,158,430 shares of our common stock for issuance of awards to be granted thereunder. 4,830,086 shares of our common stock may be issued with respect to incentive stock options under the Omnibus Incentive Plan. The maximum grant date fair value of cash and equity awards that may be awarded to a non-employee director under the Omnibus Incentive Plan during any one fiscal year, taken together with any cash fees paid to such non-employee director during such fiscal year, will be $750,000. If any award granted under the Omnibus Incentive Plan expires, terminates, or is canceled or forfeited without being settled, vested or exercised, shares of our common stock subject to such award will again be made available for future grants. Any shares that are surrendered or tendered to pay the exercise price of an award or to satisfy withholding taxes owed, or any shares reserved for issuance, but not issued, with respect to settlement of a stock appreciation right, will not again be available for grants under the Omnibus Incentive Plan.

*Change in Capitalization*. If there is a change in our capitalization in the event of a stock or extraordinary cash dividend, recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, split-off, spin-off, combination, repurchase or exchange of shares of our common stock or other relevant change in capitalization or applicable law or circumstances, such that the Compensation Committee determines that an adjustment to the terms of the Omnibus Incentive Plan (or awards thereunder) is necessary or appropriate, then the Compensation Committee shall make adjustments in a

manner that it deems equitable. Such adjustments may be to the number of shares reserved for future issuance under the Omnibus Incentive Plan, the number of shares covered by awards then outstanding under the Omnibus Incentive Plan, the limitations on awards under the Omnibus Incentive Plan, or the exercise price of outstanding options, or such other equitable substitution or adjustments as the Compensation Committee may determine appropriate.

*Awards Available for Grant*. The Compensation Committee may grant awards of non-qualified stock options, incentive (qualified) stock options, stock appreciation rights ("SARs"), restricted stock awards, restricted stock units, other stock-based awards, other cash-based awards or any combination of the foregoing. Awards may be granted under the Omnibus Incentive Plan in assumption of, or in substitution for, outstanding awards previously granted by an entity acquired by the Company or with which the Company combines, which are referred to herein as "Substitute Awards."

*Stock Options*. The Compensation Committee will be authorized to grant options to purchase shares of our common stock that are either "qualified," meaning they are intended to satisfy the requirements of Section 422 of the Code for incentive stock options, or "non-qualified," meaning they are not intended to satisfy the requirements of Section 422 of the Code. All options granted under the Omnibus Incentive Plan shall be non-qualified unless the applicable award agreement expressly states that the option is intended to be an incentive stock option. Options granted under the Omnibus Incentive Plan will be subject to the terms and conditions established by the Compensation Committee. Under the terms of the Omnibus Incentive Plan, the exercise price of the options will not be less than the fair market value (or 110% of the fair market value in the case of a qualified option granted to a 10% stockholder) of our common stock at the time of grant (except with respect to Substitute Awards). Options granted under the Omnibus Incentive Plan will be subject to such terms, including the exercise price and the conditions and timing of exercise, as may be determined by the Compensation Committee and specified in the applicable award agreement. The maximum term of an option granted under the Omnibus Incentive Plan will be ten years from the date of grant (or five years in the case of a qualified option granted to a 10% stockholder), provided that if the term of a non-qualified option would expire at a time when trading in the shares of our common stock is prohibited by the Company's insider trading policy, the option's term shall be extended automatically until the 30th day following the expiration of such prohibition (as long as such extension shall not violate Section 409A of the Code). Payment in respect of the exercise of an option may be made in cash, by check, by cash equivalent and/or by delivery of shares of our common stock valued at the fair market value at the time the option is exercised, or any combination of the foregoing, provided that such shares are not subject to any pledge or other security interest, or by such other method as the Compensation Committee may permit in its sole discretion, including (i) by delivery of other property having a fair market value equal to the exercise price and all applicable required withholding taxes, (ii) if there is a public market for the shares of our common stock at such time, by means of a broker-assisted cashless exercise mechanism or (iii) by means of a "net exercise" procedure effected by withholding the minimum number of shares otherwise deliverable in respect of an option that are needed to pay the exercise price and all applicable required withholding taxes. In all events of cashless or net exercise, any fractional shares of common stock will be settled in cash.

*Stock Appreciation Rights*. The Compensation Committee will be authorized to award SARs under the Omnibus Incentive Plan. SARs will be subject to the terms and conditions established by the Compensation Committee. A SAR is a contractual right that allows a participant to receive, in the form of either cash, shares or any combination of cash and shares, the appreciation, if any, in the value of a share over a certain period of time. An option granted under the Omnibus Incentive Plan may include SARs, and SARs may also be awarded to a participant independent of the grant of an option. SARs granted in connection with an option shall be subject to terms similar to the option corresponding to such SARs, including with respect to vesting and expiration. Except as otherwise provided by the Compensation Committee (in the case of Substitute Awards or SARs granted in tandem with previously granted options), the strike price per share of our common stock underlying each SAR shall not be less than 100% of the fair market value of such share, determined as of the date of grant and the maximum term of a SAR granted under the Omnibus Incentive Plan will be ten years from the date of grant.

*Restricted Stock*. The Compensation Committee will be authorized to grant restricted stock under the Omnibus Incentive Plan, which will be subject to the terms and conditions established by the Compensation Committee. Restricted stock is common stock that is generally non-transferable and is

subject to other restrictions determined by the Compensation Committee for a specified period. Any accumulated dividends will be payable at the same time that the underlying restricted stock vests.

*Restricted Stock Unit Awards*. The Compensation Committee will be authorized to grant restricted stock unit awards, which will be subject to the terms and conditions established by the Compensation Committee. A restricted stock unit award, once vested, may be settled in a number of shares of our common stock equal to the number of units earned, in cash equal to the fair market value of the number of shares of our common stock earned in respect of such restricted stock unit award or in a combination of the foregoing, at the election of the Compensation Committee. Restricted stock units may be settled at the expiration of the period over which the units are to be earned or at a later date selected by the Compensation Committee. To the extent provided in an award agreement, the holder of outstanding restricted stock units shall be entitled to be credited with dividend equivalent payments upon the payment by us of dividends on shares of our common stock, either in cash or, at the sole discretion of the Compensation Committee, in shares of our common stock having a fair market value equal to the amount of such dividends (or a combination of cash and shares), and interest may, at the sole discretion of the Compensation Committee, be credited on the amount of cash dividend equivalents at a rate and subject to such terms as determined by the Compensation Committee, which accumulated dividend equivalents (and interest thereon, if applicable) shall be payable at the same time that the underlying restricted stock units are settled.

*Other Stock-Based Awards*. The Compensation Committee will be authorized to grant awards of unrestricted shares of our common stock, rights to receive grants of awards at a future date, other awards denominated in shares of our common stock, or awards that provide for cash payments based in whole or in part on the value of our common stock under such terms and conditions as the Compensation Committee may determine and as set forth in the applicable award agreement.

*Effect of a Change in Control*. Unless otherwise provided in an award agreement, or any applicable employment, consulting, change in control, severance or other agreement between us and a participant, in the event of a change in control (as defined in the Omnibus Incentive Plan), if a participant's employment or service is terminated by us other than for cause (and other than due to death or disability) within the 12-month period following a change in control, then the Compensation Committee may provide that (i) all then-outstanding options and SARs held by such participant will become immediately exercisable as of such participant's date of termination with respect to all of the shares subject to such option or SAR; and/or (ii) the restricted period (and any other conditions) shall expire as of such participant's date of termination with respect to all of the then-outstanding shares of restricted stock or restricted stock units held by such participant (including without limitation a waiver of any applicable performance goals); provided that with respect to any award whose vesting or exercisability is otherwise subject to the achievement of performance conditions, the portion of such award that shall become fully vested and immediately exercisable shall be based on the assumed achievement of actual or target performance as determined by the Compensation Committee and, unless otherwise determined by the Compensation Committee, prorated for the number of days elapsed from the grant date of such award through the date of termination. In addition, the Compensation Committee may in its discretion and upon at least ten days' notice to the affected persons, cancel any outstanding award and pay the holders, in cash, securities or other property (including of the acquiring or successor company), or any combination thereof, the value of such awards based upon the price per share of the Company's common stock received or to be received by other shareholders of the Company in connection with the transaction (it being understood that any option or SAR having a per-share exercise price or strike price equal to, or in excess of, the fair market value (as of the date specified by the Compensation Committee) of a share of the Company's common stock subject thereto may be canceled and terminated without payment or consideration therefor). Notwithstanding the above, the Compensation Committee shall exercise such discretion over the timing of settlement of any award subject to Section 409A of the Code at the time such award is granted.

*Nontransferability*. Each award may be exercised during the participant's lifetime by the participant or, if permissible under applicable law, by the participant's guardian or legal representative. No award may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a participant other than by will or by the laws of descent and distribution unless the Compensation Committee permits the award to be transferred to a permitted transferee (as defined in the Omnibus Incentive Plan).

*Amendment*. The Omnibus Incentive Plan will have a term of ten years. The board of directors may amend, suspend or terminate the Omnibus Incentive Plan at any time, subject to stockholder approval if necessary to comply with any tax, exchange rules, or other applicable regulatory requirement. No amendment, suspension or termination will materially and adversely affect the rights of any participant or recipient of any award without the consent of the participant or recipient.

The Compensation Committee may, to the extent consistent with the terms of any applicable award agreement, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any award theretofore granted or the associated award agreement, prospectively or retroactively; provided that any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would materially and adversely affect the rights of any participant with respect to any award theretofore granted will not to that extent be effective without the consent of the affected participant; and provided further that, without stockholder approval, (i) no amendment or modification may reduce the exercise price of any option or the strike price of any SAR, (ii) the Compensation Committee may not cancel any outstanding option and replace it with a new option (with a lower exercise price) or cancel any SAR and replace it with a new SAR (with a lower strike price) or, in each case, with another award or cash in a manner that would be treated as a repricing (for compensation disclosure or accounting purposes), (iii) the Compensation Committee may not take any other action considered a repricing for purposes of the stockholder approval rules of the applicable securities exchange on which our common shares are listed and (iv) the Compensation Committee may not cancel any outstanding option or SAR that has a per-share exercise price or strike price (as applicable) at or above the fair market value of a share of our common stock on the date of cancellation and pay any consideration to the holder thereof. However, stockholder approval is not required with respect to clauses (i), (ii), (iii) and (iv) above with respect to certain adjustments on changes in capitalization.

*Clawback/Forfeiture.* Awards may be subject to clawback or forfeiture to the extent required by applicable law (including, without limitation, Section 304 of the Sarbanes-Oxley Act and Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act) and/or the rules and regulations of NASDAQ or other applicable securities exchange, or if so required pursuant to a written policy adopted by the Company or the provisions of an award agreement.

## Certain Relationships and Related Party Transactions

Other than compensation arrangements for our executive officers and directors (see "Executive Compensation" for a discussion of compensation arrangements for our named executive officers and directors), the following includes a summary of transactions since January 1, 2018 and any currently proposed transactions to which we have been or are to be a party in which:

- the amounts involved exceeded or will exceed $120,000; and
- any of our directors, executive officers or holders of more than 5% of our capital stock or any member of the immediate family of the foregoing persons, had or will have a direct or indirect material interest.

### Financing Transactions

See "Summary—Recent Developments—Financing Transactions" for a description of certain financing transactions with our Parent in 2020 and 2021.

### Reorganization

In connection with the Reorganization, we will enter into a merger agreement with our Parent, which will effect the Reorganization.

The table below sets forth the consideration in shares of our common stock to be received by our 5% equityholders, directors and executive officers in the Reorganization, based on an initial public offering price of $20.00 per share (the midpoint of the range set forth on the cover of this prospectus).

| Name | Shares of Common Stock |
|---|---|
| Pamplona Fund | 70,573,720 |
| Wynnchurch Funds | 20,396,306 |
| Scott M. Rajeski | 4,417,409 |
| J. Mark Borseth | 1,147,602 |
| Joel R. Culp | 837,969 |
| Jeff A. Leake | 828,313 |
| Kaushal B. Dhruv | 199,771 |
| Melissa C. Feck | 530,278 |
| James E. Cline | 505,252 |
| Robert D. Evans | 630,383 |
| Alexander L. Hawkinson | 482,504 |
| Mark P. Laven | 1,511,027 |
| William M. Pruellage | — |
| Andrew D. Singer | — |
| Christopher P. O'Brien | — |

The consideration set forth above and otherwise to be received in the Reorganization is subject to adjustment based on the final initial public offering price of our common stock in this offering.

### Purchases from Equityholders

Immediately following this offering, based on an initial public offering price of $20.00 per share (the midpoint of the range set forth on the cover of this prospectus) and assuming the underwriters' option to purchase additional shares is not exercised, we will use approximately $172.0 million of our net proceeds from this offering to repurchase 8,829,191 shares of our common stock from the Principal Stockholders and 418,121 shares of common stock from a current employee who is not an executive officer or a director of

the Company at a price per share equal to the price per share paid by the underwriters to us for shares of our common stock in this offering. If the underwriters were to fully exercise their option to purchase additional shares of our common stock, we would use approximately $227.8 million of our net proceeds from this offering to repurchase 11,693,545 shares of common stock from the Principal Stockholders and 553,767 shares of common stock from a current employee who is not an executive officer or a director of the Company at a price per share equal to the price per share paid by the underwriters to us for shares of our common stock in this offering.

The following table sets forth the number of shares to be purchased from, and the cash proceeds to be received by, each of our Principal Stockholders based on an initial public offering price of $20.00 per share (the midpoint of the range set forth on the cover of this prospectus).

| Name | Number of shares of common stock to be sold to us, assuming the underwriters' option to purchase additional shares is not exercised | Cash Proceeds ($) | Number of shares of common stock to be sold to us, assuming the underwriters' option to purchase additional shares is exercised | Cash Proceeds ($) |
|---|---|---|---|---|
| Pamplona Fund | 6,849,606 | 127.4 million | 9,071,746 | 168.7 million |
| Wynnchurch Funds | 1,979,585 | 36.8 million | 2,621,799 | 48.8 million |

**Technology Services**

Alexander L. Hawkinson, a co-founder of BrightAI Corporation, has served on our board of directors since December 9, 2020. During the year ended December 31, 2020, BrightAI Corporation rendered services to the Company in connection with the development of certain technology tools. We have not made any payments to BrightAI Corporation in the fiscal year ended December 31, 2020, but recorded construction in progress and accounts payable-related party of $0.5 million on our consolidated balance sheet. We have made payments to BrightAI in the amount of $450,000 during our fiscal quarter ended April 3, 2021 in connection with such services. We are negotiating an agreement with BrightAI Corporation for the development of certain technology tools that we believe will improve our operational efficiency.

**Expense Reimbursement Agreement**

In connection with the Acquisition, we entered into an expense reimbursement arrangement with Pamplona and Wynnchurch for provision of ongoing consulting and advisory services. The agreement provides for the aggregate payment by us of up to $1.0 million each year in management fees, depending on the extent of services provided. The agreement provides that it will terminate upon consummation of this offering.

During 2019 and 2020, we recorded $0.5 million and $47,700, respectively, of payments with respect to the agreement.

**Stockholders' Agreement**

Prior to the consummation of this offering, we intend to enter into the Stockholders' Agreement with our Principal Stockholders.

The Stockholders' Agreement will grant Pamplona the right to nominate to our board of directors a number of designees equal to: (i) at least a majority of the total number of directors comprising our board of directors at such time as long as Pamplona and its affiliates collectively beneficially own at least 50% of the outstanding shares of our common stock; (ii) at least 40% of the total number of directors comprising our board of directors at such time as long as Pamplona and its affiliates collectively beneficially own at least 40% but less than 50% of the outstanding shares of our common stock; (iii) at least 30% of the total number of directors comprising our board of directors at such time as long as Pamplona and its affiliates collectively beneficially own at least 30% but less than 40% of the outstanding shares of our common stock; (iv) at least 20% of the total number of directors comprising our board of directors at such time as long as Pamplona and its affiliates collectively beneficially own at least 20% but less than 30% of the outstanding shares of our common stock; and (v) at least 10% of the total number of directors comprising our board of directors

at such time as long as Pamplona and its affiliates collectively beneficially own at least 5% but less than 20% of the outstanding shares of our common stock.

The Stockholders' Agreement will grant Wynnchurch the right to nominate to our board of directors one director at such time as long as Wynnchurch and its affiliates beneficially own at least 5% of the outstanding shares of our common stock.

So long as Pamplona has the right to designate at least one director to our board of directors, Pamplona will have the right to appoint a representative as an observer to any committee of the board to which Pamplona does not have a member representative, subject to applicable laws and the rules and regulations of NASDAQ. So long as Wynnchurch has the right to designate a director to our board of directors, Wynnchurch will have the right to appoint a representative as an observer to any committee of the board, subject to applicable laws and the rules and regulations of NASDAQ.

For purposes of calculating the number of directors that Pamplona and its affiliates are entitled to nominate pursuant to the formulas outlined above, any fractional amounts would be rounded up to the nearest whole number and taking into account any increase in the size of our board of directors (e.g., one and one quarter (1 1/4) directors shall equate to two directors). In addition, in the event a vacancy on the board of directors is created by the death, retirement or resignation of a Principal Stockholders' director designee, affiliates of our Principal Stockholders shall, to the fullest extent permitted by law, have the right to have the vacancy filled by a new respective Principal Stockholders' director-designee. Upon the consummation of this offering, James E. Cline, Robert D. Evans, William M. Pruellage, Mark P. Laven, Andrew D. Singer and Christopher P. O'Brien will be deemed to be the only designees of our Principal Stockholders under the Stockholders' Agreement.

In addition, the Stockholders' Agreement will grant to Pamplona special governance rights for as long as Pamplona and its affiliates collectively maintain beneficial ownership of at least 25% of our outstanding common stock, including, but not limited to, rights of approval over certain strategic transactions such as mergers or other transactions involving a change in control, and certain rights regarding the appointment or termination of our chief executive officer.

**Registration Rights Agreement**

Prior to the consummation of this offering, we intend to enter into a registration rights agreement (the "Registration Rights Agreement") with Pamplona Fund and Wynnchurch Funds (each, a "Registration Party"), pursuant to which each Registration Party will be entitled to demand the registration of the sale of certain or all of our common stock that it beneficially owns. Among other things, under the terms of the Registration Rights Agreement:

- if we propose to file certain types of registration statements under the Securities Act with respect to an offering of equity securities, we will be required to use our reasonable best efforts to offer each Registration Party the opportunity to register the sale of all or part of its shares on the terms and conditions set forth in the Registration Rights Agreement (customarily known as "piggyback rights"); and
- Each Registration Party has the right, subject to certain conditions and exceptions, to request that we file (i) registration statements with the SEC for one or more underwritten offerings of all or part of our shares of common stock that it beneficially owns and/or (ii) a shelf registration statement that includes all or part of our shares of common stock that it beneficially owns as soon as we become eligible to register the sale of our securities on Form S-3 under the Securities Act, and we are required to cause any such registration statements to be filed with the SEC, and to become effective, as promptly as reasonably practicable.

All expenses of registration under the Registration Rights Agreement, including the legal fees of one counsel retained by or on behalf of the Registration Parties, will be paid by us.

The registration rights granted in the Registration Rights Agreement are subject to customary restrictions such as minimums, blackout periods and, if a registration is underwritten, any limitations on the number of shares to be included in the underwritten offering as reasonably advised by the managing

underwriter. The Registration Rights Agreement also contains customary indemnification and contribution provisions. The Registration Rights Agreement is governed by New York law.

**Indemnification Agreement**

We intend to enter into indemnification agreements with each of our current directors and executive officers. These agreements will require us to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. We also intend to enter into indemnification agreements with our future directors and executive officers.

**Policies and Procedures for Related Party Transactions**

Upon the consummation of this offering, we will adopt a written Related Person Transaction Policy (the "policy"), which will set forth our policy with respect to the review, approval, ratification and disclosure of all material related person transactions by our audit committee. In accordance with the policy, our audit committee will have overall responsibility for implementation of and compliance with the policy.

For purposes of the policy, a "related person transaction" is a transaction, arrangement or relationship (or any series of similar transactions, arrangements or relationships) in which we were, are or will be a participant and the amount involved exceeded, exceeds or will exceed $120,000 and in which any related person (as defined in the policy) had, has or will have a direct or indirect material interest. A "related person transaction" does not include any employment relationship or transaction involving an executive officer and any related compensation resulting solely from that employment relationship that has been reviewed and approved by our board of directors or audit committee.

The policy will require that notice of a proposed related person transaction be provided to our legal department prior to entry into such transaction. If our legal department determines that such transaction is a related person transaction, the proposed transaction will be submitted to our audit committee for consideration. Under the policy, our audit committee may approve only those related person transactions that are in, or not inconsistent with, our best interests and the best interests of our stockholders. In the event that we become aware of a related person transaction that has not been previously reviewed, approved or ratified under the policy and that is ongoing or is completed, the transaction will be submitted to the audit committee so that it may determine whether to ratify, rescind or terminate the related person transaction.

The policy will also provide that the audit committee review certain previously approved or ratified related person transactions that are ongoing to determine whether the related person transaction remains in our best interests and the best interests of our stockholders. Additionally, we will make periodic inquiries of directors and executive officers with respect to any potential related person transaction of which they may be a party or of which they may be aware.

## Principal Stockholders

The following table sets forth the beneficial ownership of our common stock as of April 13, 2021, as adjusted to reflect the Reorganization, by:

- each person, or group of affiliated persons, who we know to beneficially own more than 5% of our common stock;
- each of our named executive officers for fiscal year 2020;
- each of our current directors; and
- all of our current directors and executive officers as a group.

Percentage ownership of our common stock before this offering is based on 109,673,709 shares of common stock outstanding as of April 13, 2021 after giving effect to the Reorganization. Percentage ownership of our common stock after this offering is based on 120,426,397 shares of common stock as of April 13, 2021, after giving effect to the Reorganization, our issuance of shares of common stock in this offering and the use of the net proceeds from this offering to repurchase shares of common stock from our Principal Stockholders and a current employee who is not an executive officer or a director of the Company. Percentage ownership of our common stock after this offering assuming the underwriters' option is exercised is based on 120,426,397 shares of common stock as of April 13, 2021, after giving effect to the Reorganization, our issuance of shares of common stock in this offering, the exercise by the underwriters of their option to purchase additional shares in full and the use of the net proceeds from this offering to repurchase shares of common stock from our Principal Stockholders and a current employee who is not an executive officer or a director of the Company.

Beneficial ownership is determined in accordance with the rules of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to such securities. Except as otherwise indicated, all persons listed below have sole voting and investment power with respect to the shares beneficially owned by them, subject to applicable community property laws. Unless otherwise indicated, the address of each person or entity named in the table below is 787 Watervliet Shaker Road, Latham, New York 12110. In addition, the percentage ownership assumes no purchase of our common stock through the directed share program.

| | Shares of Common Stock Beneficially Owned Before the Offering | | Shares of Common Stock Beneficially Owned After the Offering Assuming Underwriters' Option Is Not Exercised | | Shares of Common Stock Beneficially Owned After the Offering Assuming Underwriters' Option Is Exercised | |
|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent |
| **5% Stockholders** | | | | | | |
| Pamplona Funds[(1)] | 70,573,720 | 64.3% | 63,724,114 | 52.9% | 61,501,974 | 51.1% |
| Wynnchurch Funds[(2)] | 20,396,306 | 18.6% | 18,416,721 | 15.3% | 17,774,507 | 14.8% |
| **Named Executive Officers and Directors** | | | | | | |
| Scott M. Rajeski[(3)] | 4,417,409 | 4.0% | 4,417,409 | 3.7% | 4,417,409 | 3.7% |
| J. Mark Borseth | 1,147,602 | 1.0% | 1,147,602 | 1.0% | 1,147,602 | 1.0% |
| Joel R. Culp | 837,969 | 0.8% | 837,969 | 0.7% | 837,969 | 0.7% |
| James E. Cline | 505,252 | 0.5% | 505,252 | 0.4% | 505,252 | 0.4% |
| Robert D. Evans | 630,383 | 0.6% | 630,383 | 0.5% | 630,383 | 0.5% |
| Alexander L. Hawkinson | 482,504 | 0.4% | 482,504 | 0.4% | 482,504 | 0.4% |
| Mark P. Laven[(4)] | 1,511,027 | 1.4% | 1,511,027 | 1.3% | 1,511,027 | 1.3% |
| Suzan Morno-Wade | — | — | — | — | — | — |
| William M. Pruellage | — | — | — | — | — | — |
| Andrew D. Singer | — | — | — | — | — | — |
| Christopher P. O'Brien[(2)] | — | — | — | — | — | — |
| All current directors and executive officers as a group (11 persons) | 9,532,146 | 8.7% | 9,532,146 | 7.9% | 9,532,146 | 7.9% |

* Less than 1%.

(1) Reflects 70,573,720 shares of common stock held by Pamplona Capital Partners V, L.P. Pamplona Capital Partners V, L.P., a Cayman Islands limited partnership, is controlled by Pamplona Equity Advisors V Ltd, a Cayman Islands limited company, its general partner. John C. Halsted owns 100% of the shares of Pamplona Equity Advisors V, Ltd. Pamplona PE Investments Malta Limited, a Malta limited company serves as an investment manager to Pamplona Capital Partners V, L.P. Pamplona Capital Management LLP, a United Kingdom limited liability partnership, Pamplona Capital Management LLC, a Delaware limited liability company, Pamplona Capital Management (PE) SL, a Spanish limited liability company and Pamplona Capital Management (Monaco) SAM, a Monaco joint stock company, (together the "Pamplona Manager Entities") serve as investment advisors to Pamplona PE Investments Malta Limited. Mr. John C. Halsted and Mr. Alexander Knaster are the principals of Pamplona Manager Entities. Each of Pamplona Equity Advisors V, Ltd, the Pamplona Manager Entities, John C. Halsted and Alexander Knaster may be deemed to have voting and dispositive power with respect to the common stock directly owned by Pamplona Capital Partners V, L.P. and therefore be deemed to be the beneficial owner of the common stock held by Pamplona Capital Partners V, L.P., but each disclaim beneficial ownership of such common stock. The principal business address of each of the entities and persons identified in this paragraph is c/o Pamplona Capital Management LLC, 667 Madison Avenue, 22nd Floor, New York, NY 10065.

(2) Reflects 20,396,306 shares of common stock held by Wynnchurch Capital Partners IV, L.P. ("Wynnchurch IV") and WC Partners Executive IV, L. P. ("WC Executive"). For so long as Wynnchurch IV and WC Executive own at least 5% of our common stock, Wynnchurch has the right to appoint one director. The general partner of Wynnchurch IV and WC Executive is Wynnchurch Partners IV, L.P. ("Wynnchurch GP IV"). The general partner of Wynnchurch GP IV is Wynnchurch Management, Ltd. ("WML"). WML and a limited partner committee consisting of other senior partners manage the Wynnchurch GP IV, provided that WML's consent is required for any action, decision,

consent or other determination. The sole director of WML is John Hatherly. The address of each of the entities and persons identified in this paragraph is 6250 N. River Road, Suite 10-100, Rosemont, IL 60018.

(3) Consists of shares of common stock held by Scott Rajeski Family, LLC (the “Rajeski LLC”). Mr. Rajeski’s spouse, Cindy G. Rajeski, is the sole manager of the Rajeski LLC.

(4) Consists of shares of common stock held by Laven Family Holdings, LLC (the “Laven LLC”). Mr. Laven and Mr.Laven’s spouse, Leslie J. Laven, are managers of the Laven LLC.

## Description of Capital Stock

*The following is a description of the material terms of our certificate of incorporation and bylaws, each of which will become effective prior to the consummation of this offering, and of specific provisions of Delaware law. The following description is intended as a summary only and is qualified in its entirety by reference to our certificate of incorporation, our bylaws and the DGCL.*

### General

The following is a description of the material terms of, and is qualified in its entirety by, our certificate of incorporation and bylaws, each of which will be in effect upon the consummation of this offering, the forms of which are filed as exhibits to the registration statement of which this prospectus is a part.

Our purpose is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the DGCL.

### Authorized Capital

At the time of the closing of this offering, our authorized capital stock will consist of:

- 900,000,000 shares of common stock, par value $0.0001 per share; and
- 100,000,000 shares of preferred stock, par value $0.0001 per share.

Immediately following the closing of this offering, there are expected to be 120,426,397 shares of common stock issued and outstanding and no shares of preferred stock outstanding.

Unless our board of directors determines otherwise, we will issue all shares of our capital stock in uncertificated form.

### Common Stock

*Voting Rights*. Holders of our common stock will be entitled to one vote for each share held of record on all matters to which stockholders are entitled to vote generally, including the election or removal of directors. The holders of our common stock will not have cumulative voting rights in the election of directors.

*Dividend Rights*. The DGCL permits a corporation to declare and pay dividends out of "surplus" or, if there is no "surplus," out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. "Surplus" is defined as the excess of the net assets of the corporation over the amount determined to be the capital of the corporation by the board of directors. The capital of the corporation is typically calculated to be (and cannot be less than) the aggregate par value of all issued shares of capital stock. Net assets equals the fair value of the total assets minus total liabilities. The DGCL also provides that dividends may not be paid out of net profits if, after the payment of the dividend, capital is less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets.

Declaration and payment of any dividend will be subject to the discretion of our board of directors. The time and amount of dividends will be dependent upon our financial condition, operations, cash requirements and availability, debt repayment obligations, capital expenditure needs and restrictions in our debt instruments, industry trends, the provisions of Delaware law affecting the payment of dividends to stockholders and any other factors our board of directors may consider relevant.

*Liquidation Rights*. Upon our liquidation, dissolution or winding up and after payment in full of all amounts required to be paid to creditors and to the holders of preferred stock having liquidation preferences, if any, the holders of our common stock will be entitled to receive pro rata our remaining assets available for distribution.

*Rights and Preferences*. Holders of our common stock will not have preemptive, subscription, redemption or conversion rights. The common stock will not be subject to further calls or assessment by us. There will be no redemption or sinking fund provisions applicable to the common stock. All shares of our

common stock that will be outstanding at the time of the completion of the offering will be fully paid and non-assessable. The rights, powers, preferences and privileges of holders of our common stock will be subject to those of the holders of any shares of our preferred stock we may authorize and issue in the future.

**Preferred Stock**

Our certificate of incorporation that will be in effect upon the closing of this offering authorizes our board of directors to establish one or more series of preferred stock (including convertible preferred stock). Unless required by law or by NASDAQ, the authorized shares of preferred stock will be available for issuance without further action by you. Our board of directors may determine, with respect to any series of preferred stock, the powers (including voting powers), preferences and relative participations, optional or other special rights, and the qualifications, limitations or restrictions thereof, of that series, including, without limitation:

- the designation of the series;
- the number of shares of the series, which our board of directors may, except where otherwise provided in the preferred stock designation, increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares then outstanding);
- whether dividends, if any, will be cumulative or non-cumulative and the dividend rate of the series;
- the dates at which dividends, if any, will be payable;
- the redemption rights and price or prices, if any, for shares of the series;
- the terms and amounts of any sinking fund provided for the purchase or redemption of shares of the series;
- the amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of our Company;
- whether the shares of the series will be convertible into shares of any other class or series, or any other security, of our Company or any other corporation, and, if so, the specification of the other class or series or other security, the conversion price or prices or rate or rates, any rate adjustments, the date or dates as of which the shares will be convertible and all other terms and conditions upon which the conversion may be made;
- restrictions on the issuance of shares of the same series or of any other class or series; and
- the voting rights, if any, of the holders of the series.

We could issue a series of preferred stock that could, depending on the terms of the series, impede or discourage an acquisition attempt or other transaction that some, or a majority, of you might believe to be in your best interests or in which you might receive a premium for your common stock over the market price of the common stock. Additionally, the issuance of preferred stock may adversely affect the holders of our common stock by restricting dividends on the common stock, diluting the voting power of the common stock or subordinating the liquidation rights of the common stock. As a result of these or other factors, the issuance of preferred stock could have an adverse impact on the market price of our common stock.

**Anti-Takeover Effects of Our Certificate of Incorporation and Bylaws and Certain Provisions of Delaware Law**

Our certificate of incorporation, bylaws and the DGCL, which are summarized in the following paragraphs, will contain provisions that are intended to enhance the likelihood of continuity and stability in the composition of our board of directors. These provisions are intended to avoid costly takeover battles, reduce our vulnerability to a hostile change of control and enhance the ability of our board of directors to maximize stockholder value in connection with any unsolicited offer to acquire us. However, these provisions may have an anti-takeover effect and may delay, deter or prevent a merger or acquisition of our Company by means of a tender offer, a proxy contest or other takeover attempt that a stockholder might consider in its best interest, including those attempts that might result in a premium over the prevailing market price for the shares of common stock held by stockholders.

***Authorized but Unissued Capital Stock***

Delaware law does not require stockholder approval for any issuance of authorized shares. However, the listing requirements of NASDAQ, which would apply if and so long as our common stock remains listed on NASDAQ, require stockholder approval of certain issuances equal to or exceeding 20% of the then outstanding voting power or then outstanding number of shares of common stock. These additional shares may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions.

Our board of directors may generally issue preferred shares on terms calculated to discourage, delay or prevent a change of control of our Company or the removal of our management. Moreover, our authorized but unissued shares of preferred stock will be available for future issuances without stockholder approval and could be utilized for a variety of corporate purposes, including future offerings to raise additional capital, acquisitions and employee benefit plans.

One of the effects of the existence of unissued and unreserved common stock or preferred stock may be to enable our board of directors to issue shares to persons friendly to current management, which issuance could render more difficult or discourage an attempt to obtain control of our Company by means of a merger, tender offer, proxy contest or otherwise, and thereby protect the continuity of our management and possibly deprive our stockholders of opportunities to sell their shares of common stock at prices higher than prevailing market prices.

***Classified Board of Directors***

Our certificate of incorporation that will be in effect upon the closing of this offering will provide that our board of directors will be divided into three classes of directors, with the classes to be as nearly equal in number as possible, and with the directors serving three-year terms. As a result, approximately one-third of our board of directors are elected each year. The classification of directors will have the effect of making it more difficult for stockholders to change the composition of our board of directors. Our certificate of incorporation and bylaws that will be in effect upon the closing of this offering will provide that, subject to any rights of holders of preferred stock to elect additional directors under specified circumstances or to any rights granted to our Principal Stockholders under our stockholders agreement, the number of directors is fixed from time to time exclusively pursuant to a resolution adopted by the board of directors.

***Business Combinations***

We have opted out of Section 203 of the DGCL; however, our certificate of incorporation that will be in effect upon the closing of this offering will contain similar provisions providing that we may not engage in certain "business combinations" with any "interested stockholder" for a three-year period following the time that the stockholder became an interested stockholder, unless:

- prior to such time, our board of directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of our voting stock outstanding at the time the transaction commenced, excluding certain shares; or
- at or subsequent to that time, the business combination is approved by our board of directors and by the affirmative vote of holders of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a "business combination" includes a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. Subject to certain exceptions, an "interested stockholder" is a person who, together with that person's affiliates and associates, owns, or within the previous three years owned, 15% or more of our voting stock. For purposes of this section only, "voting stock" has the meaning given to it in Section 203 of the DGCL.

Under certain circumstances, this provision will make it more difficult for a person who would be an "interested stockholder" to effect various business combinations with a corporation for a three-year period.

This provision may encourage companies interested in acquiring our Company to negotiate in advance with our board of directors because the stockholder approval requirement would be avoided if our board of directors approves either the business combination or the transaction which results in the stockholder becoming an interested stockholder. These provisions also may have the effect of preventing changes in our board of directors and may make it more difficult to accomplish transactions which stockholders may otherwise deem to be in their best interests.

Our restated certificate of incorporation provides that our Principal Stockholders and their affiliates and any of their respective direct or indirect transferees and any group as to which such persons are a party do not constitute "interested stockholders" for purposes of this provision.

***Removal of Directors; Vacancies***

Under the DGCL, unless otherwise provided in our certificate of incorporation that will be in effect upon the closing of this offering, directors serving on a classified board may be removed by the stockholders only for cause. Our certificate of incorporation will provide that directors may be removed with or without cause upon the affirmative vote of a majority in voting power of all outstanding shares of stock entitled to vote thereon, voting together as a single class; provided, however, at any time when our Principal Stockholders and their affiliates beneficially own, in the aggregate, less than 50% in voting power of the stock of the Company entitled to vote generally in the election of directors, directors may only be removed for cause, and only by the affirmative vote of holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Company entitled to vote thereon, voting together as a single class. In addition, our certificate of incorporation will also provide that, subject to the rights granted to one or more series of preferred stock then outstanding or the rights granted under the stockholders agreement with affiliates of our Principal Stockholders, any vacancies on our board of directors are filled only by the affirmative vote of a majority of the remaining directors, even if less than a quorum, by a sole remaining director or by the stockholders; provided, however, at any time when our Principal Stockholders and their affiliates beneficially own, in the aggregate, less than a majority in voting power of the stock of the Company entitled to vote generally in the election of directors, any newly created directorship on the board of directors that results from an increase in the number of directors and any vacancy occurring in the board of directors may, subject to any rights granted to our Principal Stockholders under our stockholders agreement, only be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director (and not by stockholders).

***No Cumulative Voting***

Under Delaware law, the right to vote cumulatively does not exist unless the certificate of incorporation specifically authorizes cumulative voting. Our certificate of incorporation will not authorize cumulative voting. Therefore, stockholders holding a majority in voting power of the shares of our stock entitled to vote generally in the election of directors are able to elect all our directors.

***Special Stockholder Meetings***

Our certificate of incorporation to be in effect upon the closing of this offering will provide that special meetings of our stockholders may be called at any time only by or at the direction of the board of directors or the Chairman of the board of directors; provided, however, so long as our Principal Stockholders and their affiliates own, in the aggregate, at least a majority in voting power of the stock of the Company entitled to vote generally in the election of directors, special meetings of our stockholders shall also be called by or at the direction of the board of directors or the Chairman of the board of directors at the request of our Principal Stockholders and their affiliates. Our bylaws will prohibit the conduct of any business at a special meeting other than as specified in the notice for such meeting. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers, or changes in control or management of our Company.

***Requirements for Advance Notification of Director Nominations and Stockholder Proposals***

Our bylaws to be in effect upon the closing of this offering will establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than

nominations made by or at the direction of the board of directors or a committee of the board of directors. In order for any matter to be "properly brought" before a meeting, a stockholder will have to comply with advance notice requirements and provide us with certain information. Generally, to be timely, a stockholder's notice must be received at our principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary date of the immediately preceding annual meeting of stockholders. Our bylaws will also specify requirements as to the form and content of a stockholder's notice. Our bylaws will allow the chairman of the meeting at a meeting of the stockholders to adopt rules and regulations for the conduct of meetings which may have the effect of precluding the conduct of certain business at a meeting if the rules and regulations are not followed. These provisions may also defer, delay or discourage a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to influence or obtain control of our Company.

***Stockholder Action by Written Consent***

Pursuant to Section 228 of the DGCL, any action required to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of our stock entitled to vote thereon were present and voted, unless our certificate of incorporation provides otherwise. Our certificate of incorporation will preclude stockholder action by written consent at any time when our Principal Stockholders and their affiliates beneficially own, in the aggregate, less than a majority in voting power of the stock of the Company entitled to vote generally in the election of directors; provided, that any action required or permitted to be taken by the holders of preferred stock, voting separately as a series or separately as a class with one or more other such series, may be taken by written consent to the extent provided by the applicable certificate of designation relating to such series.

***Supermajority Provisions***

Our certificate of incorporation and bylaws to be in effect upon the closing of this offering will provide that the board of directors is expressly authorized to make, alter, amend, change, add to, rescind or repeal, in whole or in part, our bylaws without a stockholder vote in any matter not inconsistent with the laws of the State of Delaware or our certificate of incorporation. For as long as our Principal Stockholders and their affiliates beneficially own, in the aggregate, at least a majority in voting power of the stock of the Company entitled to vote generally in the election of directors, any amendment, alteration, rescission or repeal of our bylaws by our stockholders requires the affirmative vote of a majority in voting power of the outstanding shares of our stock present in person or represented by proxy and entitled to vote on such amendment, alteration, rescission or repeal. At any time when our Principal Stockholders and their affiliates beneficially own, in the aggregate, less than a majority in voting power of the stock of the Company entitled to vote generally in the election of directors, any amendment, alteration, rescission or repeal of our bylaws by our stockholders requires the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Company entitled to vote thereon, voting together as a single class.

The DGCL provides generally that the affirmative vote of a majority of the outstanding shares entitled to vote thereon, voting together as a single class, is required to amend a corporation's certificate of incorporation, unless the certificate of incorporation requires a greater percentage.

Our certificate of incorporation to be in effect upon the closing of this offering will provide that at any time when our Principal Stockholders and their affiliates beneficially own, in the aggregate, less than a majority in voting power of the stock of the Company entitled to vote generally in the election of directors, the following provisions in our certificate of incorporation may be amended, altered, repealed or rescinded only by the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Company entitled to vote thereon, voting together as a single class:

- the provision requiring a 66 2/3% supermajority vote for stockholders to amend our bylaws;
- the provisions providing for a classified board of directors (the election and term of our directors);
- the provisions regarding resignation and removal of directors;

- the provisions regarding competition and corporate opportunities;
- the provisions regarding entering into business combinations with interested stockholders;
- the provisions regarding stockholder action by written consent;
- the provisions regarding calling special meetings of stockholders;
- the provisions regarding filling vacancies on our board of directors and newly created directorships;
- the provisions eliminating monetary damages for breaches of fiduciary duty by a director; and
- the amendment provision requiring that the above provisions be amended only with a 66 2/3% supermajority vote.

The combination of the classification of our board of directors, the lack of cumulative voting and the supermajority voting requirements make it more difficult for our existing stockholders to replace our board of directors, as well as for another party to obtain control of us by replacing our board of directors. Because our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management.

These provisions may have the effect of deterring hostile takeovers, delaying, or preventing changes in control of our management or our Company, such as a merger, reorganization or tender offer. These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and its policies and to discourage certain types of transactions that may involve an actual or threatened acquisition of us. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions are also intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts. Such provisions may also have the effect of preventing changes in management.

**Dissenters' Rights of Appraisal and Payment**

Under the DGCL, with certain exceptions, our stockholders have appraisal rights in connection with a merger or consolidation of us. Pursuant to the DGCL, stockholders who properly request and perfect appraisal rights in connection with such merger or consolidation will have the right to receive payment of the fair value of their shares as determined by the Delaware Court of Chancery.

**Stockholders' Derivative Actions**

Under the DGCL, any of our stockholders may bring an action in our name to procure a judgment in our favor, also known as a derivative action, provided that the stockholder bringing the action is a holder of our shares at the time of the transaction to which the action relates or such stockholder's stock thereafter devolved by operation of law.

**Exclusive Forum**

Our certificate of incorporation to be in effect upon the closing of this offering will provide that unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for any (i) derivative action or proceeding brought on behalf of our Company, (ii) action asserting a claim of breach of a fiduciary duty owed by any director or officer of our Company to the Company or the Company's stockholders, creditors or other constituents, (iii) action asserting a claim against the Company or any director or officer of the Company arising pursuant to any provision of the DGCL or our certificate of incorporation or our bylaws or (iv) action asserting a claim against the Company or any director or officer of the Company governed by the internal affairs doctrine; provided, that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state court sitting in the State of Delaware, or if no state court of the State of Delaware has jurisdiction, the federal district court for the District of Delaware, unless we consent in writing to the selection of an alternative forum.

Additionally, our certificate of incorporation will state that the foregoing provision will not apply to claims arising under the Securities Act, the Exchange Act or other federal securities laws for which there is exclusive federal or concurrent federal and state jurisdiction. Unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. The exclusive forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers or stockholders, which may discourage lawsuits with respect to such claims. Our stockholders will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder as a result of our exclusive forum provisions. See "Risk Factors—Risks Relating to this Offering and Ownership of our Common Stock—Our certificate of incorporation will provide that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees."

**Conflicts of Interest**

Delaware law permits corporations to adopt provisions renouncing any interest or expectancy in certain opportunities that are presented to the corporation or its officers, directors or stockholders. Our certificate of incorporation, to the maximum extent permitted from time to time by Delaware law, will renounce any interest or expectancy that we have in, or right to be offered an opportunity to participate in, specified business opportunities that are from time to time presented to our officers, directors or stockholders or their respective affiliates, other than those officers, directors, stockholders or affiliates who are our or our subsidiaries' employees. Our certificate of incorporation will provide that, to the fullest extent permitted by law, each of our Principal Stockholders or any of their affiliates or any director who is not employed by us (including any non-employee director who serves as one of our officers in both his director and officer capacities) or his or her affiliates has no duty to refrain from (i) engaging in a corporate opportunity in the same or similar lines of business in which we or our affiliates now engage or propose to engage or (ii) otherwise competing with us or our affiliates. In addition, to the fullest extent permitted by law, in the event that our Principal Stockholders or any of their affiliates or any non-employee director acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself or himself or its or his affiliates or for us or our affiliates, such person will have no duty to communicate or offer such transaction or business opportunity to us or any of our affiliates and they may take any such opportunity for themselves or offer it to another person or entity. Our certificate of incorporation will not renounce our interest in any business opportunity that is expressly offered to a non-employee director solely in his or her capacity as a director or officer of the Company. To the fullest extent permitted by law, no business opportunity will be deemed to be a potential corporate opportunity for us unless we would be permitted to undertake the opportunity under our certificate of incorporation, we have sufficient financial resources to undertake the opportunity and the opportunity would be in line with our business.

**Limitation of Liability and Indemnification**

Our certificate of incorporation limits the liability of our directors to the maximum extent permitted by the DGCL. The DGCL provides that directors will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except liability:

- for any breach of their duty of loyalty to the corporation or its stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of laws;
- under Section 174 of the DGCL (governing distributions to stockholders); or
- for any transaction from which the director derived an improper personal benefit.
- However, if the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of our directors will be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. The modification or repeal of this provision

of our certificate of incorporation will not adversely affect any right or protection of a director existing at the time of such modification or repeal.

Our certificate of incorporation and bylaws provide that we will, to the fullest extent from time to time permitted by law, indemnify our directors and officers against all liabilities and expenses in any suit or proceeding, arising out of their status as an officer or director or their activities in these capacities. We will also indemnify any person who, at our request, is or was serving as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise. We may, by action of our board of directors, provide indemnification to our employees and agents within the same scope and effect as the foregoing indemnification of directors and officers.

The right to be indemnified will include the right of an officer or a director to be paid expenses in advance of the final disposition of any proceeding, provided that, if required by law, we receive an undertaking to repay such amount if it will be determined that he or she is not entitled to be indemnified.

Our board of directors may take such action as it deems necessary to carry out these indemnification provisions, including adopting procedures for determining and enforcing indemnification rights and purchasing insurance policies. Our board of directors may also adopt bylaws, resolutions or contracts implementing indemnification arrangements as may be permitted by law. Neither the amendment nor the repeal of these indemnification provisions, nor any provision of our certificate of incorporation that is inconsistent with these indemnification provisions, will eliminate or reduce any rights to indemnification relating to their status or any activities prior to such amendment, repeal or adoption.

We believe these provisions will assist in attracting and retaining qualified individuals to serve as directors.

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

**Listing**

We intend to apply to list our shares of common stock on NASDAQ under the symbol “SWIM.”

## Shares Eligible for Future Sale

Prior to this offering, there has been no public market for our common stock. As described below, only a limited number of shares will be available for sale shortly after this offering due to contractual and legal restrictions on resale. Nevertheless, sales of a substantial number of shares of our common stock in the public market after such restrictions lapse, or the perception that those sales may occur, could adversely affect the prevailing market price of our common stock at such time and our ability to raise equity-related capital at a time and price we deem appropriate.

Upon the completion of this offering, we will have outstanding an aggregate of 120,426,397 shares of common stock. Additionally, we will have 842,524 options outstanding, which are exercisable into 842,524 shares of common stock, subject to their vesting terms, and 325,753 RSUs outstanding, which will result in the issuance of 325,753 shares of common stock, subject to their vesting terms. Of these shares, all of the 20,000,000 shares of common stock to be sold in this offering (or 23,000,000 shares assuming the underwriters exercise their option to purchase additional shares in full) will be freely tradable without restriction unless the shares are held by any of our "affiliates" as such term is defined in Rule 144 under the Securities Act, and without further registration under the Securities Act. All remaining shares of common stock will be deemed "restricted securities" as such term is defined under Rule 144. The restricted securities were, or will be, issued and sold by us in private transactions and are eligible for public sale only if registered under the Securities Act or if they qualify for an exemption from registration under Rule 144 or Rule 701 under the Securities Act, which rules are summarized below.

As a result of the lock-up agreements described below and the provisions of Rule 144 and Rule 701 under the Securities Act, the shares of our common stock (excluding the shares to be sold in this offering) that will be available for sale in the public market are as follows:

- no shares will be eligible for sale on the date of this prospectus or prior to 180 days after the date of this prospectus; and
- 100,426,397 shares will be eligible for sale upon the expiration of the lock-up agreements beginning 180 days after the date of this prospectus and when permitted under Rule 144 or Rule 701 or other applicable securities laws, assuming that the underwriters do not exercise their option to purchase additional shares.

### Lock-up Agreements

We, the Pamplona Fund, the Wynnchurch Funds, all of our directors and executive officers and holders of substantially all of our outstanding stock have agreed not to sell any common stock or securities convertible into or exercisable or exchangeable for shares of common stock for a period of 180 days from the date of this prospectus, subject to certain exceptions. Please see "Underwriting" for a description of these lock-up provisions. Certain underwriters, as described in "Underwriting," in their sole discretion, may at any time release all or any portion of the shares from the restrictions in such agreements, subject to applicable notice requirements.

### Rule 144

In general, under Rule 144 under the Securities Act as currently in effect, a person (or persons whose shares are aggregated) who is not deemed to have been an affiliate of ours at any time during the six months preceding a sale, and who has beneficially owned restricted securities within the meaning of Rule 144 for at least six months (including any period of consecutive ownership of preceding non-affiliated holders) would be entitled to sell those shares, subject only to the availability of current public information about us. A non-affiliated person who has beneficially owned restricted securities within the meaning of Rule 144 for at least one year would be entitled to sell those shares without regard to the provisions of Rule 144.

A person (or persons whose shares are aggregated) who is deemed to be an affiliate of ours and who has beneficially owned restricted securities within the meaning of Rule 144 for at least six months would be entitled to sell within any three-month period a number of shares that does not exceed the greater of 1% of the then outstanding shares of our common stock or the average weekly trading volume of our common stock reported by NASDAQ during the four calendar weeks preceding the filing of notice of the sale.

Such sales are also subject to certain manner of sale provisions, notice requirements and the availability of current public information about us.

**Rule 701**

In general, under Rule 701 under the Securities Act, any of our employees, directors, officers, consultants or advisors who purchases shares from us in connection with a compensatory stock or option plan or other written agreement before the effective date of this offering is entitled to sell such shares 90 days after the effective date of this offering in reliance on Rule 144, without having to comply with the holding period requirement of Rule 144 and, in the case of non-affiliates, without having to comply with the public information, volume limitation or notice filing provisions of Rule 144. The SEC has indicated that Rule 701 will apply to typical stock options granted by an issuer before it becomes subject to the reporting requirements of the Exchange Act, along with the shares acquired upon exercise of such options, including exercises after the date of this prospectus.

**Stock Options**

Upon the completion of this offering, we will have 842,524 options to purchase an aggregate of 842,524 shares of our common stock outstanding. During the period the options are outstanding, we will reserve from our authorized and unissued common stock a sufficient number of shares to provide for the issuance of shares of common stock underlying the options upon the exercise of the options.

**Restricted Stock Units**

Upon the completion of this offering, there will be 325,753 shares of our common stock issuable upon the vesting of the RSUs. During the period the RSUs are outstanding, we will reserve from our authorized and unissued common stock a sufficient number of shares to provide for the issuance of shares of common stock underlying the RSUs.

**Stock Issued Under Employee Plans**

We intend to file a registration statement on Form S-8 under the Securities Act to register our common stock issuable under the Omnibus Incentive Plan. This registration statement on Form S-8 is expected to be filed following the effective date of the registration statement of which this prospectus is a part and will be effective upon filing. Accordingly, shares registered under such registration statement will be available for sale in the open market following the effective date, unless such shares are subject to vesting restrictions with us, Rule 144 restrictions applicable to our affiliates or the lock-up restrictions described above.

**Registration Rights**

Following this offering and subject to the lock-up agreements, certain of our stockholders will be entitled to certain rights with respect to the registration of the sale of their shares of common stock under the Securities Act. For more information, see “Certain Relationships and Related Party Transactions.” After such registration, these shares of common stock will become freely tradable without restriction under the Securities Act, except for shares purchased by affiliates.

## Material U.S. Federal Income Tax Considerations

The following is a discussion of the material U.S. federal income tax considerations applicable to Non-U.S. Holders (as defined herein) with respect to the acquisition, ownership and disposition of our common stock issued pursuant to this offering. The following discussion is based upon current provisions of the Code, U.S. judicial decisions, administrative pronouncements and existing and proposed Treasury regulations, all as in effect as of the date hereof. All of the preceding authorities are subject to change at any time, possibly with retroactive effect, so as to result in U.S. federal income tax consequences different from those discussed below. We have not requested, and will not request, a ruling from the IRS with respect to any of the U.S. federal income tax consequences described below, and as a result there can be no assurance that the IRS will not disagree with or challenge any of the conclusions we have reached and describe herein.

This discussion only addresses beneficial owners of our common stock that hold such common stock as a capital asset within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all aspects of U.S. federal income taxation that may be important to a Non-U.S. Holder in light of such Non-U.S. Holder's particular circumstances or that may be applicable to Non-U.S. Holders subject to special treatment under U.S. federal income tax laws (including, without limitation, financial institutions, regulated investment companies, foreign governments, real estate investment trusts, dealers in securities, Non-U.S. Holders that elect to mark their securities to market, insurance companies, tax-exempt organizations, Non-U.S. Holders who acquire our common stock pursuant to the exercise of employee stock options or otherwise as compensation for their services, "qualified foreign pension funds" as defined in Section 897(l)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds, Non-U.S. Holders liable for the alternative minimum tax, Non-U.S. Holders required to conform the timing of income accruals to financial statements pursuant to section 451 of the Code, controlled foreign corporations, passive foreign investment companies, certain former citizens or former residents of the U.S., and Non-U.S. Holders that hold our common stock as part of a hedge, straddle, other integrated transaction, constructive sale or conversion transaction). In addition, this discussion does not address U.S. federal tax laws other than those pertaining to U.S. federal income tax (such as U.S. federal estate or gift tax, the Medicare contribution tax on certain net investment income, or the alternative minimum tax), nor does it address any aspects of U.S. state, local or non-U.S. taxes. Non-U.S. Holders are urged to consult with their own tax advisors regarding the possible application of these taxes.

For purposes of this discussion, the term "Non-U.S. Holder" means a beneficial owner of our common stock that is an individual, corporation, estate or trust, other than:

- an individual who is a citizen or resident of the U.S., as determined for U.S. federal income tax purposes;
- a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized in the U.S. or under the laws of the U.S., any state thereof or the District of Columbia;
- an estate, the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust if: (i) a court within the U.S. is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust; or (ii) it has a valid election in effect under applicable U.S. Treasury regulations to be treated as a domestic trust.

If an entity or arrangement is or is treated as a partnership or other pass-through entity for U.S. federal income tax purposes is the beneficial owner of shares of our common stock, the tax treatment of a person treated as a partner (or other owner) generally will depend on the status of the partner (or other owner) and the activities of the entity. Persons that, for U.S. federal income tax purposes, are treated as partners (or other owners) in a partnership or other pass-through entity that is the beneficial owner of shares of our common stock are urged to consult their tax advisors regarding the tax consequences of acquiring, owning and disposing of our common stock.

Prospective purchasers are urged to consult their tax advisors as to the particular consequences to them under U.S. federal, state and local, and applicable non-U.S. tax laws of the acquisition, ownership and disposition of our common stock.

**Distributions**

As discussed above under "Dividend Policy," we do not currently anticipate paying any dividends or other distributions on our common stock. If we make distributions of cash or property in respect of our common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). Subject to the discussions below under "—U.S. Trade or Business Income," "—Information Reporting and Backup Withholding" and "—FATCA," you generally will be subject to U.S. federal withholding tax at a 30% rate, or at a reduced rate prescribed by an applicable income tax treaty, on any dividends received in respect of our common stock. If the amount of the distribution exceeds our current and accumulated earnings and profits, such excess first will be treated as a return of capital to the extent of your tax basis in shares of our common stock, and thereafter will be treated as capital gain (which will be treated in the manner described below under "—Sale, Exchange or Other Taxable Disposition of Common Stock"). However, except to the extent that we elect (or the paying agent or other intermediary through which you hold your common stock elects) otherwise, we (or the intermediary) must generally withhold at the applicable rate on the entire distribution, in which case you would be entitled to a refund from the IRS for the withholding tax on the portion, if any, of the distribution that exceeded our current and accumulated earnings and profits.

In order to obtain a reduced rate of U.S. federal withholding tax under an applicable income tax treaty, you will be required to provide a properly executed IRS Form W-8BEN or Form W-8BEN-E (or, in each case, another applicable form or an appropriate successor form) certifying your entitlement to benefits under the treaty. Special certifications and other requirements apply if Non-U.S. Holders hold our common stock through pass-through entities for U.S. federal income tax purposes. If you are eligible for a reduced rate of U.S. federal withholding tax under an income tax treaty, you may obtain a refund or credit of any excess amounts withheld by filing an appropriate claim for a refund with the IRS. You are urged to consult your own tax advisor regarding your possible entitlement to benefits under an applicable income tax treaty.

Dividend income that is effectively connected with your conduct of a trade or business within the U.S. will be taxed in the manner described in "—U.S. Trade or Business Income" below.

**Sale, Exchange or Other Taxable Disposition of Common Stock**

Subject to the discussions below under "—U.S. Trade or Business Income," "—Information Reporting and Backup Withholding" and "—FATCA," you generally will not be subject to U.S. federal income or withholding tax in respect of any gain on a sale, exchange or other taxable disposition of our common stock unless:

- the gain is effectively connected with your conduct of a U.S. trade or business within the U.S. (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such gain is attributable), in which case, such gain will be taxed as described in "—U.S. Trade or Business Income" below;
- you are an individual who is present in the U.S. for 183 or more days in the taxable year of the disposition and certain other conditions are met, in which case you will be subject to U.S. federal income tax at a rate of 30% (or a reduced rate under an applicable income tax treaty) on the amount by which certain capital gains allocable to U.S. sources exceed certain capital losses allocable to U.S. sources (provided that you have timely filed U.S. federal income tax returns with respect to such losses); or
- we are or have been a "United States real property holding corporation" (a "USRPHC") as defined under Section 897 of the Code at any time during the shorter of the five-year period ending on the date of the disposition and your holding period for the common stock, in which case, subject to the exception set forth in the second sentence of the next paragraph, such gain will be subject to U.S. federal income tax as described in "—U.S. Trade or Business Income" below.

In general, a corporation is a USRPHC if the fair market value of its "United States real property interests" equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests

and its other assets used or held for use in a trade or business. In the event that we are determined to be a USRPHC, gain will, nonetheless, not be subject to tax as U.S. trade or business income if your holdings (direct and indirect, taking into account certain constructive ownership rules) at all times during the applicable period described in the third bullet point above constituted 5% or less of our common stock, provided that our common stock was regularly traded on an established securities market during such period. We believe that we are not currently, and we do not anticipate becoming in the future, a USRPHC for U.S. federal income tax purposes.

**U.S. Trade or Business Income**

For purposes of this discussion, dividend income and gain on the sale, exchange or other taxable disposition of our common stock will be considered to be "U.S. trade or business income" if (A)(i) such income or gain is effectively connected with your conduct of a trade or business within the U.S. and (ii) if you are eligible for the benefits of an income tax treaty with the U.S. and such treaty requires, such income or gain is attributable to a permanent establishment (or, if you are an individual, a fixed base) that you maintain in the U.S. or (B) with respect to gain, we are or have been a USRPHC at any time during the shorter of the five-year period ending on the date of the disposition of our common stock and your holding period for our common stock (subject to the exception set forth above in the second paragraph of "—Sale, Exchange or Other Taxable Disposition of Common Stock"). Generally, U.S. trade or business income is not subject to U.S. federal withholding tax (provided that you comply with applicable certification and disclosure requirements, including providing a properly executed IRS Form W-8ECI (or other applicable form or an appropriate successor form)); instead, you are subject to U.S. federal income tax on a net basis at regular U.S. federal income tax rates (generally in the same manner as a U.S. person) on your U.S. trade or business income. If you are a non-U.S. corporation, any U.S. trade or business income that you receive may also be subject to a "branch profits tax" at a 30% rate, or at a lower rate prescribed by an applicable income tax treaty, as adjusted for certain items. However, the branch profits tax will not apply to any gain described in clause (B) above.

**Information Reporting and Backup Withholding**

We must annually report to the IRS and to each Non-U.S. Holder any distribution that is subject to U.S. federal withholding tax or that is exempt from such withholding pursuant to an income tax treaty. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which a Non-U.S. Holder resides. Under certain circumstances, the Code imposes a backup withholding obligation on certain reportable payments. Dividends paid to you will generally be exempt from backup withholding if you provide a properly executed IRS Form W-8BEN or Form W-8BEN-E (or, in each case, an appropriate successor form) or otherwise establish an exemption and the applicable withholding agent does not have actual knowledge or reason to know that you are a U.S. person or that the conditions of such other exemption are not, in fact, satisfied.

The payment of the proceeds from the disposition of our common stock to or through the U.S. office of any broker (U.S. or non-U.S.) will be subject to information reporting and possible backup withholding unless you certify as to your non-U.S. status under penalties of perjury or otherwise establish an exemption and the broker does not have actual knowledge or reason to know that you are a U.S. person or that the conditions of any other exemption are not, in fact, satisfied. The payment of proceeds from the disposition of our common stock to or through a non-U.S. office of a non-U.S. broker will not be subject to information reporting or backup withholding unless the non-U.S. broker has certain types of relationships with the U.S. (a "U.S. related financial intermediary"). In the case of the payment of proceeds from the disposition of our common stock to or through a non-U.S. office of a broker that is either a U.S. person or a U.S. related financial intermediary, the Treasury regulations require information reporting (but not backup withholding) on the payment unless the broker has documentary evidence in its files that the beneficial owner is a Non-U.S. Holder and the broker has no knowledge to the contrary. You are urged to consult your tax advisor on the application of information reporting and backup withholding in light of your particular circumstances.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to you will be refunded or credited against your U.S. federal income tax liability, if any, provided that the required information is timely furnished to the IRS.

**FATCA**

Pursuant to Section 1471 through 1474 of the Code, commonly referred to as the Foreign Account Tax Compliance Act ("FATCA"), a 30% U.S. federal withholding tax is generally imposed with respect to "withholdable payments," which generally includes U.S.-source payments otherwise subject to nonresident withholding tax (e.g., U.S.-source dividends on our common stock) paid to a non-U.S. entity (whether received as a beneficial owner or as an intermediary for another party) unless: (i) if the non-U.S. entity is a "foreign financial institution" (which include most foreign hedge funds, private equity funds, mutual funds, securitization vehicles and any other investment vehicles) and such non-U.S. entity undertakes certain due diligence, reporting, withholding and certification obligations; (ii) if the non-U.S. entity is not a "foreign financial institution," such non-U.S. entity identifies any "substantial" owner (generally, any specified U.S. person who owns, directly or indirectly, more than a specified percentage of such entity); or (iii) the non-U.S. entity is otherwise exempt under FATCA.

The FATCA withholding tax will apply even if the payment would otherwise not be subject to U.S. nonresident withholding tax (e.g., because it is capital gain). Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the U.S. governing FATCA may be subject to different rules.

FATCA currently applies to dividends made in respect of our common stock. Proposed Treasury regulations, the preamble to which states that they can be relied upon until final regulations are issued, exempt from FATCA proceeds on dispositions of stock.

To avoid withholding on dividends, Non-U.S. Holders may be required to provide the Company (or its withholding agents) with applicable tax forms or other information. In addition, under certain circumstances, a non-U.S. Holder may be eligible for refunds or credits of the tax, and a Non-U.S. Holder might be required to file a U.S. federal income tax return to claim such refunds or credits. Non-U.S. Holders are urged to consult their own tax advisors regarding the possible implications of FATCA on their investment in our common stock and the entities through which they hold our common stock, including, without limitation, the process and deadlines for meeting the applicable requirements to prevent the imposition of the 30% withholding tax under FATCA.

## Underwriting

Barclays Capital Inc., BofA Securities, Inc., Morgan Stanley & Co. LLC and Goldman Sachs & Co. LLC are acting as representatives of the underwriters and book-running managers of this offering. Under the terms of an underwriting agreement, which will be filed as an exhibit to the registration statement, each of the underwriters named below has severally agreed to purchase from us the respective number of shares of common stock shown opposite its name below:

| Underwriters | Number of Shares |
|---|---|
| Barclays Capital Inc. | |
| BofA Securities, Inc. | |
| Morgan Stanley & Co. LLC | |
| Goldman Sachs & Co. LLC | |
| Nomura Securities International, Inc. | |
| William Blair & Company, L.L.C. | |
| Robert W. Baird & Co. Incorporated | |
| KeyBanc Capital Markets Inc. | |
| Truist Securities, Inc. | |
| Total | 20,000,000 |

The underwriting agreement provides that the underwriters' obligation to purchase shares of common stock depends on the satisfaction of the certain conditions contained in the underwriting agreement including:

- the obligation to purchase all of the shares of common stock offered hereby (other than those shares of common stock covered by their option to purchase additional shares as described below), if any of the shares are purchased;
- the representations and warranties made by us to the underwriters are true;
- there is no material change in our business or the financial markets; and
- we deliver customary closing documents to the underwriters.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officers' certificates and legal opinions. The underwriters reserve the right to withdraw, cancel, or modify offers to the public and to reject orders in whole or in part. The underwriters may offer and sell the shares to the public through one or more of their respective affiliates or other registered broker-dealers or selling agents.

### Commissions and Expenses

The following table summarizes the underwriting discounts and commissions we will pay to the underwriters. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional shares. The underwriting fee is the difference between the initial price to the public and the amount the underwriters pay to us for the shares.

| | Company | |
|---|---|---|
| | No Exercise | Full Exercise |
| Per Share | $ | $ |
| Total | $ | $ |

The representatives have advised us that the underwriters propose to offer the shares of common stock directly to the public at the offering price on the cover of this prospectus and to selected dealers, which may include the underwriters, at such offering price less a selling concession not in excess of $ per share.

If all the shares are not sold at the initial public offering price following the initial public offering, the representative may change the offering price and other selling terms.

The expenses of the offering that are payable by us are estimated to be approximately $6,300,000 (excluding underwriting discounts and commissions). We have agreed to reimburse the underwriters for certain of their expenses in an amount up to $65,000.

**Option to Purchase Additional Shares**

We have granted the underwriters an option exercisable for 30 days after the date of this prospectus to purchase, from time to time, in whole or in part, up to an aggregate of 3,000,000 shares from us at the offering price less underwriting discounts and commissions, solely for the purpose of covering overallotments. To the extent that this option is exercised, each underwriter will be obligated, subject to certain conditions, to purchase its pro rata portion of these additional shares based on the underwriter's percentage underwriting commitment in this offering as indicated in the above table.

**Lock-Up Agreements**

We, all of our directors and executive officers and holders of substantially all of our outstanding stock have agreed, subject to certain exceptions, that, for a period of 180 days after the date of this prospectus, subject to certain limited exceptions, we and they will not directly or indirectly, without the prior written consent of Barclays Capital Inc. and BofA Securities, Inc., (1) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of common stock (including, without limitation, shares of common stock that may be deemed to be beneficially owned by us or them in accordance with the rules and regulations of the SEC and shares of common stock that may be issued upon exercise of any options or warrants) or securities convertible into or exercisable or exchangeable for common stock (other than the stock and shares issued pursuant to employee benefit plans, qualified stock option plans, or other employee compensation plans existing on the date of this prospectus or pursuant to currently outstanding options, warrants or rights not issued under one of those plans), or sell or grant options, rights or warrants with respect to any shares of common stock or securities convertible into or exchangeable for common stock (other than the grant of options pursuant to option plans existing on the date of this prospectus), (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of shares of common stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of common stock or other securities, in cash or otherwise, or (3) publicly disclose the intention to do any of the foregoing, in each case, subject to specified exceptions.

Barclays Capital Inc. and BofA Securities, Inc., in their sole discretion, may release the common stock and other securities subject to the lock-up agreements described above in whole or in part at any time. When determining whether or not to release common stock and other securities from lock-up agreements, Barclays Capital Inc. and BofA Securities, Inc. will consider, among other factors, the holder's reasons for requesting the release, the number of shares of common stock and other securities for which the release is being requested and market conditions at the time. At least three business days before the effectiveness of any release or waiver of any of the restrictions described above with respect to an officer or director of the Company, Barclays Capital Inc. and BofA Securities, Inc. will notify us of the impending release or waiver and we have agreed to announce the impending release or waiver in accordance with any method permitted by applicable law or regulation (which may include a press release or a publicly filed registration statement), except where the release or waiver is effected solely to permit a transfer of common stock that is not for consideration or to an immediate family member and where the transferee has agreed in writing to be bound by the same terms as the lock-up agreements described above to the extent and for the duration that such terms remain in effect at the time of transfer.

**Offering Price Determination**

Prior to this offering, there has been no public market for our common stock. The initial public offering price was negotiated between the representatives and us. In determining the initial public offering price of our common stock, the representatives considered:

- the history and prospects for the industry in which we compete;
- our financial information;
- the ability of our management and our business potential and earning prospects;
- the prevailing securities markets at the time of this offering; and
- the recent market prices of, and the demand for, publicly traded shares of generally comparable companies.

**Indemnification**

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, and to contribute to payments that the underwriters may be required to make for these liabilities.

**Stabilization, Short Positions and Penalty Bids**

The representatives may engage in stabilizing transactions, short sales and purchases to cover positions created by short sales, and penalty bids or purchases for the purpose of pegging, fixing or maintaining the price of the common stock, in accordance with Regulation M under the Securities Exchange Act of 1934, as amended:

- Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum.
- A short position involves a sale by the underwriters of shares in excess of the number of shares the underwriters are obligated to purchase in the offering, which creates the syndicate short position. This short position may be either a covered short position or a naked short position. In a covered short position, the number of shares involved in the sales made by the underwriters in excess of the number of shares they are obligated to purchase is not greater than the number of shares that they may purchase by exercising their option to purchase additional shares. In a naked short position, the number of shares involved is greater than the number of shares in their option to purchase additional shares. The underwriters may close out any short position by either exercising their option to purchase additional shares and/or purchasing shares in the open market. In determining the source of shares to close out the short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through their option to purchase additional shares. A naked short position is more likely to be created if the underwriters are concerned that there could be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.
- Syndicate covering transactions involve purchases of the common stock in the open market after the distribution has been completed in order to cover syndicate short positions.
- Penalty bids permit the representatives to reclaim a selling concession from a syndicate member when the common stock originally sold by the syndicate member is purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

These stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of the common stock. As a result, the price of the common stock may be higher than the price that might otherwise exist in the open market. These transactions may be effected on NASDAQ or otherwise and, if commenced, may be discontinued at any time.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the common stock. In addition, neither we nor any of the underwriters make any representation that the representatives will engage in these stabilizing transactions or that any transaction, once commenced, will not be discontinued without notice.

**Passive Market Making**

In connection with the offering, underwriters and selling group members may engage in passive market making transactions in the common stock on NASDAQ in accordance with Rule 103 of Regulation M under the Exchange Act during the period before the commencement of offers or sales of common stock and extending through the completion of distribution. A passive market maker must display its bids at a price not in excess of the highest independent bid of the security. However, if all independent bids are lowered below the passive market maker's bid that bid must be lowered when specified purchase limits are exceeded.

**Electronic Distribution**

A prospectus in electronic format may be made available on the Internet sites or through other online services maintained by one or more of the underwriters and/or selling group members participating in this offering, or by their affiliates. In those cases, prospective investors may view offering terms online and, depending upon the particular underwriter or selling group member, prospective investors may be allowed to place orders online. The underwriters may agree with us to allocate a specific number of shares for sale to online brokerage account holders. Any such allocation for online distributions will be made by the representatives on the same basis as other allocations.

Other than the prospectus in electronic format, the information on any underwriter's or selling group member's web site and any information contained in any other web site maintained by an underwriter or selling group member is not part of the prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or any underwriter or selling group member in its capacity as underwriter or selling group member and should not be relied upon by investors.

**Listing on NASDAQ**

We intend to apply to list our shares of common stock on NASDAQ under the symbol "SWIM."

**Stamp Taxes**

If you purchase shares of common stock offered in this prospectus, you may be required to pay stamp taxes and other charges under the laws and practices of the country of purchase, in addition to the offering price listed on the cover page of this prospectus.

**Other Relationships**

The underwriters and certain of their affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. The underwriters and certain of their affiliates have, from time to time, performed, and may in the future perform, various commercial and investment banking and financial advisory services for the issuer and its affiliates, for which they received or may in the future receive customary fees and expenses.

In the ordinary course of their various business activities, the underwriters and certain of their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers, and such investment and securities activities may involve securities and/or instruments of the issuer or its affiliates. In addition, affiliates of certain of the underwriters are lenders under the Amended Term Loan and the Revolving Credit Facility and may receive a portion of the net proceeds of this offering as a result of the application of such proceeds as described in "Use of Proceeds". If the underwriters or their affiliates have a lending relationship with us, certain of those underwriters or their affiliates may hedge their credit exposure to us consistent with their customary risk management policies. Typically, the underwriters and their affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities or the securities of our affiliates, including potentially the shares of common stock offered hereby. Any such credit default swaps or short positions could adversely affect future trading prices of the shares of common stock offered hereby. The underwriters and certain of their affiliates may also communicate independent

investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

**Directed Share Program**

At our request, the underwriters have reserved for sale, at the initial public offering price, up to 5% of the common stock for sale to our directors, officers, employees and other individuals associated with us and members of their families. The sales will be made, at our direction, by Morgan Stanley & Co. LLC, an underwriter of this offering, through a directed share program. We do not know if these persons will choose to purchase all or any portion of these reserved shares, but any purchases they do make will reduce the number of shares available to the general public. Participants in the directed share program who purchase more than $1,000,000 of shares shall be subject to a 25-day lock-up with respect to any shares sold to them pursuant to that program. This lock-up will have similar restrictions and an identical extension provision to the lock-up agreements described herein. Any shares sold in the directed share program to our directors, executive officers or Principal Stockholders shall be subject to the lock-up agreements described herein. Any reserved shares of common stock that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares of common stock offered by this prospectus. We have agreed to indemnify the underwriters against certain liabilities and expenses, including liabilities under the Securities Act, in connection with the sales of the shares reserved for the directed share program.

**Selling Restrictions**

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

***European Economic Area and United Kingdom***

In relation to each Member State of the European Economic Area and the United Kingdom (each, a "Relevant Member State"), no common stock has been offered or will be offered pursuant to the offering to a public in that Relevant Member State prior to the publication of a prospectus in relation to the common stock which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation, except that offers of shares may be made to the public in that Relevant State at any time under the following exemptions under the Prospectus Regulation:

- to legal entities which are qualified investors as defined under the Prospectus Regulation;
- by the underwriters to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Regulation), subject to obtaining prior consent of the representatives of the underwriters for any such offer; or
- in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of common stock shall result in a requirement for us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

For the purposes of this provision, the expression "offer to the public" in relation to any shares in any Relevant State means the communication in any form and by any means of sufficient information on the

terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression "Prospectus Regulation" means Regulation (EU) 2017/1129.

***United Kingdom***

This prospectus has only been communicated or caused to have been communicated and will only be communicated or caused to be communicated as an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act of 2000 (the "FSMA")) as received in connection with the issue or sale of the common stock in circumstances in which Section 21(1) of the FSMA does not apply to us. All applicable provisions of the FSMA will be complied with in respect to anything done in relation to the common stock in, from or otherwise involving the United Kingdom.

***Canada***

The securities may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the securities must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts ("NI 33-105"), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

***Notice to Prospective Investors in Switzerland***

This offering memorandum does not constitute an issue prospectus pursuant to Article 652a or Article 1156 of the Swiss Code of Obligations and the notes will not be listed on the SIX Swiss Exchange. Therefore, this offering memorandum may not comply with the disclosure standards of the listing rules (including any additional listing rules or prospectus schemes) of the SIX Swiss Exchange. Accordingly, the notes may not be offered to the public in or from Switzerland, but only to a selected and limited circle of investors who do not subscribe to the notes with a view to distribution. Any such investors will be individually approached by the initial purchasers from time to time.

***Dubai International Financial Centre***

This offering memorandum relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This offering memorandum is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this offering memorandum nor taken steps to verify the information set forth herein and has no responsibility for the offering memorandum. The notes to which this offering memorandum relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the notes offered should conduct their own due diligence on the notes. If you do not understand the contents of this offering memorandum you should consult an authorized financial advisor.

***Hong Kong***

The shares may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies (Winding

Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong) ("Companies (Winding Up and Miscellaneous Provisions) Ordinance") or which do not constitute an invitation to the public within the meaning of the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) ("Securities and Futures Ordinance"), or (ii) to "professional investors" as defined in the Securities and Futures Ordinance and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance, and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" in Hong Kong as defined in the Securities and Futures Ordinance and any rules made thereunder.

***Singapore***

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor (as defined under Section 4A of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA")) under Section 274 of the SFA, (ii) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to conditions set forth in the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor, the securities (as defined in Section 239(1) of the SFA) of that corporation shall not be transferable for 6 months after that corporation has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer in that corporation's securities pursuant to Section 275(1A) of the SFA, (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (6) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore ("Regulation 32").

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is a trust (where the trustee is not an accredited investor (as defined in Section 4A of the SFA)) whose sole purpose is to hold investments and each beneficiary of the trust is an accredited investor, the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferable for 6 months after that trust has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than S$200,000 (or its equivalent in a foreign currency) for each transaction (whether such amount is to be paid for in cash or by exchange of securities or other assets), (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (6) as specified in Regulation 32.

***Japan***

The securities have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended), or the FIEA. The securities may not be offered or sold, directly or indirectly, in Japan or to or for the benefit of any resident of Japan (including any person resident in Japan or any corporation or other entity organized under the laws of Japan) or to others for reoffering or resale, directly or indirectly, in Japan or to or for the benefit of any resident of Japan, except pursuant to

an exemption from the registration requirements of the FIEA and otherwise in compliance with any relevant laws and regulations of Japan.

## Legal Matters

The validity of the shares of common stock offered hereby will be passed upon for us by Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York. The validity of the shares of common stock offered hereby will be passed upon for the underwriters by Latham & Watkins LLP, New York, New York.

## Change in Independent Registered Public Accounting Firm

On September 23, 2020, our board of directors approved the decision to change independent registered public accounting firms and we dismissed RSM US LLP, which we sometimes refer to as RSM, as our independent registered public accounting firm. On September 24, 2020, we retained Deloitte & Touche LLP, which we sometimes refer to as Deloitte, as our new independent registered public accounting firm to audit our consolidated financial statements as of and for the year ended December 31, 2020.

The report of RSM on our consolidated financial statements as of and for the year ended December 31, 2019 did not contain any adverse opinion or disclaimer of opinion and was not qualified or modified as to uncertainty, audit scope or accounting principles. During the two most recent fiscal years preceding our dismissal of RSM and the subsequent interim period through September 23, 2020, we had no "disagreements" (as defined in Item 304(a)(1)(iv) of Regulation S-K and the related instructions thereto) with RSM on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of RSM, would have caused RSM to make reference in connection with its report to the subject matter of the disagreement during its audit of our consolidated financial statements for the year ended December 31, 2019. During the two most recent years preceding our discharge of RSM and the subsequent interim period through September 23, 2020, there were no "reportable events" (as defined in Item 304(a)(1)(v) of Regulation S-K and the related instructions thereto).

During the two years ended December 31, 2019 and through the period ended September 23, 2020, we did not consult with Deloitte with respect to (i) the application of accounting principles to a specified transaction, either completed or proposed, the type of audit opinion that might be rendered on our financial statements, and neither a written report nor oral advice was provided to us that Deloitte concluded was an important factor considered by us in reaching a decision as to any accounting, auditing or financial reporting issue, or (ii) any other matter that was the subject of a disagreement or a reportable event (each as defined above).

We have provided RSM with a copy of the foregoing disclosure and requested that RSM furnish us with a letter addressed to the SEC stating whether or not RSM agrees with the above statements and, if not, stating the respects in which it does not agree. A copy of the letter, dated March 10, 2021, furnished by RSM in response to that request, is filed as Exhibit 16.1 to the registration statement of which this prospectus is a part.

## Experts

The consolidated financial statements of Latham Group, Inc. as of December 31, 2019 and for the year ended December 31, 2019 have been audited by RSM US LLP, an independent registered public accounting firm, as stated in their report thereon, and included in this prospectus and registration statement in reliance upon such report and upon the authority of such firm as experts in accounting and auditing.

The financial statements as of and for the year ended December 31, 2020 included in this registration statement have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such financial statements are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

## Where You Can Find More Information

We have filed with the SEC a registration statement on Form S-1 with respect to the common stock being sold in this offering. This prospectus constitutes a part of that registration statement. This prospectus

does not contain all the information set forth in the registration statement and the exhibits and schedules to the registration statement, because some parts have been omitted in accordance with the rules and regulations of the SEC. For further information with respect to us and our common stock being sold in this offering, you should refer to the registration statement and the exhibits and schedules filed as part of the registration statement. Statements contained in this prospectus regarding the contents of any agreement, contract or other document referred to herein are not necessarily complete; reference is made in each instance to the copy of the contract or document filed as an exhibit to the registration statement. Each statement is qualified by reference to the exhibit.

The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The SEC's website address is www.sec.gov.

After we have completed this offering, we will be subject to the information reporting requirements of the Exchange Act, and we will file annual, quarterly and current reports, proxy statements and other information with the SEC. We intend to make these filings available on our website (https://www.lathampool.com) once this offering is completed. Our website and the information contained on, or that can be accessed through, our website will not be deemed to be incorporated by reference in, and are not considered part of, this prospectus. You can also request copies of these documents, for a copying fee, by writing to the SEC, or you can review these documents on the SEC's website, as described above. In addition, we will provide electronic or paper copies of our filings free of charge upon request.

**Index to Consolidated Financial Statements**

## Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Latham Group, Inc.

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheet of Latham Group, Inc.(formerly Latham Topco, Inc.) and its subsidiaries (the Company) as of December 31, 2019, the related consolidated statements of operations, comprehensive income, stockholders' equity and cash flows for the year ended December 31, 2019, and the related notes to the consolidated financial statements (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019, and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

**Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

We have served as the Company's auditor from 2006 to 2019.

/s/ RSM US LLP

Blue Bell, Pennsylvania

December 15, 2020, except for Note 20, as to which the date is March 10, 2021, and except for the effects of the stock split described in Note 22, as to which the date is April 14, 2021

## Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Latham Group, Inc.

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheet of Latham Group, Inc. (formerly, Latham Topco, Inc.) and its subsidiaries (the "Company") as of December 31, 2020, the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows, for the year ended December 31, 2020, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020, and the results of its operations and its cash flows for the year ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

**Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

Hartford, Connecticut
March 10, 2021 (April 14, 2021 as to the effects of the stock split described in Note 22)

We have served as the Company's auditor since 2020.

**Latham Group, Inc.**

**Consolidated Balance Sheets**
**(in thousands, except share and per share data)**

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| **Assets** | | |
| Current assets: | | |
| Cash | $ 56,655 | $ 59,310 |
| Trade receivables, net | 31,427 | 32,758 |
| Inventories, net | 35,611 | 64,818 |
| Income tax receivable | — | 4,377 |
| Prepaid expenses and other current assets | 3,998 | 6,063 |
| Total current assets | 127,691 | 167,326 |
| Property and equipment, net | 37,845 | 47,357 |
| Equity method investment | — | 25,384 |
| Deferred tax assets | 206 | 345 |
| Deferred offering costs | — | 1,041 |
| Goodwill | 101,672 | 115,750 |
| Intangible assets, net | 258,297 | 289,473 |
| Total assets | $525,711 | $646,676 |
| **Liabilities and Stockholders' Equity** | | |
| Current liabilities: | | |
| Accounts payable | $ 12,093 | $ 29,789 |
| Accounts payable – related party | — | 500 |
| Current maturities of long-term debt | 6,891 | 13,042 |
| Accrued expenses and other current liabilities | 22,233 | 50,606 |
| Contingent consideration liability | 8,978 | — |
| Total current liabilities | 50,195 | 93,937 |
| Long-term debt, net of discount and current portion | 216,332 | 208,454 |
| Related party note payable | — | 64,938 |
| Deferred income tax liabilities, net | 60,008 | 55,193 |
| Liability for uncertain tax positions | 5,075 | 5,540 |
| Other long-term liabilities | 306 | 1,943 |
| Total liabilities | 331,916 | 430,005 |
| Commitments and contingencies | | |
| Stockholders' equity: | | |
| Common stock, $0.0001 par value; 500,000,000 shares authorized as of December 31, 2019 and 2020; 109,673,709 shares issued and outstanding as of December 31, 2019 and 2020 | 11 | 11 |
| Additional paid-in capital | 196,473 | 200,541 |
| Retained earnings (accumulated deficit) | (2,218) | 13,765 |
| Accumulated other comprehensive income (loss) | (471) | 2,354 |
| Total stockholders' equity | 193,795 | 216,671 |
| Total liabilities and stockholders' equity | $525,711 | $646,676 |

The accompanying notes are an integral part of these consolidated financial statements.

**Latham Group, Inc.**

**Consolidated Statements of Operations**
**(in thousands, except share and per share data)**

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Net sales | $ 317,975 | $ 403,389 |
| Cost of sales | 219,819 | 260,616 |
| Gross profit | 98,156 | 142,773 |
| Selling, general and administrative expense | 57,388 | 85,527 |
| Amortization | 15,643 | 17,347 |
| Income from operations | 25,125 | 39,899 |
| Other expense (income): | | |
| Interest expense | 22,639 | 18,251 |
| Other expense (income), net | (300) | (1,111) |
| Total other expense (income), net | 22,339 | 17,140 |
| Income before income taxes | 2,786 | 22,759 |
| Income tax (benefit) expense | (4,671) | 6,776 |
| Net income | $ 7,457 | $ 15,983 |
| Net income per share attributable to common stockholders: | | |
| Basic | $ 0.07 | $ 0.14 |
| Diluted | $ 0.07 | $ 0.14 |
| Weighted-average common shares outstanding – basic and diluted | | |
| Basic | 109,673,709 | 116,469,884 |
| Diluted | 109,673,709 | 116,469,884 |

The accompanying notes are an integral part of these consolidated financial statements.

**Latham Group, Inc.**

**Consolidated Statements of Comprehensive Income**
**(in thousands)**

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Net income | $7,457 | $15,983 |
| Other comprehensive income (loss), net of tax: | | |
| Foreign currency translation adjustments | (664) | 2,825 |
| Benefit pension plan adjustments | (6) | — |
| Total other comprehensive income (loss), net of tax | (670) | 2,825 |
| Comprehensive income | $6,787 | $18,808 |

The accompanying notes are an integral part of these consolidated financial statements.

**Latham Group, Inc.**

**Consolidated Statements of Stockholders' Equity**
**(in thousands, except share amounts)**

| | Common Stock | | Additional Paid-in Capital | Retained Earnings (Accumulated Deficit) | Accumulated Other Comprehensive Income (Loss) | Total Stockholders' Equity |
|---|---|---|---|---|---|---|
| | Shares | Amount | | | | |
| **Balances at December 31, 2018** | 109,673,709 | $ 11 | $188,048 | $ (7,978) | $ 199 | $180,280 |
| Net income | — | — | — | 7,457 | — | 7,457 |
| Cumulative effect of adoption of new revenue recognition standard (Note 2) | — | — | — | (1,697) | — | (1,697) |
| Foreign currency translation adjustments | — | — | — | — | (664) | (664) |
| Defined benefit pension plan adjustment | — | — | — | — | (6) | (6) |
| Capital contribution from parent | — | — | 7,817 | — | — | 7,817 |
| Distributions to parent | — | — | (200) | — | — | (200) |
| Stock-based compensation expense | — | — | 808 | — | — | 808 |
| **Balances at December 31, 2019** | 109,673,709 | 11 | 196,473 | (2,218) | (471) | 193,795 |
| Net income | — | — | — | 15,983 | — | 15,983 |
| Foreign currency translation adjustments | — | — | — | — | 2,825 | 2,825 |
| Issuance of common stock | 32,902,113 | 3 | 64,935 | — | — | 64,938 |
| Capital contribution from parent | — | — | 615 | — | — | 615 |
| Distributions to parent | — | — | (582) | — | — | (582) |
| Purchases and retirement of treasury stock | (32,902,113) | (3) | (64,935) | — | — | (64,938) |
| Contingent consideration settlement | — | — | 2,208 | — | — | 2,208 |
| Stock-based compensation expense | — | — | 1,827 | — | — | 1,827 |
| **Balances at December 31, 2020** | 109,673,709 | $ 11 | $200,541 | $13,765 | $2,354 | $216,671 |

The accompanying notes are an integral part of these consolidated financial statements.

**Latham Group, Inc.**

**Consolidated Statements of Cash Flows**
**(in thousands)**

| | Year Ended December 31, 2019 | 2020 |
|---|---|---|
| **Cash flows from operating activities:** | | |
| Net income | $ 7,457 | $ 15,983 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation and amortization | 21,659 | 25,365 |
| Amortization of deferred financing costs and debt discount | 3,151 | 2,317 |
| Bad debt expense | 253 | 358 |
| Change in fair value of interest rate swap | — | 334 |
| Deferred income taxes | (10,226) | (4,670) |
| Stock-based compensation expense | 808 | 1,827 |
| Loss on sale and disposal of property and equipment | 680 | 332 |
| Provision on liability for uncertain tax positions | 5,075 | 465 |
| Change in fair value of contingent consideration for Narellan Group Pty Limited | 1,441 | (204) |
| Changes in operating assets and liabilities: | | |
| Trade receivables | (7,104) | 9,462 |
| Inventories | 12,960 | (17,023) |
| Prepaid expenses and other current assets | 1,460 | 1,680 |
| Income tax receivable | (503) | (4,190) |
| Accounts payable | (2,278) | 12,647 |
| Accrued expenses and other current liabilities | 699 | 17,685 |
| Other long-term liabilities | 123 | 793 |
| Net cash provided by operating activities | 35,655 | 63,161 |
| **Cash flows from investing activities:** | | |
| Purchases of property and equipment | (8,165) | (16,264) |
| Proceeds from the sale of property and equipment | 1,296 | 579 |
| Acquisitions of businesses, net of cash acquired | (20,214) | (74,736) |
| Equity method investment in Premier Pools & Spas | — | (25,384) |
| Net cash used in investing activities | (27,083) | (115,805) |
| **Cash flows from financing activities:** | | |
| Proceeds from long-term debt borrowings | 22,310 | 20,000 |
| Payments on long-term debt borrowings | (5,809) | (24,044) |
| Proceeds from capital contributions from parent | 250 | 615 |
| Distributions to parent | (200) | (582) |
| Proceeds from issuance of common stock | — | 64,938 |
| Payments of initial public offering costs | — | (1) |
| Payments of Narellan Group Pty Limited contingent consideration | — | (6,624) |
| Net cash provided by financing activities | 16,551 | 54,302 |
| Effect of exchange rate changes on cash | (956) | 997 |
| **Net increase in cash** | 24,167 | 2,655 |
| Cash at beginning of period | 32,488 | 56,655 |
| Cash at end of period | $ 56,655 | $ 59,310 |
| **Supplemental cash flow information:** | | |
| Cash paid for interest | $ 19,488 | $ 15,625 |
| Income taxes paid, net | $ 168 | $ 14,815 |
| **Supplemental disclosure of non-cash investing and financing activities:** | | |
| Purchases of property and equipment included in accounts payable and accrued expenses | $ 312 | $ 1,235 |
| Capitalized internal-use software included in accounts payable – related party . | $ — | $ 500 |
| Deferred offering costs included in accounts payable and accrued expenses | $ — | $ 1,040 |
| Related party note entered into for purchase of treasury stock | $ — | $ 64,938 |
| Fair value of contingent consideration recorded in connection with acquisition of Narellan Group Pty Limited | $ 8,869 | $ — |
| Fair value of equity issued by Parent to settle contingent consideration in connection with the acquisition of Narellan Group Pty Limited | $ 7,567 | $ 2,208 |
| Change in defined benefit pension plan liability | $ 31 | $ (149) |
| Net working capital adjustment receivable | $ — | $ 750 |

The accompanying notes are an integral part of these consolidated financial statements.

**Notes to Consolidated Financial Statements**

## 1. NATURE OF THE BUSINESS

Latham Group, Inc. ("the Company") wholly owns Latham Pool Products, Inc. ("Latham Pool Products") (together, "Latham") and a designer, manufacturer and marketer of in-ground residential swimming pools in North America, Australia and New Zealand. Latham offers a portfolio of pools and related products, including in-ground swimming pools, pool liners and pool covers.

Latham Topco, Inc. was incorporated in the State of Delaware on December 6, 2018. Latham Topco, Inc. changed its name to Latham Group, Inc. on March 3, 2021. On December 18, 2018, an investment fund managed by affiliates of Pamplona Capital Management (the "Sponsor"), Wynnchurch Capital, L.P. and management acquired all of our outstanding equity interests through the newly formed entities (the "Acquisition"). The Company has been controlled by funds managed by the Sponsor since the Acquisition. The Company was acquired for a total purchase price of $374.1 million and resulted in the recognition of $91.8 million in goodwill. The Acquisition was funded, in part, through long-term debt proceeds of $215.0 million.

***Impact of COVID-19 Pandemic***

On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic and recommended containment and mitigation measures worldwide. In response to the COVID-19 pandemic, federal, state and local governments put in place travel restrictions, quarantines, "shelter-in-place" orders, and various other restrictive measures in an attempt to control the spread of the disease. Such restrictions or orders have resulted in, and continue to result in, business closures, work stoppages, slowdowns and delays, among other effects that impact its operations, as well as customer demand and the operations of its suppliers.

Since the onset of the COVID-19 pandemic, the Company has been focused on protecting its employees' health and safety, meeting its customers' needs as they navigate an uncertain financial and operating environment, working closely with its suppliers to protect its ongoing business operations and rapidly adjusting its short-, medium- and long-term operational plans to proactively and effectively respond to the current and potential future public health crises.

To mitigate the impact of the COVID-19 pandemic on the Company's business, it increased frequency and intensity of cleaning of its properties, implemented policies to enable its factory employees to work flexible working hours, shifted its corporate employees to remote work, temporarily stopped hiring, temporarily cut salaries (which cuts the Company has repaid to its employees later in the year) and have greatly reduced travel for its employees. Substantially all of the Company's plants have remained operational throughout the pandemic and it has not experienced any significant supply issues. The Company did not experience any significant impacts on its liquidity as a result of the COVID-19 pandemic.

Following a slow-down in orders in March and April of 2020 as some of the Company's dealers shut down during the peak season, the Company saw a sustained increase in demand for its products during 2020.

Although the Company has implemented measures to mitigate the impact of the COVID-19 pandemic on its business, financial condition and results of operations, the Company expects that these measures may not fully mitigate the impact of the COVID-19 pandemic on its business, financial condition and results of operations. The Company cannot predict the degree to, or the period over, which the Company will be affected by the pandemic and resulting governmental and other measures. The global impact of the COVID-19 pandemic continues to rapidly evolve, and the Company will continue to monitor the situation closely.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

***Basis of Presentation***

The accompanying consolidated financial statements and accompanying notes have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP"). The Company's

consolidated financial statements include the accounts of the Company and its subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

***Use of Estimates***

The preparation of the Company's consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates. The Company bases its estimates on historical experience, known trends and other market-specific or other relevant factors that it believes to be reasonable under the circumstances. Estimates are evaluated on an ongoing basis and revised as there are changes in circumstances, facts and experience. Changes in estimates are recorded in the period in which they become known.

***Seasonality***

Although the Company generally has demand for its products throughout the year, its business is seasonal and weather is one of the principal external factors affecting the business. In general, net sales and net income are highest during spring and summer, representing the peak months of swimming pool use, pool installation and remodeling and repair activities. Sales periods having severe weather may also affect net sales.

***Revenue Recognition***

The Company adopted accounting standards codification ("ASC") 606, *Revenue from Contracts with Customers* ("ASC 606"), on January 1, 2019 using the modified retrospective method. This standard applies to all contracts with customers, except for contracts that are within the scope of other standards. The adoption of ASC 606 resulted in a net decrease to retained earnings (accumulated deficit) of $1.7 million, a reduction to prepaid expenses of $1.2 million and an increase to accrued expenses of $0.5 million as of January 1, 2019, as a result of adjusting the timing of recording customer incentives to more closely match the revenues to which they are associated.

Under ASC 606, the Company recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration that the Company expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that the Company determines are within the scope of ASC 606, the Company performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when, or as, the Company satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that the Company will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. At contract inception, once the contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract, determines which goods or services are performance obligations, and assesses whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when, or as, that performance obligation is satisfied.

The Company sells its products through business-to-business distribution channels. With the exception of its extended service warranties and custom product contracts, the Company recognizes its revenue at a point in time when control of the promised goods is transferred to the Company's customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods. Control of the goods is considered to have been transferred upon shipping or upon arrival at the customer's destination, depending on the terms of the purchase order. Revenue that is derived from its extended service warranties, which are separately priced and sold, is recognized over the term of the contract. Refer to Warranties within this same Note for further information.

Revenue from custom products is recognized over time utilizing an input method that compares the cost of cumulative work-in-process to date to the most current estimates for the entire cost of the performance obligation. Custom products are generally delivered to the customer within three days of receipt of the purchase order.

Each product shipped is considered to be one performance obligation. For each product shipped, the transaction price by product is specified in the purchase order. The Company recognizes revenue on the transaction price less any estimated rebates, cash discounts or other sales incentives. Customer rebates, cash discounts, and other sales incentives are estimated by applying the portfolio approach using the most-likely-amount method and are recorded as a reduction to revenue at the time of the initial sale. Estimates are updated each reporting period and any changes are allocated to the performance obligations on the same basis as at inception. The Company believes the most-likely-amount method best predicts the amount of consideration to which it will be entitled.

The Company has elected to account for shipping and handling costs as activities to fulfill the promise to transfer the goods. As a result of this accounting policy election, the Company does not consider shipping and handling activities as promised services to its customers. Therefore, shipping and handling costs billed to customers are recorded in net sales, and the related costs in cost of sales.

The Company does not engage in contracts greater than one year, and therefore does not have any contract costs capitalized as of December 31, 2019 and 2020.

As a practical expedient, the Company does not adjust the promised amount of consideration for the effects of a significant financing component as the period between the transfer of a promised good to a customer and when the customer pays for that product is one year or less.

***Warranties***

The Company offers limited assurance-type warranties on most of its products, which assure that the product will comply with agreed upon specifications. These assurance-type warranties are not separately priced and are not considered separate performance obligations. The Company also offers optional extended service contracts which are separately priced. The Company recognizes revenue related to extended service contracts over the term of the contract.

The Company’s assurance-type warranties generally range from five years to lifetime warranties. At the time product revenue is recognized, the Company records a liability for estimated costs that may be incurred under its warranties. The costs are estimated based on historical experience and any specific warranty issues that have been identified. The accuracy of the estimate of additional costs is dependent on the number and cost of future claims submitted during the warranty periods. Although historical warranty costs have been within expectations, there can be no assurance that future warranty costs will not exceed historical amounts. The Company believes that the reserves established for estimated and probable future product warranty claims are adequate. The Company periodically assesses the adequacy of its recorded warranty liability and adjusts the balance as necessary. Warranty costs are recorded within cost of sales on the consolidated statements of operations. The Company’s provision for product warranties was recorded within accrued expenses and other current liabilities and other long-term liabilities on the consolidated balance sheets as of December 31, 2019 and 2020.

***Cost of Sales***

Cost of sales includes the cost of materials and all costs to make products saleable, such as labor, materials, inbound freight, including inter-plant freight, purchasing and receiving costs, operating lease costs related to distribution and manufacturing facilities, and warehousing and distributions costs. In addition, all depreciation expense associated with assets used to manufacture products and make them saleable is included in cost of sales. The Company records shipping and handling costs associated with outbound freight as cost of sales when the related revenue is recognized in the accompanying consolidated statements of operations.

**Notes to Consolidated Financial Statements (Continued)**

***Trade Receivables, Net***

Trade receivables are recorded at the original invoiced amount and do not bear interest. The Company maintains an allowance for bad debt. The allowance for bad debt is based on the best estimate of the amount of probable credit losses in existing accounts receivable. The Company determines the allowances based on historical write-off experience. The Company's allowance for bad debt as of December 31, 2019 and 2020 was $1.3 million and $1.4 million, respectively.

***Concentration of Credit Risk***

Financial instruments that subject the Company to concentrations of credit risk consist primarily of cash and trade receivables. The Company from time to time may have bank deposits in excess of insurance limits of the Federal Deposit Insurance Corporation. The Company also has bank deposits in international accounts. The Company has not historically sustained any credit losses in such accounts and believes it is not exposed to any significant credit risk related to its cash. The Company routinely reviews the financial strength of its customers before extending credit and believes that its trade receivables credit risk exposure is limited. Generally, the Company does not require collateral from its customers.

During the years ended December 31, 2019 and 2020, one customer represented approximately 25.7% and 22.3% of the Company's net sales, respectively. As of December 31, 2019 and 2020, outstanding trade receivables related to this customer were $12.0 million and $5.4 million, respectively. The Company provides extended payment terms to qualified customers for sales under its "Early Buy" program, which allows customers to take delivery in December and receive payment terms for April through June of the following year.

***Fair Value Measurements***

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. To increase the comparability of fair value measures, the following hierarchy prioritizes the inputs to valuation methodologies used to measure fair value.

Level 1 — Quoted prices in active markets for identical assets or liabilities.

Level 2 — Inputs, other than quoted prices in active markets, that are observable either directly or indirectly.

Level 3 — Unobservable inputs that reflect the Company's own assumptions incorporated into valuation techniques. These valuations require significant judgment.

In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. When there is more than one input at different levels within the hierarchy, the fair value is determined based on the lowest level input that is significant to the fair value measurement in its entirety. Assessment of the significance of a particular input to the fair value measurement in its entirety requires substantial judgment and consideration of factors specific to the asset or liability. Level 3 inputs are inherently difficult to estimate. Changes to these inputs can have significant impact on fair value measurements. Assets and liabilities measured at fair value using Level 3 inputs are based on one or more of the following valuation techniques: market approach, income approach or cost approach. There were no transfers between fair value measurement levels during the years ended December 31, 2019 and 2020.

***Interest Rate Swap***

Borrowings under the Credit Agreement (see Note 9) accrue interest at variable rates and expose the Company to interest rate risk. On April 30, 2020, the Company entered into an interest rate swap with a notional amount of $200.0 million and a three-year term to reduce the interest rate risk associated with the Company's Credit Agreement. The Company's interest rate swap is not designated as a hedging instrument for accounting purposes. The Company accounts for the interest rate swap as other long-term liabilities in the

consolidated balance sheets at fair value. The resulting gain (loss) on the interest rate swap is recognized within other expense (income), net in the consolidated statements of operations.

***Business Combinations***

In determining whether an acquisition should be accounted for as a business combination or asset acquisition, the Company first determines whether substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or a group of similar identifiable assets. If this is the case, the single identifiable asset or the group of similar assets is not deemed to be a business, and is instead deemed to be an asset. If this is not the case, the Company then further evaluates whether the single identifiable asset or group of similar identifiable assets and activities includes, at a minimum, an input and a substantive process that together significantly contribute to the ability to create outputs. If so, the Company concludes that the single identifiable asset or group of similar identifiable assets and activities is a business.

The Company accounts for business combinations that are deemed to be businesses using the acquisition method of accounting. Application of this method of accounting requires that (i) identifiable assets acquired (including identifiable intangible assets) and liabilities assumed generally be measured and recognized at fair value as of the acquisition date and (ii) the excess of the purchase price over the net fair value of identifiable assets acquired and liabilities assumed be recognized as goodwill, which is not amortized for accounting purposes but is subject to testing for impairment at least annually. Any contingent assets acquired and contingent liabilities assumed are also recognized at fair value if the Company can reasonably estimate fair value during the measurement period (which cannot exceed one year from the acquisition date). The Company re-measures any contingent liabilities at fair value in each subsequent reporting period. Transaction costs related to business combinations are expensed as incurred. Determining the fair value of assets acquired and liabilities assumed in a business combination requires management to use significant judgment and estimates, especially with respect to intangible assets.

During the measurement period, which extends no later than one year from the acquisition date, the Company may record certain adjustments to the carrying value of the assets acquired and liabilities assumed with the corresponding offset to goodwill. After the measurement period, all adjustments are recorded in the consolidated statements of operations as operating expenses or income.

Acquisition-related contingent consideration was recorded in the consolidated balance sheets at its acquisition-date estimated fair value, in accordance with the acquisition method of accounting. The fair value of the acquisition-related contingent consideration was remeasured each reporting period, with changes in fair value recorded in other expense (income), net in the consolidated statements of operations. The fair value measurement is based on significant inputs not observable by market participants and thus represents a Level 3 input in the fair value hierarchy (see Note 5).

***Equity Method Investments***

Investments and ownership interests in common stock or in-substance common stock are accounted for under the equity method accounting if the Company has the ability to exercise significant influence over the entity, but does not have a controlling financial interest. Under the equity method, investments are initially recognized at cost and adjusted to reflect the Company’s interest in net earnings, dividends received and other-than-temporary impairments. The Company records its interest in the net earnings of its equity method investee, along with adjustments for amortization of basis differences, investee capital transactions and other comprehensive income (loss), within earnings (losses) from equity method investment in the consolidated statements of operations. Basis differences represent differences between the cost of the investment and the underlying equity in net assets of the investment and are generally amortized over the lives of the related assets that gave rise to the underlying basis differences. Profits or losses related to intra-entity sales with its equity method investee are eliminated until realized by the investor or investee.

The Company records its proportionate share of earnings or losses of Premier Holdco, LLC (“Premier Pools & Spas”) within earnings (losses) from equity method investment in the consolidated statements of

operations on a three-month lag. Accordingly, the consolidated statement of operations for the year ended December 31, 2020 does not reflect any proportionate share of earnings or losses of Premier Pools & Spas.

Equity method goodwill is not amortized or tested for impairment; instead the Company evaluates equity method investments for impairment when events or changes in circumstances indicate that the decline in value below the carrying amount of its equity method investment is determined to be other than temporary. In such a case, the decline in value below the carrying amount of its equity method investment is recognized in the consolidated statements of operations in the period the impairment occurs.

***Inventories, Net***

Inventories, primarily raw materials and finished goods, are stated at the lower of cost or net realizable value. Cost is determined under the first-in, first-out method. Inventory costs include all costs directly attributable to the products, including all manufacturing overhead, and excludes costs to distribute. The Company periodically reviews its inventory for slow moving or obsolete items and writes down the related products to estimated net realizable value. As of December 31, 2019 and 2020, the Company's reserves for estimated slow moving products or obsolescence were $2.1 million and $1.8 million, respectively.

***Property and Equipment, Net***

Property and equipment are recorded at cost and presented net of accumulated depreciation. Property and equipment acquired through business combinations are recorded at fair value at the acquisition date. Expenditures for betterments and major improvements that substantially enhance the value and increase the estimated useful life of the assets are capitalized and depreciated over the new estimated useful life. Normal repairs and maintenance costs are expensed as incurred. Depreciation and amortization expense are recognized using the straight-line method over the estimated useful lives of each respective asset category as follows:

| | Estimated Useful Life |
|---|---|
| Building and improvements | 25 years |
| Molds and dyes | 5 – 10 years |
| Machinery and equipment (including computer equipment and software) | 3 – 10 years |
| Furniture and fixtures | 5 – 7 years |
| Vehicles | 5 years |

Leasehold improvements are amortized over the shorter of the term of the related lease or the estimated useful lives of the improvements. When property and equipment is sold or retired, the asset cost and accumulated depreciation and amortization are removed from the respective accounts and a gain or loss is recognized, if any, on the consolidated statements of operations.

The Company capitalizes external costs and directly attributable internal costs to acquire or create internal-use software which are incurred subsequent to the completion of the preliminary project state. These costs relate to activities such as software design, configuration, coding, testing and installation and exclude training and maintenance. Once the software is substantially complete and ready for its intended use, capitalized development costs are amortized straight-line over the estimated useful life of the software, generally not to exceed five years.

***Long-Lived Assets***

Long-lived assets include property and equipment and definite-lived intangible assets. The Company evaluates the carrying value of its long-lived assets for impairment whenever events or circumstances indicate that the carrying value of the assets may not be recoverable. Conditions that may indicate impairment include, but are not limited to, a significant decrease in the market price of an asset, a significant adverse change in the extent or manner in which an asset is being used or a significant decrease in its physical condition, and operating or cash flow performance that demonstrates continuing losses associated with an

asset or asset group. The Company also considers non-financial data such as changes in the operating environment, competitive information, market trends and business relationships.

A potential impairment has occurred if the projected future undiscounted cash flows expected to result from the use and eventual disposition of the asset or asset group are less than the carrying value of the asset or asset group. The estimate of cash flows includes management's assumptions of cash inflows and outflows directly resulting from the use of the asset in operation. If the carrying value exceeds the sum of the undiscounted cash flows, an impairment charge is recorded equal to the excess of the asset or asset group's carrying value over its fair value. Fair value is measured using appropriate valuation methodologies that would typically include a projected discounted cash flow model using a discount rate the Company believes is commensurate with the risk inherent in its business. The Company did not recognize any impairment losses on long-lived assets during the years ended December 31, 2019 and 2020.

The Company amortizes its definite-lived intangible assets using the straight-line method. The weighted-average estimated useful lives (in years) of the Company's definite-lived intangible assets are as follows (see Note 6):

| Asset | Estimated Useful Life |
|---|---|
| Patented technology | 5 – 10 years |
| Trade names and trademarks | 9 – 25 years |
| Pool designs | 14 years |
| Franchise relationships | 4 years |
| Dealer relationships | 5 – 15 years |
| Non-competition agreements | 5 years |

***Goodwill***

The Company accounts for goodwill as the excess of the purchase price over the net amount of identifiable assets acquired and liabilities assumed in a business combination measured at fair value. Goodwill is not subject to amortization; rather, the Company tests goodwill for impairment annually on the first day of the Company's fourth fiscal quarter and whenever events occur or changes in circumstances indicate that impairment may have occurred. Historically, including for the Company's annual impairment test conducted during the year ended December 31, 2020, the Company had two reporting units for the purpose of performing its goodwill impairment test. In November 2020, the Company made changes to its internal organizational structure, including roles and responsibilities and to its internal reporting, resulting in a change to segment management. As a result of the change in segment management and in the information that is regularly reviewed, the results of the previous two reporting units are no longer being reviewed for profitability on an individual basis. Due to these factors, the Company recognized a change in reporting units effective in November 2020 and determined that only one reporting unit exists. The Company completed an assessment of any potential impairment for all reporting units immediately prior to and after the reporting unit change and determined that no impairment existed.

Impairment testing is performed for the Company's reporting unit by first assessing qualitative factors to see if further testing of goodwill is required. If the Company concludes that it is more likely than not that its reporting unit's fair value is less than its carrying amount based on the qualitative assessment, then a quantitative test is required. The Company may also choose to bypass the qualitative assessment and perform the quantitative test.

If the estimated fair value of the reporting unit exceeds the carrying amount, the Company considers that goodwill is not impaired. If the carrying value exceeds estimated fair value, there is an impairment of goodwill and an impairment loss is recorded. The Company calculates the impairment loss by comparing the fair value of its reporting unit less the carrying amount, including goodwill. Goodwill impairment would be limited to the carrying value of the goodwill.

**Notes to Consolidated Financial Statements (Continued)**

The Company measures fair value of its reporting unit based on the enterprise values derived using an income approach and a market approach. The Company applies a weighting of 75% to the income approach and a weighting of 25% to the market approach. The income approach uses a discounted cash flows model that indicates the fair value of the reporting unit based on the present value of the cash flows that the reporting unit is expected to generate in the future. Significant estimates in the discounted cash flows model include: the weighted-average cost of capital; and long-term rate of growth and profitability of the business. The market approach uses a guideline transactions method to indicate the fair value of the reporting unit based on a selected multiple. Significant estimates in the market approach model include identifying appropriate market multiples and assessing earnings before interest, income taxes, depreciation and amortization ("EBITDA") in estimating the fair value of the reporting unit.

***Debt Issuance Costs***

The Company defers costs incurred in conjunction with acquiring third-party financing. The Company amortizes debt issuance costs over the term of the related long-term debt instruments using the effective interest method. Debt issuance costs related to long-term debt are recorded as a direct reduction to the carrying amount of long-term debt on the consolidated balance sheets (see Note 9).

***Deferred Offering Costs***

The Company capitalizes certain legal, professional accounting, and other third-party fees that are directly associated with in-process equity financings as deferred offering costs until such financings are consummated. After consummation of the equity financing, these costs are recorded in stockholders' equity as a reduction of additional paid-in capital generated as a result of the offering. Should the planned equity financing be abandoned, the deferred offering costs will be expensed immediately as a charge to operating expenses in the consolidated statements of operations. There were no deferred offering costs as of December 31, 2019. As of December 31, 2020, the Company had recorded $1.0 million of deferred offering costs related to its planned IPO of common stock.

***Segment Reporting***

The Company identifies operating segments based on how the chief operating decision maker ("CODM") manages the business, allocates resources, makes operating decisions and evaluates operating performance.

The Company conducts its business as one operating and reportable segment that designs, manufactures and markets in-ground swimming pools, liners and covers. The Company's chief executive officer, who is the chief operating decision maker, reviews financial information presented on a consolidated basis for purposes of assessing financial performance and allocating resources.

***Income Taxes***

The Company accounts for income taxes using the asset and liability method. This approach requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax basis of assets and liabilities, using enacted tax rates expected to be applicable in the years in which the temporary differences are expected to reverse. Changes in deferred tax assets and liabilities are recorded in the provision for income taxes. The Company evaluates the realizability of its deferred tax assets and establishes a valuation allowance when it is more likely than not that all or a portion of the deferred tax assets will not be realized. Potential for recovery of deferred tax assets is evaluated by estimating the future taxable profits expected, scheduling of anticipated reversals of taxable temporary differences, and considering prudent and feasible tax planning strategies. If in future periods the Company were to determine that it would be able to realize its deferred tax assets in excess of the net recorded amount, an adjustment to the deferred tax assets, particularly a release of the valuation allowance, would increase income in the period such determination was made.

The Company records liabilities for uncertain income tax positions based on a two-step process. The first step is recognition, where an individual tax position is evaluated as to whether it has a likelihood of

greater than 50% of being sustained upon examination based on the technical merits of the position, including resolution of any related appeals or litigation processes. For tax positions that are currently estimated to have less than a 50% likelihood of being sustained, no tax benefit is recorded. For tax positions that have met the recognition threshold in the first step, the Company performs the second step of measuring the benefit to be recorded. The amount of the benefit that may be recognized is the largest amount that has a greater than 50% likelihood of being realized on ultimate settlement. The actual benefits ultimately realized may differ from the estimates. In future periods, changes in facts, circumstances and new information may require the Company to change the recognition and measurement estimates with regard to individual tax positions. Changes in recognition and measurement estimates are recorded in income tax (benefit) expense and liability in the period in which such changes occur.

The Company's policy is to classify interest and penalties related to unrecognized tax benefits as a component of income tax (benefit) expense within the consolidated statements of operations. There were no penalties or accrued interest as of December 31, 2019. The Company had $0.2 million of accrued interest and no accrued penalties as of December 31, 2020. The Company reinvests earnings of foreign operations indefinitely and, accordingly, does not provide for income taxes that could result from the remittance of such earnings.

***Stock-Based Compensation***

Certain of the Company's employees, directors and officers have been granted profits interest units ("PIUs") in the form of Class B units in the Company's parent entity, Latham Investment Holdings, LP ("Parent"). As the employees and officers provide services to the Company, the stock-based compensation is deemed to be for the benefit of the Company (see Note 16). The Company records an allocation of stock-based compensation expense from its Parent and recognizes a corresponding capital contribution in additional paid-in capital.

The Company accounts for the PIUs as equity classified awards. PIUs are measured at fair value on the grant date. The Company estimates the grant-date fair value of PIUs using the Contingent Claims Analysis Model, which uses the risk-free rate, expected term, volatility and dividend yield as inputs.

A portion of the PIUs vest in five equal annual installments, based on continued service ("Time Vesting PIUs"). The Company recognizes the grant date fair value of these Time Vesting PIUs as an expense over the employee's requisite service period. However, the Parent has a repurchase right for $0 per share until the third anniversary of the Acquisition in the event of voluntary termination or termination without cause (the "$0 Repurchase Right"). The Company will reverse stock-based compensation expense in the event that the Parent exercises the $0 Repurchase Right since it functions as a vesting condition. In the event of a change-in-control event, the Company will immediately recognize the unrecognized stock-based compensation expense related to the unvested Time Vesting PIUs. The remaining units (the "Performance PIUs") will vest upon the consummation of a change-in-control, as defined in the Parent's partnership agreement, a performance condition and the achievement of either a specified internal rate of return or a specific return on the Sponsor's investment, both of which are market conditions. As the Performance PIUs contain both performance and market conditions, compensation expense for those awards will be equal to the grant date fair value of all awards for which the performance condition is met and the requisite service period is satisfied regardless of whether the market conditions are ultimately satisfied. No stock-based compensation expense has been recognized to-date for the remaining units as the Company has not deemed the performance condition to be probable.

The Company accounts for forfeitures of stock-based awards as they occur rather than applying an estimated forfeiture rate to stock-based compensation expense.

***Pension and Other Postretirement Plans***

The Company sponsors a noncontributory defined benefit pension plan that covers certain former employees. Funding of accrued pension costs is subject to limitations in the *Internal Revenue Code* and the Employee Retirement Income Security Act of 1974 ("ERISA"). Guidance for employers' accounting for

defined benefit pension and other postretirement plans applies to employers that sponsor single-employer defined benefit pension and other postretirement plans who are either business enterprises or nongovernmental not-for-profit organizations. Among other provisions, the guidance requires employers to fully recognize the overfunded or underfunded positions (the difference between the fair value of plan assets and the benefit obligation) of defined benefit pension, retiree healthcare and other postretirement plans in their balance sheets. In applying the provisions of the guidance, the Company records the unrecognized gains (losses) and prior service costs in the ending balance of accumulated other comprehensive income (loss). As of December 31, 2019, the Company's plan assets and related plan obligations were $1.3 million and $1.5 million, respectively, representing 0.3% and 0.3% of total assets, respectively, and are deemed immaterial to the consolidated financial statements. During the year ended December 31, 2020, the Company terminated its defined benefit pension plan (see Note 15).

***Foreign Currency Translation and Foreign Currency Transactions***

The financial statements of the Company's foreign operations are denominated in local currency and are then translated to U.S. dollars. Assets and liabilities are translated using the current rate of exchange at the balance sheet dates or historical rates of exchange, as applicable. Revenue and expenses are translated using the average monthly exchange rates prevailing throughout the reporting period. The related foreign currency translation adjustments are recorded as a component of accumulated other comprehensive income (loss) in stockholders' equity. Transaction gains and losses associated with the Company's international subsidiaries, which are denominated in currencies other than the Company's foreign entities' functional currencies, are recognized as a component of other expense (income), net within the consolidated statements of operations.

***Advertising Costs***

Advertising costs, consisting of costs related to dealer conferences and commercials, are expensed as incurred and are included in selling, general and administrative expense on the consolidated statements of operations. Total advertising costs were $3.8 million and $5.9 million during the years ended December 31, 2019 and 2020, respectively.

***Comprehensive Income (Loss)***

Comprehensive income (loss) is a measure of net income and all other changes in equity that result from transactions other than with equity holders and would normally be recorded in the consolidated statements of stockholders' equity and the consolidated statements of comprehensive income. Other comprehensive income (loss) consists of foreign currency translation adjustments and defined benefit plan adjustments.

Income tax (benefit) expense on the components of other comprehensive income (loss) was not significant for the years ended December 31, 2019 and 2020.

***Earnings Per Share***

Basic net income per share is calculated by dividing net income available to common stockholders by the weighted-average number of shares of common stock outstanding for the period. Diluted net income per share is calculated by dividing net income available to common stockholders by the diluted weighted-average number of shares of common stock outstanding for the period. There were no potentially dilutive securities outstanding during the year ended December 31, 2019 and 2020.

***Treasury Stock***

The Company accounts for treasury stock acquisitions using the cost method. The Company accounts for the retirement of treasury stock by deducting its par value from common stock and reflecting any excess of cost over par value as a deduction from additional paid-in capital on the consolidated balance sheets.

**Notes to Consolidated Financial Statements (Continued)**

***Recently Adopted Accounting Standards***

In June 2018, the FASB issued ASU 2018-07, *Compensation-Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting* ("ASU 2018-07"). The standard largely aligns the accounting for share-based payment awards issued to employees and non-employees by expanding the scope of ASC 718 to apply to non-employee share-based transactions, as long as the transaction is not effectively a form of financing. For public entities, ASU 2018-07 was required to be adopted for annual periods beginning after December 15, 2018, including interim periods within those fiscal years. For nonpublic entities, ASU 2018-07 is effective for annual periods beginning after December 15, 2019 and interim periods within those fiscal years. Early adoption is permitted for all entities but no earlier than the Company's adoption of ASU 2018-07. The Company adopted ASU 2018-07 as of the required effective date of January 1, 2020. The adoption of ASU 2018-07 adoption of this standard did not have a material impact on the Company's consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13, Fair Value *Measurement (Topic 820): Disclosure Framework — Changes to the Disclosure Requirements for Fair Value Measurement* ("ASU 2018-13"), which modifies the existing disclosure requirements for fair value measurements in ASC 820. The new disclosure requirements include disclosure related to changes in unrealized gains or losses included in other comprehensive income (loss) for recurring Level 3 fair value measurements held at the end of each reporting period and the explicit requirement to disclose the range and weighted-average of significant unobservable inputs used for Level 3 fair value measurements. The other provisions of ASU 2018-13 include eliminated and modified disclosure requirements. For all entities, this guidance is required to be adopted for annual periods beginning after December 15, 2019, including interim periods within those fiscal years. Early adoption is permitted. The Company adopted ASU 2018-13 as of the required effective date of January 1, 2020. The adoption of ASU 2018-13 did not have a material impact on the Company's consolidated financial statements.

***Recently Issued Accounting Pronouncements***

The Company qualifies as "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012 and has elected to "opt in" to the extended transition related to complying with new or revised accounting standards, which means that when a standard is issued or revised and it has different application dates for public and nonpublic companies, the Company will adopt the new or revised standard at the time nonpublic companies adopt the new or revised standard and will do so until such time that the Company either (i) irrevocably elects to "opt out" of such extended transition period or (ii) no longer qualifies as an emerging growth company. The Company may choose to early adopt any new or revised accounting standards whenever such early adoption is permitted for private companies.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)* ("ASU 2016-02"), which sets out the principles for the recognition, measurement, presentation and disclosure of leases for both parties to a contract (i.e., lessees and lessors). The new standard requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee. This classification will determine whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease. In addition, a lessee is required to record (i) a right-of-use asset and a lease liability on its balance sheet for all leases with accounting lease terms of more than 12 months regardless of whether it is an operating or financing lease and (ii) lease expense in its consolidated statement of operations for operating leases and amortization and interest expense in its consolidated statement of operations for financing leases. Leases with a term of 12 months or less may be accounted for similar to prior guidance for operating leases today. In July 2018, the FASB issued *ASU No. 2018-11, Leases (Topic 842)*, which added an optional transition method that allows companies to adopt the standard as of the beginning of the year of adoption as opposed to the earliest comparative period presented. In November 2019, the FASB issued guidance delaying the effective date for all entities, except for public business entities. For nonpublic entities, this guidance is effective for annual periods beginning after December 15, 2020. In June 2020, the FASB issued additional guidance delaying the effective date for all entities, except for public business entities. For public entities, ASU 2016-02 was

effective for annual periods beginning after December 15, 2018, including interim periods within those fiscal years. For nonpublic entities, this guidance is effective for annual periods beginning after December 15, 2021. Early adoption is permitted. The Company is currently evaluating the impact that the adoption of ASU 2016-02 will have on its consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"), which requires the measurement and recognition of expected credit losses for financial assets held at amortized cost. ASU 2016-13 replaces the existing incurred loss impairment model with an expected loss model. It also eliminates the concept of other-than-temporary impairment and requires credit losses related to available-for-sale debt securities to be recorded through an allowance for credit losses rather than as a reduction in the amortized cost basis of the securities. These changes will result in earlier recognition of credit losses. In November 2018, the FASB issued ASU 2018-19, *Codification Improvements to Topic 326, Financial Instruments — Credit Losses*, which narrowed the scope and changed the effective date for nonpublic entities for ASU 2016-13. The FASB subsequently issued supplemental guidance within ASU 2019-05, *Financial Instruments — Credit Losses (Topic 326): Targeted Transition Relief* ("ASU 2019-05"). ASU 2019-05 provides an option to irrevocably elect the fair value option for certain financial assets previously measured at amortized cost basis. For public entities that are SEC filers, excluding entities eligible to be smaller reporting companies, ASU 2016-13 is effective for annual periods beginning after December 15, 2019, including interim periods within those fiscal years. For all other entities, ASU 2016-13 is effective for annual periods beginning after December 15, 2022, including interim periods within those fiscal years. Early adoption is permitted. The Company is currently evaluating the impact that the adoption of ASU 2016-13 will have on its consolidated financial statements.

In August 2017, the FASB issued ASU 2017-12, *Derivatives and Hedging (Topic 815): Targeted Improvements to Accounting for Hedging Activities* ("ASU 2017-12"), which is intended to improve the financial reporting of hedging relationships to better portray the economic results of an entity's risk management activities in its consolidated financial statements. In addition to that main objective, the amendments in the update make certain targeted improvements to simplify the application of the hedge accounting guidance in current GAAP. Additional updates to further clarify the guidance in ASU 2017-12 were issued by the FASB in October 2018 within ASU 2018-16. For public entities, the amendment is effective for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. For nonpublic entities, ASU 2017-12 is effective for fiscal years beginning after December 15, 2020 and interim periods beginning after December 15, 2021. Early application is permitted in any interim period after the issuance of the update. The Company is currently evaluating the impact that the adoption of ASU 2017-12 will have on its consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* ("ASU 2019-12"), which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in ASC 740 and also clarifies and amends existing guidance to improve consistent application. For public entities, ASU 2019-12 is effective for annual periods beginning after December 15, 2020, and interim periods within those reporting periods. For nonpublic companies, ASU 2019-12 is effective for annual periods beginning after December 15, 2021, and interim periods within those reporting periods. Early adoption is permitted. The Company is currently evaluating the impact that the adoption of ASU 2019-12 will have on its consolidated financial statements.

In January 2020, the FASB issued ASU 2020-01, *Investments — Equity Securities (Topic 321), Investments — Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815)* ("ASU 2020-01"), which is intended to clarify the interaction of the accounting for equity securities under Topic 321 and investments accounted for under the equity method of accounting in Topic 323 and the accounting for certain forward contracts and purchased options accounted for under Topic 815. For public entities, ASU 2020-01 is effective for annual periods beginning after December 15, 2020, and interim periods within those reporting periods. For nonpublic companies, ASU 2020-01 is effective for annual

periods beginning after December 15, 2021, and interim periods within those reporting periods. The Company is currently evaluating the impact that the adoption of ASU 2020-01 will have on its consolidated financial statements.

In March 2020, the FASB issued ASU 2020-04, *Facilitation of the Effects of Reference Rate Reform on Financial Reporting* which provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by the discontinuation of the London Interbank Offered Rate ("LIBOR") or by another reference rate expected to be discontinued. This guidance is effective for all entities upon issuance on March 12, 2020 and may be applied through December 31, 2022. The expedients and exceptions in this guidance are optional, and the Company is evaluating the potential future financial statement impact of any such expedient or exception that it may elect to apply as the Company evaluates the effects of adopting this guidance on its consolidated financial statements.

## 3. ACQUISITIONS

***Narellan Group Pty Limited***

On May 31, 2019 (the "Acquisition Date"), Latham Pool Products acquired Narellan Group Pty Limited and its subsidiaries (collectively "Narellan") for a total purchase price of $35.2 million (the "Narellan Acquisition"). The results of Narellan's operations have been included in the consolidated financial statements since that date. Narellan is a fiberglass pool manufacturer based in Australia with operations in Australia, New Zealand and Canada. The acquisition expanded the Company's market share with a broader geographical footprint. Additionally, the acquisition provided the Company with an increase in dealer and franchise relationships. In connection with the Narellan Acquisition, consideration paid included $20.2 million in cash, $7.6 million in equity consideration and $7.4 million of contingent consideration as of the Acquisition Date. The cash consideration was funded, in part, through long-term debt proceeds of $22.3 million, net of discount of $0.7 million. The equity consideration consisted of Parent's Class A Shares. The valuation of the Parent's Class A Shares was prepared using a quantitative put options method. Since Parent funded a portion of the Company's purchase price, the Company recorded a capital contribution within additional paid-in capital within stockholders' equity. The Company incurred $1.1 million in transaction costs.

The Company agreed to pay the contingent consideration in the form of cash and equity consideration to the seller if certain EBITDA targets were achieved for any of the trailing twelve months periods ended December 31, 2019, June 30, 2020 or the year ended December 31, 2020 (the "Contingent Consideration"). The fair value of the Contingent Consideration at the Acquisition Date was $7.4 million (see Note 5).

On September 25, 2020, the Company amended the terms of the Narellan share purchase agreement to accelerate the settlement of the Contingent Consideration with the selling shareholders of Narellan based upon estimated EBITDA for the year ended December 31, 2020. The Contingent Consideration was settled through a cash payment of $6.6 million and the issuance by the Company's Parent of an additional 1,516,076 Class A units as equity consideration, which had a contractual value of $2.2 million and was recorded as a capital contribution from Parent on the consolidated statements of stockholders' equity. As the fair value of the Class A units issued of $2.8 million exceeded the contractual value of $2.2 million and the selling shareholders are also employees of the Company, the Company recorded the excess remuneration paid to the selling shareholders of $0.6 million as stock-based compensation in the consolidated statements of operations and as contributed capital in the consolidated statements of stockholders' equity as of and for the year-ended December 31, 2020.

The Company accounted for the Narellan Acquisition using the acquisition method of accounting in accordance with FASB ASC 805, *Business Combinations* ("ASC 805"). This requires that the assets acquired and liabilities assumed be measured at fair value. The Company estimated, using Level 3 inputs, the fair value of certain fixed assets using a combination of the cost approach and the market approach. Inventories were valued using the comparative sales method. Specific to intangible assets, dealer relationships and franchise relationships were valued using the multi-period excess earnings method, whereas trade names

and proprietary pool designs were valued using the relief from royalty method. The Company recorded the assets acquired and liabilities assumed at their respective fair values as of the acquisition date.

The following summarizes the purchase price allocation for the Company's acquisition of Narellan:

| (in thousands) | May 31, 2019 |
|---|---|
| Total consideration | $35,233 |
| Allocation of purchase price: | |
| Cash | 24 |
| Trade receivables | 1,420 |
| Inventories | 4,501 |
| Prepaid expenses and other current assets | 472 |
| Property and equipment | 4,861 |
| Intangible assets | 18,332 |
| Deferred tax asset | 126 |
| Total assets acquired | 29,736 |
| Accounts payable | 3,379 |
| Accrued expenses and other current liabilities | 442 |
| Deferred tax liabilities | 470 |
| Total liabilities assumed | 4,291 |
| Total fair value of net assets acquired, excluding goodwill: | 25,445 |
| Goodwill | $ 9,788 |

Total consideration was comprised of the following:

| (in thousands) | Amount |
|---|---|
| Cash consideration | $20,238 |
| Fair value of equity consideration | 7,567 |
| Fair value of contingent consideration | 7,428 |
| Total consideration | $35,233 |

The excess of the purchase price over the fair value of the identifiable assets acquired and the liabilities assumed in the acquisition was allocated to goodwill in the amount of $9.8 million. Goodwill resulting from the acquisition was attributable to the expanded market share and broader geographical footprint. The goodwill recognized is not deductible for tax purposes.

**Notes to Consolidated Financial Statements (Continued)**

The Company allocated a portion of the purchase price to specific intangible asset categories as follows:

| Definite-lived intangible assets: | Fair Value (in thousands) | Amortization Period (in years) |
|---|---|---|
| Trade names and trademarks | $9,535 | 25 |
| Pool designs | 5,728 | 14 |
| Patented technology | 1,410 | 5 |
| Franchise relationships | 1,187 | 4 |
| Dealer relationships | 472 | 5 |

The following are the net sales and net loss from Narellan included in the Company's results from the Acquisition Date through December 31, 2019:

| (in thousands) | Year Ended December 31, 2019 |
|---|---|
| Net sales | $15,893 |
| Net loss | $ (1,047) |

***GL International, LLC***

On October 22, 2020, Latham Pool Products acquired GL International, LLC ( "GLI") for a total purchase price of $79.7 million (the "GLI Acquisition"). The results of GLI's operations have been included in the consolidated financial statements since that date. GLI specializes in manufacturing custom pool liners and safety covers. As a result, this acquisition expanded the Company's liner and safety cover product offerings.In connection with the GLI Acquisition, consideration paid was $79.7 million in cash, or $74.7 million net of cash acquired of $5.0 million, and excluding a net working capital adjustment receivable of $0.8 million. The net working capital adjustment receivable was recorded in prepaid expenses and other current assets in the consolidated balance sheet as of December 31, 2020. The cash consideration was funded from existing cash on hand. The Company incurred $2.4 million in transaction costs.

The Company accounted for the GLI Acquisition using the acquisition method of accounting in accordance with FASB ASC 805, *Business Combinations* ("ASC 805"). This requires that the assets acquired and liabilities assumed be measured at fair value. The Company estimated, using Level 3 inputs, the fair value of certain fixed assets using a combination of the cost approach and the market approach. Inventories were valued using the comparative sales method, less the cost of disposal. Specific to intangible assets, dealer relationships were valued using the multi-period excess earnings method, whereas trade names were valued using the relief from royalty method. The Company recorded the assets acquired and liabilities assumed at their respective fair values as of the acquisition date.

**Notes to Consolidated Financial Statements (Continued)**

The following summarizes the purchase price allocation for the Company's acquisition of GLI:

| (in thousands) | October 22, 2020 |
|---|---|
| Total consideration | $79,743 |
| Allocation of purchase price: | |
| Cash | 5,007 |
| Trade receivables | 10,639 |
| Inventories | 11,854 |
| Prepaid expenses and other current assets | 3,949 |
| Property and equipment | 1,402 |
| Intangible assets | 46,700 |
| Total assets acquired | 79,551 |
| Accounts payable | 3,536 |
| Accrued expenses and other current liabilities | 8,853 |
| Other long-term liabilities | 524 |
| Total liabilities assumed | 12,913 |
| Total fair value of net assets acquired, excluding goodwill: | 66,638 |
| Goodwill | $13,105 |

The excess of the purchase price over the fair value of the identifiable assets acquired and the liabilities assumed in the acquisition was allocated to goodwill in the amount of $13.1 million. Goodwill resulting from the GLI Acquisition was attributable to the expanded market share and product offerings. Goodwill resulting from the GLI Acquisition is deductible for tax purposes.

The Company allocated a portion of the purchase price to specific intangible asset categories as follows:

| Definite-lived intangible assets: | Fair Value (in thousands) | Amortization Period (in years) |
|---|---|---|
| Trade names | $ 9,500 | 9 |
| Dealer relationships | 37,200 | 8 |
| | $46,700 | |

The following are the net sales and net loss from GLI included in the Company's results from the GLI Acquisition Date through December 31, 2020:

| (in thousands) | Year Ended December 31, 2020 |
|---|---|
| Net sales | $ 7,689 |
| Net loss | $(1,123) |

***Pro Forma Financial Information (Unaudited)***

The following pro forma financial information presents the statements of operations of the Company combined with Narellan and GLI as if the acquisitions occurred on January 1, 2019. The pro forma results do not include any anticipated synergies, cost savings or other expected benefits of an acquisition. As the Narellan Acquisition closed on May 31, 2019, Narellan's operating results have already been reflected in the Company's consolidated statements of operations for the year ended December 31, 2020. The pro forma financial information is not necessarily indicative of what the financial results would have been had the acquisitions been completed on January 1, 2019 and is not necessarily indicative of the Company's future financial results.

**Notes to Consolidated Financial Statements (Continued)**

| (in thousands) | Year Ended December 31, 2019 | 2020 |
|---|---|---|
| Net sales | $382,029 | $462,802 |
| Net income | $ 6,066 | $ 26,344 |

The pro forma financial information presented above has been calculated after adjusting for the results of the Narellan Acquisition and GLI Acquisition for the year ended December 31, 2019 and for the GLI Acquisition for the year ended December 31, 2020 to reflect the accounting effects as a result of the acquisitions, including the amortization expense from acquired intangible assets, the depreciation and amortization expense from acquired property and equipment, the additional cost of sales from acquired inventory, interest expense from debt financing, and any related tax effects. With respect to the GLI Acquisition, transaction costs incurred during the year ended December 31, 2020 are reflected within pro forma net income for the year ended December 31, 2019, in order to reflect the GLI Acquisition as if it had occurred on January 1, 2019.

## 4. EQUITY METHOD INVESTMENT

On October 30, 2020, the Company entered into a securities purchase agreement to purchase 28% of the common units of Premier Pools & Spas for $25.4 million. The Company concluded that it holds common stock of Premier Pools & Spas and has the ability to exercise significant influence over Premier Pools & Spas, but does not have a controlling financial interest. Accordingly, the Company accounts for this investment using the equity method of accounting. The Company's proportionate share of the earnings or losses of the investee are reported as a separate line in the consolidated statements of operations.

Premier Pools & Spas is a holding company for its manufacturing and franchising companies including PFC LLC, Premier Franchise Management LLC, Premier Pools Management LLC, and Premier Fiberglass LLC (the "Premier Companies"). The Premier Companies are a leading swimming pool-building brand that uses its franchisee network to sell and install pools around the United States.

In connection with Latham's Investment in Premier Pools & Spas, the Company entered into an exclusive supply agreement with Premier Pools & Spas, the Premier Companies, and Premier Pools & Spas' franchisees ("Premier Franchisees") (together, the "Customer"). PremierPools & Spas does not consolidate the operations of the Premier Franchisees. Per the supply agreement, Latham is the exclusive supplier of the Premier Franchisees for specific pool and pool products. These products include fiberglass products and package pool products. The initial term of the supply agreement is ten years.

For the first three years of the supply agreement, the Customer is entitled to a low-teens percentage rebate for all fiberglass pools sold and an additional growth rebate of a low single-digit to low-teens percentage based on year over year sales growth on fiberglass pools (the "Rebates"). The Rebates will be paid directly to Premier Pools Management Corp. Holdco.

As of December 31, 2020, the Company's carrying amount for the equity method investment in Premier Pools & Spas was $25.4 million. Because of the three-month financial reporting lag, the Company did not record any earnings from its interest in Premier Pools & Spas' earnings for the year ended December 31, 2020. The Company will begin to record its interest in the net earnings of Premier Pools & Spas, along with adjustments for amortization of basis differences and any investee capital transactions, during the fiscal quarter ended April 3, 2021.

## 5. FAIR VALUE MEASUREMENTS

***Assets and liabilities measured at fair value on a nonrecurring basis***

The Company's non-financial assets such as goodwill, intangible assets and property and equipment are measured at fair value upon acquisition or remeasured to fair value when an impairment charge is recognized. Such fair value measurements are based predominantly on Level 2 and Level 3 inputs.

**Notes to Consolidated Financial Statements (Continued)**

***Assets and liabilities measured at fair value on a recurring basis***

The fair value of the Company's Contingent Consideration is measured and recorded on the consolidated balance sheets using Level 3 inputs because it is valued based on unobservable inputs and other estimation techniques due to the absence of quoted market prices. The Company values the Contingent Consideration using a Monte Carlo simulation, which relies on management's projections of EBITDA and the estimated probability of achieving such targets.

Estimates of fair value are subjective in nature, involve uncertainties and matters of significant judgment, and are made at a specific point in time. Thus, changes in key assumptions from period to period could significantly affect the estimate of fair value.

The following table presents a reconciliation of the Company's Contingent Consideration measured and recorded at fair value on a recurring basis as of December 31, 2019, using significant unobservable inputs (Level 3) (in thousands):

| | Fair Value |
|---|---|
| Balance as of May 31, 2019 | $ 7,428 |
| Change in fair value of Contingent Consideration | 1,441 |
| Foreign currency translation adjustment | 109 |
| Balance as of December 31, 2019 | 8,978 |
| Change in fair value of Contingent Consideration | (204) |
| Foreign currency translation adjustment | 58 |
| Payment of Contingent Consideration and issuance of Class A units (see Note 3) | (8,832) |
| Balance as of September 25, 2020 | $ — |

The Monte Carlo simulation utilized the following unobservable inputs to determine the fair value of the Contingent Consideration as of December 31, 2019:

| | Year Ended December 31, 2019 |
|---|---|
| EBITDA risk adjustment | 17.30% |
| Annual EBITDA volatility | 55.00% |
| Risk-free rate of return | 2.10% |

The fair value of the benefit plan assets is measured and recorded on the Company's consolidated balance sheets using Level 2 inputs. The fair value of the Company's plan assets was $1.3 million as of December 31, 2019. During the year ended December 31, 2020, the Company terminated its defined benefit pension plan (see Note 15).

***Fair value of financial instruments***

The Company considers the carrying amounts of cash, trade receivables, prepaid expenses and other current assets, accounts payable, and accrued expenses and other current liabilities, to approximate fair value due to the short-term maturities of these instruments.

*Term loan*

The term loan is carried at amortized cost; however, the Company estimates the fair value of the term loan for disclosure purposes. The fair value of the term loan is determined using inputs based on observable market data of a non-public exchange using, which are classified as Level 2 inputs. The following table sets forth the carrying amount and fair value of the term loan (in thousands):

| | December 31, | | | |
|---|---|---|---|---|
| | 2019 | | 2020 | |
| | Carrying Value | Estimated Fair Value | Carrying Value | Estimated Fair Value |
| Term loan | $223,223 | $220,712 | $221,496 | $221,081 |

*Interest rate swap*

The Company estimates the fair value of the interest rate swap (see Note 9) on a quarterly basis using Level 2 inputs, including the forward LIBOR curve. The fair value is estimated by comparing (i) the present value of all future monthly fixed rate payments versus (ii) the variable payments based on the forward LIBOR curve. As of December 31, 2019 and 2020, the Company's interest rate swap liability was $0 and $0.3 million, which was recorded within other long-term liabilities on the consolidated balance sheets.

## 6. GOODWILL AND INTANGIBLE ASSETS, NET

***Goodwill***

The following table presents the changes in the carrying value of goodwill during the years ended December 31, 2019 and 2020 (in thousands):

| | Amount |
|---|---|
| Balance as of December 31, 2018 | $ 91,782 |
| Acquisition | 9,788 |
| Foreign currency translation adjustment | 102 |
| Balance as of December 31, 2019 | 101,672 |
| Acquisition | 13,105 |
| Foreign currency translation adjustment | 973 |
| Balance as of December 31, 2020 | $115,750 |

The Company performed an annual test for goodwill impairment in the fourth quarter of the fiscal year ended December 31, 2019 and 2020 in accordance with Step 1 of ASC 350 and determined that goodwill was not impaired.

***Intangible Assets***

Intangible assets, net as of December 31, 2019 consisted of the following (in thousands):

| | December 31, 2019 | | | |
|---|---|---|---|---|
| | Gross Carrying Amount | Foreign Currency Translation | Accumulated Amortization | Net Amount |
| Trade names and trademarks | $125,600 | $ 99 | $ 5,032 | $120,667 |
| Patented technology | 16,126 | 14 | 1,698 | 14,442 |
| Pool designs | 5,728 | 59 | 239 | 5,548 |
| Franchise relationships | 1,187 | 12 | 173 | 1,026 |
| Dealer relationships | 123,176 | 5 | 8,530 | 114,651 |
| Non-competition agreements | 2,476 | — | 513 | 1,963 |
| | $274,293 | $189 | $16,185 | $258,297 |

The Company recognized $15.6 million of amortization expense related to intangible assets during the year ended December 31, 2019.

**Notes to Consolidated Financial Statements (Continued)**

Intangible assets, net as of December 31, 2020 consisted of the following (in thousands):

| | December 31, 2020 | | | |
|---|---|---|---|---|
| | Gross Carrying Amount | Foreign Currency Translation | Accumulated Amortization | Net Amount |
| Trade names and trademarks | $135,100 | $1,047 | $10,258 | $125,889 |
| Patented technology | 16,126 | 155 | 3,452 | 12,829 |
| Pool designs | 5,728 | 629 | 648 | 5,709 |
| Franchise relationships | 1,187 | 130 | 470 | 847 |
| Dealer relationships | 160,376 | 52 | 17,697 | 142,731 |
| Non-competition agreements | 2,476 | — | 1,008 | 1,468 |
| | $320,993 | $2,013 | $33,533 | $289,473 |

The Company recognized $17.3 million of amortization expense related to intangible assets during the year ended December 31, 2020.

The Company estimates that amortization expense related to definite-lived intangible assets will be as follows in each of the next five years and thereafter (in thousands):

| Year Ended | Estimated Future Amortization Expense |
|---|---|
| 2021 | $ 21,959 |
| 2022 | 21,959 |
| 2023 | 21,768 |
| 2024 | 20,948 |
| 2025 | 20,791 |
| Thereafter | 182,048 |
| | $289,473 |

## 7. INVENTORIES, NET

Inventories, net consisted of the following (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Raw materials | $19,035 | $37,010 |
| Finished goods | 16,576 | 27,808 |
| | $35,611 | $64,818 |

**Notes to Consolidated Financial Statements (Continued)**

## 8. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consisted of the following (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Land | $ 1,613 | $ 1,613 |
| Building and improvements | 5,495 | 5,898 |
| Machinery and equipment | 17,661 | 21,478 |
| Furniture and fixtures | 511 | 1,406 |
| Computer equipment and software | 5,090 | 6,633 |
| Molds and dyes | 5,602 | 9,051 |
| Leasehold improvements | 2,611 | 3,573 |
| Vehicles | 2,338 | 3,061 |
| Construction in progress | 3,046 | 8,525 |
| | 43,967 | 61,238 |
| Less: Accumulated depreciation | (6,122) | (13,881) |
| | $37,845 | $ 47,357 |

Depreciation and amortization expense related to property and equipment during the years ended December 31, 2019 and 2020 was $6.0 million and $8.0 million, respectively. Construction in progress recorded as of December 31, 2019 and 2020 primarily related to an increase in fiberglass molds and fiberglass production capacity. The Company recorded aggregate losses on sales and disposals of property and equipment of $0.7 million and $0.3 million during the years ended December 31, 2019 and 2020 respectively.

## 9. LONG-TERM DEBT

The components of the Company's outstanding debt obligations consisted of the following (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Term loan | $232,191 | $228,147 |
| Less: Unamortized discount and debt issuance costs | (8,968) | (6,651) |
| Total debt | 223,223 | 221,496 |
| Less: Current portion of long-term debt | (6,891) | (13,042) |
| Total long-term debt | $216,332 | $208,454 |

***Revolving Credit Facility***

On December 18, 2018, the Latham Pool Products entered into an agreement (the "Credit Agreement") with Nomura Corporate Funding Americas, LLC ("Nomura") that included a revolving line of credit (the "Revolver") and letters of credit ("Letters of Credit" or collectively with the Revolver, the "Revolving Credit Facility"), as well as a term loan (as described below). The Revolving Credit Facility was utilized to finance ongoing general corporate and working capital needs with the Revolver of up to $30.0 million. The Revolving Credit Facility matures on December 18, 2023.

The Revolving Credit Facility allows for either Eurocurrency borrowings, bearing interest ranging from 4.50% to 4.75%, or base rate borrowings, bearing interest ranging from 3.50% to 3.75% depending on the First Lien Net Leverage Ratio, as defined in the Credit Agreement. A commitment fee accrues on any unused portion of the commitments under the Revolving Credit Facility. The commitment fee is due and payable

quarterly in arrears and is equal to the applicable margin times the actual daily amount by which the $30.0 million initial commitment exceeds the sum of the outstanding borrowings under the Revolver and outstanding Letters of Credit obligations. The applicable margin ranges from 0.375% to 0.500% as determined by the Company's First Lien Net Leverage Ratio as defined in the Credit Agreement.

The Company is required to meet certain financial covenants, including maintaining specific liquidity measurements. There are also negative covenants, including certain restrictions on the Company's ability to incur additional indebtedness, create liens, make investments, consolidate or merge with other entities, enter into transactions with affiliates and make prepayments. As of December 31, 2019 and 2020, the Company was in compliance with all financial-related covenants related to the Credit Agreement. There were no amounts outstanding as of December 31, 2019 and 2020 on the Revolving Credit Facility or Letters of Credit.

***Term Loan Facility***

On December 18, 2018, in connection with the Acquisition, the Company entered into the Credit Agreement with Nomura to borrow $215.0 million (the "Original Term Loan"). The Company incurred debt issuance costs of $11.5 million related to the transaction.

The Original Term Loan was amended on May 29, 2019, to provide additional borrowings of $23.0 million at a discount of $0.7 million (the "First Amendment") to fund the Company's acquisition of Narellan (see Note 3). Any portion of the First Amendment not used to fund the acquisition of Narellan was required to be applied to repay the First Amendment in an aggregate amount equal to such portion of the First Amendment, without any premium or penalty.

On August 6, 2020, the Company entered into a Form of Affiliated Lender Assignment and Assumption with Nomura (the "Assignment"). Under the Assignment, the Company repaid $4.975 million of the outstanding principal balance, which was accepted as full repayment of $5.0 million of the outstanding principal balance. The Company treated the $25.0 thousand as a gain on extinguishment of debt and recorded it within interest expense, net in its consolidated statements of operations during the year ended December 31, 2020.

On October 14, 2020, the Company entered into a subsequent amendment under the Original Term Loan with Nomura to borrow an additional $20.0 million (the "Second Amendment" and collectively with the Original Term Loan and the First Amendment, the "Term Loan"). The Company accounted for the borrowings under the Second Amendment as new debt and recorded $0.1 million of third party costs as a direct reduction to the carrying amount of long-term debt on the consolidated balance sheet. There were no financing costs incurred with the Second Amendment. The Term Loan has a maturity date of June 18, 2025. Interest and principal payments are due quarterly.

The Term Loan bears interest at (1) a base rate equal to the highest of (i) the Federal Funds Rate plus 1⁄2 of 1%, (ii) the "prime rate" published in the Money Rates section of the Wall Street Journal and (iii) LIBOR plus 1.00% (2) plus a Loan Margin of (i) 6.00% for Eurocurrency Rate Loans and (ii) 5.00% for Base Rate Loans, as defined in the Credit Agreement. Principal payments under the First Amendment were calculated as 0.629% of the outstanding principal balance. In connection with the Second Amendment, the Company is required to repay the outstanding principal balance of the Term Loan in fixed quarterly payments of $3.3 million, commencing March 31, 2021. The Company was required to make a $1.6 million principal payment for the partial period of October 14, 2020 through December 31, 2020. Outstanding borrowings at December 31, 2019 and 2020 were $223.2 million and $221.5 million, respectively, net of discount and debt issuance costs of $9.0 million and $6.7 million, respectively. In connection with the Term Loan, the Company is subject to various financial reporting, financial and other covenants, including maintaining specific liquidity measurements.

**Notes to Consolidated Financial Statements (Continued)**

Under the Term Loan, the Company is required to make mandatory prepayments based on the Company's excess cash flow for the year, as follows (as a percentage of the Company's excess cash flow for the year):

| Leverage Ratio | Mandatory Prepayment Percentage |
|---|---|
| > 3.50:1.00 | 90% |
| > 3.00:1.00 and ≤ 3.50:1.00 | 75% |
| > 2.50:1.00 and ≤ 3.00:1.00 | 50% |
| > 2.00:1.00 and ≤ 2.50:1.00 | 25% |
| ≤ 2.00:1.00 | 0% |

Leverage Ratio in the table above is defined as of any date of determination, the ratio of the aggregate principal amount of indebtedness at such date to consolidated earnings before interest, taxes, depreciation and amortization.

As of December 31, 2019, the estimated mandatory prepayment to be paid was $0.9 million. There was no estimated mandatory prepayment to be paid as of December 31, 2020. As of December 31, 2020, the current portion of principal due on the Term Loan was $13.0 million, and this amount is shown as a current liability in current maturities of long-term debt on the consolidated balance sheets. There are also negative covenants, including, but not limited to, certain restrictions on the Company's ability to incur additional indebtedness, create liens, make investments, consolidate or merge with other entities, enter into transactions with affiliates and make prepayments. As of December 31, 2019 and 2020, the Company was in compliance with all financial-related covenants related to the Term Loan.

As of December 31, 2019, the unamortized debt issuance costs and discount on the Term Loan were $8.4 million and $0.5 million, respectively. As of December 31, 2020, the unamortized debt issuance costs and discount on the Term Loan were $6.3 million and $0.4 million, respectively. The effective interest rate was 10.47% and 8.03% for the years ended December 31, 2019 and 2020, respectively.

Interest rate risk associated with the Company's Credit Agreement is managed through an interest rate swap which the Company executed on April 30, 2020. The swap has an effective date of May 18, 2020 and a termination date of May 18, 2023. Under the terms of the swap, the Company fixed its LIBOR borrowing rate at 0.442% on a notional amount of $200.0 million. The interest rate swap is not designated as a hedging instrument for accounting purposes (see Note 2 and Note 5).

The Company recorded interest expense associated with the Revolving Credit Facility, Second Amendment and interest rate swap, as follows (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Cash interest expense | $19,488 | $15,625 |
| Amortization of debt issuance costs | 2,968 | 2,179 |
| Amortization of original issue discount | 183 | 138 |
| Interest rate swap | — | 334 |
| Gain on extinguishment of debt | — | (25) |
| Total interest expense | $22,639 | $18,251 |

**Notes to Consolidated Financial Statements (Continued)**

Principal payments due on the outstanding debt in the next five fiscal years, excluding any potential payments based on excess cash flow levels, are as follows (in thousands):

| Year Ended | Term Loan Facility |
|---|---|
| 2021 | $ 13,042 |
| 2022 | 13,042 |
| 2023 | 13,042 |
| 2024 | 13,042 |
| 2025 | 175,979 |
| | $228,147 |

The obligations under the Credit Agreement are guaranteed by certain wholly owned subsidiaries (the "Guarantors") of the Company as defined in the security agreement. The obligations under the Credit Agreement are secured by substantially all of the Guarantors' tangible and intangible assets, including their accounts receivables, equipment, intellectual property, inventory, cash and cash equivalents, deposit accounts and security accounts. The Credit Agreement also restricts payments and other distributions unless certain conditions are met, which could restrict the Company's ability to pay dividends.

## 10. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consisted of the following (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Accrued sales rebates | $ 6,520 | $15,511 |
| Accrued product warranties | 2,663 | 2,705 |
| Accrued incentives | 2,448 | 11,244 |
| Accrued vacation | 2,425 | 3,805 |
| Accrued payroll | 2,334 | 6,098 |
| Deferred offering costs | — | 1,040 |
| Accrued third-party services | 1,556 | 2,172 |
| Other | 4,287 | 8,031 |
| Total accrued expenses and other current liabilities | $22,233 | $50,606 |

## 11. PRODUCT WARRANTIES

The warranty reserve activity consisted of the following (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Balance at the beginning of the year | $ 1,977 | $ 2,846 |
| Accruals for warranties issued | 3,729 | 3,966 |
| Warranty liabilities assumed in GLI Acquisition | — | 118 |
| Less: Settlements made (in cash or in kind) | (2,860) | (4,048) |
| Balance at the end of the year | 2,846 | 2,882 |
| Less: Current portion of accrued warranty costs | (2,663) | (2,705) |
| Accrued warranty costs – less current portion | $ 183 | $ 177 |

**Notes to Consolidated Financial Statements (Continued)**

## 12. NET SALES

The following table sets forth the Company's disaggregation of net sales by product line (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| In-ground Swimming Pools | $175,033 | $237,410 |
| Covers | 70,984 | 84,524 |
| Liners | 71,958 | 81,455 |
| | $317,975 | $403,389 |

The allowance for bad debt activity during the years ended December 31, 2019 and 2020 was as follows (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Balance at the beginning of the year | $1,535 | $1,322 |
| Bad debt expense | 253 | 358 |
| Write-offs | (466) | (242) |
| Balance at the end of the year | $1,322 | $1,438 |

## 13. INCOME TAXES

The Company is subject to United States federal, state and local income taxes, as well as other foreign income taxes. The domestic and foreign components of its income (loss) before income taxes are as follows (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Income (loss) before income taxes: | | |
| Domestic | $9,939 | $19,609 |
| Foreign | (7,153) | 3,150 |
| Total | $2,786 | $22,759 |

Current and deferred income tax (benefit) expense is composed of the following (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Current income tax (benefit) expense: | | |
| Domestic | $ 5,424 | $10,342 |
| Foreign | 131 | 1,104 |
| Total current tax (benefit) expense | 5,555 | 11,446 |
| Deferred income tax (benefit) expense: | | |
| Domestic | (10,020) | (4,532) |
| Foreign | (206) | (138) |
| Total deferred tax (benefit) expense | (10,226) | (4,670) |
| Total income tax (benefit) expense | $ (4,671) | $ 6,776 |

**Notes to Consolidated Financial Statements (Continued)**

The reconciliation of the statutory federal income tax rate with the Company's effective income tax rate is as follows (% of Income Before Income Taxes):

| | Year Ended December 31, 2019 | Year Ended December 31, 2020 |
|---|---|---|
| Federal statutory tax rate | 21.0% | 21.0% |
| Foreign taxes less than U.S. statutory rate | 1.1% | 1.2% |
| State income tax, net of federal benefit | (67.2)% | 1.4% |
| Uncertain tax positions | 348.2% | 0.8% |
| Change in valuation allowance | (5.9)% | (1.1)% |
| GILTI | 21.1% | 1.5% |
| Meals and entertainment | 6.8% | 0.5% |
| Foreign expenses not deductible for tax | 56.1% | 1.7% |
| Transaction costs not deductible for tax | 13.3% | 2.0% |
| Canadian restructuring | (562.4)% | — |
| Canadian Branch Income | 0.0% | 1.8% |
| Other expenses not deductible for tax | (0.1)% | (1.0)% |
| | (168.0)% | 29.8% |

The Company continues to maintain valuation allowances in Canada primarily related to tax losses where it believes it is not more likely than not that the losses will be utilized. The following table summarizes changes in the valuation allowance (in thousands):

| | Year Ended December 31 | |
|---|---|---|
| | 2019 | 2020 |
| Balance at January 1 | $(12,300) | $(12,463) |
| Additions | (163) | (241) |
| Balance at December 31 | $(12,463) | $(12,704) |

On December 22, 2017, the U.S. government enacted comprehensive tax legislation commonly referred to as the U.S. Tax Cuts and Jobs Act of 2017 (the "Act"). The Act made broad and complex changes to the U.S. tax code, including, but not limited to (1) reducing the U.S. federal corporate tax rate from 35% to 21% effective January 1, 2018, (2) bonus depreciation that allows for full expensing of qualified property, (3) interest expense deduction limitation rules, and (4) new international tax provisions including, but not limited to, GILTI and Foreign Derived Intangible Income ("FDII"). The Act also required companies to record/pay a one-time transition tax on earnings of certain foreign subsidiaries that were previously tax deferred. The one-time transition tax was based on the Company's total post-1986 earnings and profits ("E&P") that were previously deferred for U.S. income tax purposes. The Company did not record a liability for the one-time transition tax for all of its foreign subsidiaries as the Company did not have aggregate E&P from those foreign subsidiaries.

During the year ended December 31, 2019, the Company finalized the computations of the income tax effects of the Act. Although the Company has completed its accounting for the effects of the Act, the determination of the Act's income tax effects may change following future legislation or further interpretation of the Act based on the publication of recently proposed U.S. Treasury regulations and guidance from the Internal Revenue Service and state tax authorities. The Company has elected with respect to its treatment of GILTI to account for taxes on GILTI as incurred.

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act") was enacted in response to the coronavirus ("COVID-19") pandemic. The CARES Act is aimed at providing assistance and health care for individuals, families, and businesses affected by COVID-19 and generally

supporting the U.S. economy. The CARES Act, among other things, includes provisions related to refundable payroll tax credits, deferment of the employer portion of social security payments, net operating loss carryback periods, modifications to the net interest deduction limitations, and technical corrections to tax depreciation methods for qualified improvement property. The CARES Act did not have a material impact on the Company's consolidated financial condition or results of operations for the year ended December 31, 2020.

On December 27, 2020, the Consolidated Appropriations Act ("CAA") was enacted in further response to the COVID-19 pandemic. The CAA extended many of the provisions enacted by the CARES Act, the extension of which likewise did not have a material impact on the Company's consolidated financial statements for the year ended December 31, 2020.

***Deferred Income Taxes***

Deferred income taxes recognize the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the carrying amounts used for income tax purposes, and the impact of available net operating loss ("NOL") and tax credit carryforwards. These items are stated at the enacted tax rates that are expected to be in effect when taxes are actually paid or recovered. Deferred income tax assets and liabilities recorded on the balance sheets as of December 31, 2019 and 2020 consist of the following (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Deferred tax assets: | | |
| Net operating loss carryforwards | $ 12,110 | $ 12,099 |
| Inventories, net | 680 | 473 |
| Warranty reserve | 649 | 789 |
| Trade receivables | 477 | 360 |
| Profits interest units | 389 | 760 |
| Section 163(j) | 289 | — |
| Deferred taxes in equity | 257 | 257 |
| Accrued expenses | 224 | 498 |
| Transaction costs | 107 | 607 |
| Canadian tax credits | 86 | 255 |
| Other | 64 | 216 |
| Gross deferred tax assets | 15,332 | 16,314 |
| Valuation allowance | (12,463) | (12,704) |
| Total deferred tax asset | 2,869 | 3,610 |
| Less: Foreign deferred tax benefit | (206) | (345) |
| Total domestic deferred tax asset | 2,663 | 3,265 |
| Deferred tax liabilities: | | |
| Intangible assets | (57,221) | (53,874) |
| Property and equipment, net | (4,677) | (4,120) |
| Prepaid expenses | (773) | (464) |
| Total deferred tax liabilities | (62,671) | (58,458) |
| Net deferred tax liabilities | $(60,008) | $(55,193) |

ASC 740 requires that the Company reduce its deferred income tax assets by a valuation allowance if, based on the weight of the available evidence, it is more likely than not that all or a portion of a deferred

tax asset will not be realized. After consideration of all evidence, both positive and negative, the Company concluded that it is more likely than not that it will be unable to realize a portion of its deferred tax assets and that a valuation allowance of $12.7 million is necessary as of December 31, 2020. It is reasonably possible that the Company's estimates of future taxable income may change within the next 12 months, resulting in a change to the valuation allowance in one or more jurisdictions.

As of December 31, 2020, the Company had net operating loss ("NOL") carryforwards of approximately $12.1 million (tax effected), which will be available to offset future taxable income and tax liabilities. The NOL carryforwards expire in calendar years 2026 through 2039. As of December 31, 2020, a valuation allowance of $12.1 million has been recorded against the NOL carryforwards, where it appears more likely than not that such benefits will not be realized. The NOL carryforwards are in Canada.

The Company reinvests earnings of foreign operations indefinitely and, accordingly, does not provide for income taxes that could result from the remittance of such earnings. The Company acknowledges that it would need to accrue and pay taxes should it decide to repatriate cash generated from earnings of its foreign subsidiaries that are considered indefinitely reinvested but expect that the potential tax liability would be insignificant.

***Tax Uncertainties***

The liability related to uncertain tax positions, exclusive of interest, is $5.4 million at December 31, 2020. Of this amount, $5.4 million, if recognized, would impact the effective tax rate. The Company does not expect this balance to significantly change within the next twelve months. The Company's policy is to record interest and penalties related to unrecognized tax benefits in the income tax provision (benefit). As of December 31, 2020, the Company had $0.2 million of accrued interest and no accrued penalties.

The Company is subject to income taxes in the U.S., certain states and numerous foreign jurisdictions. While the Company believes it has adequately provided for all tax positions, amounts asserted by taxing authorities could be greater than its accrued position. Accordingly, additional provisions on federal and foreign tax-related matters could be recorded in the future as revised estimates are made or the underlying matters are settled or otherwise resolved.

The Company files a federal consolidated tax return which includes all U.S. entities as well as several combined or consolidated state tax returns and separate state tax returns. In addition, the Company files Canadian and Australian tax returns for its Canadian, Australian, and New Zealand entities. The Company is subject to the regular examination of its income tax returns by tax authorities. The Company has audits ongoing for the year 2018 related to Utah State Income Tax. Examinations in material jurisdictions or changes in laws, rules, regulations or interpretations by local taxing authorities could result in impacts to tax years open under statute or to foreign operating structures currently in place. The Company regularly assesses the likelihood of adverse outcomes resulting from these examinations or changes in laws, rules, regulations or interpretations to determine the adequacy of its provision for taxes. It is possible the outcomes from these examinations will have a material adverse effect on the Company's financial condition and operating results.

Tax years from the fiscal year ended December 31, 2017 through present are open for examination in the U.S. Tax years and tax periods ended December 31, 2016 through present are open for state examination. Tax years and tax periods from June 30, 2017 through present are currently open for examination in Canada. Tax years and tax periods from June 30, 2016 through present are currently open for examination in Australia. Tax years and tax periods from March 31, 2016 through present are currently open for examination in New Zealand.

The following is a reconciliation of the beginning and ending amount of uncertain tax positions (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Balance at the beginning of the year | $ — | $9,681 |
| Additions for tax positions taken during prior years | — | 181 |
| Additions for tax positions taken during the current year | 9,681 | — |
| Balance at the end of the year | $9,681 | $9,862 |

## 14. COMMITMENTS AND CONTINGENCIES

***Lease Commitments***

The Company leases certain property and equipment under agreements generally with terms of five years or less and may include certain renewal options. Rental expense during the years ended December 31, 2019 and 2020 was $6.1 million and $6.8 million, respectively.

The minimum annual rental commitments under non-cancelable operating leases as of December 31, 2020 are due as follows (in thousands):

| Year Ended | |
|---|---|
| 2021 | $ 6,484 |
| 2022 | 5,971 |
| 2023 | 4,455 |
| 2024 | 3,834 |
| 2025 | 3,491 |
| Thereafter | 5,094 |
| | $29,329 |

***Litigation***

In the normal course of its business, the Company is involved in various legal proceedings involving contractual and employment relationships, product liability claims, trademark rights and a variety of other matters. The Company does not believe there are any pending legal proceedings that will have a material impact on the Company's financial position, results of operations or cash flows. At each reporting date, the Company evaluates whether or not a potential loss amount or a potential range of loss is probable and reasonably estimable under the provisions of the authoritative guidance that addresses accounting for contingencies. The Company expenses as incurred the costs related to such legal proceedings.

## 15. EMPLOYEE BENEFIT PLANS

The Company has various retirement savings plans covering substantially all employees of the Company. These plans allow eligible employees to make discretionary contributions. The Company makes discretionary matching and other contributions depending on the plan and contributed $0.9 million and $0.8 million to such plans during the years ended December 31, 2019 and 2020, respectively.

During the year-ended December 31, 2020, the Company terminated its defined benefit pension plan, liquidating the existing plan assets and settling all remaining plan obligations associated with the Company's pension plans, which resulted in an immaterial impact to the consolidated financial statements.

**Notes to Consolidated Financial Statements (Continued)**

## 16. PROFITS INTEREST UNITS

Total stock-based compensation expense related to the PIUs was $0.8 million and $1.2 million during the years ended December 31, 2019 and 2020, respectively, which is recorded in selling, general and administrative expense in the consolidated statements of operations. There was $6.4 million and $9.8 million of unrecognized compensation expense related to the units as of December 31, 2019 and 2020, respectively. The following table summarizes the activity for all PIUs during the years ended December 31, 2019 and 2020:

| | Number of PIUs | Weighted-Average Grant-Date Fair Value |
|---|---|---|
| Balance at January 1, 2019 | 20,890,124 | $0.41 |
| Granted | 3,692,699 | $0.38 |
| Forfeited | (2,848,653) | $0.41 |
| Balance at December 31, 2019 | 21,734,170 | |
| Granted | 7,843,107 | $0.60 |
| Forfeited | (2,152,315) | $0.35 |
| Balance at December 31, 2020 | 27,424,962 | $0.43 |

As of December 31, 2020, there are 18,011,127 Performance PIUs which are not expected to vest as the performance condition is not considered to be probable. As of December 31, 2020, there are 9,413,835 Time-Vesting PIUs which will continue to vest over the employees' requisite service periods. As of December 31, 2019 and 2020, none of the Time-Vesting PIUs have vested for accounting purposes due to the Parent's $0 Repurchase Right.

The Company uses the following assumptions in conjunction with the Contingent Claims Analysis Model to estimate the fair value of the PIUs:

| | Year Ended December 31, 2019 | Year Ended December 31, 2020 |
|---|---|---|
| Expected volatility | 49.00% | 55.00% |
| Risk-free interest rate | 1.90% | 0.20% |
| Expected term (in years) | 4.6 | 3.2 |
| Expected dividend yield | —% | —% |

During the year ended December 31, 2020, the Company recorded $0.6 million in stock-based compensation expense related to the settlement of the Contingent Consideration (see Note 3 and Note 5), which is recorded in selling, general and administrative expense in the consolidated statements of operations.

## 17. COMMON STOCK

As of December 31, 2019 and 2020, the Company's amended and restated certificate of incorporation authorized the Company to issue 500,000,000 shares of $0.0001 par value common stock.

Each share of common stock entitles the holder to one vote for each share of common stock held. Common stockholders are entitled to receive dividends, as declared by the board of directors. Through December 31, 2020, no dividends had been paid. During the years ended December 31, 2019 and 2020, the Company paid distributions of $0.2 million and $0.6 million, respectively, to Parent for the repurchase of Parent's Class A shares.

On October 14 and 20, 2020, Parent authorized the sale of 32,902,113 shares of the Company's common stock to Parent for an aggregate of $64.9 million. On December 28, 2020, the Company repurchased and retired those 32,902,113 shares in exchange for a note payable in the amount of $64.9 million (the

"Parent Note"). The Parent Note bore interest at 0.15% per annum, the applicable federal rate at time of the issuance of the note payable. The principal and all accrued and unpaid interest were due on October 20, 2023. The Parent Note could be prepaid in part or full at any time without any penalty. During the year ended December 31, 2020, interest expense related to the Parent Note was insignificant. The Parent Note was settled in full on February 2, 2021 (see Note 22).

## 18. NET INCOME PER SHARE

Basic and diluted net income per share attributable to common stockholders was calculated as follows (in thousands, except share and per share data):

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Numerator: | | |
| Net income attributable to common stockholders | $ 7,457 | $ 15,983 |
| Denominator: | | |
| Weighted-average common shares outstanding, basic and diluted | 109,673,709 | 116,469,884 |
| Net income per share attributable to common stockholders, basic and diluted | $ 0.07 | $ 0.14 |

There were no potentially dilutive securities outstanding during the year ended December 31, 2019.

## 19. RELATED PARTY TRANSACTIONS

***BrightAI Services***

Starting in 2020, BrightAI rendered services to the Company, for which the cost was capitalized as internal-use software. A co-founder of BrightAI Services has served on the Company's board of directors since December 9, 2020. During the year ended December 31, 2020, the Company incurred $0.5 million associated with services performed by BrightAI, which is recorded as construction in progress within in property and equipment, net and accounts payable — related party on the consolidated balance sheet as of December 31, 2020.

***Purchase of Treasury Stock***

On October 14 and 20, 2020, Parent contributed an aggregate of $64.9 million to the Company in exchange for an aggregate of 32,902,113 shares of the Company's common stock. On December 28, 2020, the Company repurchased and retired those 32,902,113 shares in exchange for the Parent Note (see Note 17).

***Expense Reimbursement and Management Fees***

The Company has an expense reimbursement agreement (the "management fee arrangement") with the Sponsor and Wynnchurch Capital, L.P. for ongoing consulting and advisory services. The management fee arrangement provides for the aggregate payment of up to $1.0 million each year for reimbursement of expenses incurred with services provided and, depending on the extent of services provided, management fees. The management fee arrangement will terminate upon consummation of the Company's initial public offering.

The Company expensed $0.5 million of management fees during the year ended December 31, 2019 and expensed $47.7 thousand of reimbursement expenses during the year ended December 31, 2020. These fees are reported in selling, general and administrative expense in the consolidated statements of operations. As of December 31, 2019 and 2020, there were no outstanding amounts payable to the Sponsor and Wynnchurch Capital, L.P.

***Operating Lease***

In May 2019, in connection with the Narellan Acquisition, the Company assumed an operating lease for the manufacture, sale and storage of swimming pools and associated equipment with Acquigen Pty Ltd,

which is owned by an employee who is also a shareholder of the Company. The lease expires in June 2028. As of December 31, 2019 and 2020, future minimum lease payments totaled $4.3 million and $4.2 million, respectively, related to this lease. The Company recognized $0.2 million and $0.4 million of rent expense related to this lease during the years ended December 31, 2019 and 2020, respectively, which is recognized within selling, general and administrative expense on the consolidated statements of operations.

## 20. SEGMENT AND GEOGRAPHIC INFORMATION

***Segment Information***

During 2020, the Company made operational changes in how its CODM manages the business including organizational alignment, performance assessment and resource allocation. The segment disclosure is based on the intention to provide the users of the financial statements with a view of the business from the Company's perspective. The Company conducts its business as one operating and reportable segment that designs, manufactures and markets in-ground swimming pools, liners and covers.

***Geographic Information***

Net sales by geography is based on the delivery address of the customer as specified in purchase order. Net sales by geographic area was as follows (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| **Net sales** | | |
| United States | $257,786 | $325,716 |
| Canada | 43,157 | 50,499 |
| Australia | 12,126 | 20,181 |
| New Zealand | 2,432 | 3,984 |
| Other | 2,474 | 3,009 |
| Total | $317,975 | $403,389 |

Our long-lived assets by geographic area, which consist of property and equipment, net assets were as follows (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| **Long-lived assets** | | |
| United States | $30,433 | $37,680 |
| Canada | 2,279 | 3,050 |
| Australia | 4,094 | 4,979 |
| New Zealand | 1,039 | 1,648 |
| Total | $37,845 | $47,357 |

## 21. CONDENSED FINANCIAL INFORMATION OF REGISTRANT (PARENT COMPANY ONLY)

**Latham Group, Inc.**
**(Parent Company Only)**
**CONDENSED BALANCE SHEETS**
*(in thousands, except share and per share data)*

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| **Assets** | | |
| Investment in subsidiary | $193,795 | $281,609 |
| Total assets | $193,795 | $281,609 |
| **Liabilities and Stockholders' Equity** | | |
| Related party note payable | $ — | $ 64,938 |
| Total liabilities | — | 64,938 |
| **Stockholders' Equity** | | |
| Common stock, $0.0001 par value; 500,000,000 shares authorized at December 31, 2019 and 2020; 109,673,709 shares issued and outstanding as of December 31, 2019 and 2020 | 11 | 11 |
| Additional paid-in capital | 196,473 | 200,541 |
| Retained earnings (accumulated deficit) | (2,218) | 13,765 |
| Accumulated other comprehensive income (loss) | (471) | 2,354 |
| Total stockholders' equity | 193,795 | 216,671 |
| Total liabilities and stockholders' equity | $193,795 | $281,609 |

The accompanying notes are an integral part of these condensed financial statements.

**Latham Group, Inc.**
**(Parent Company Only)**
**CONDENSED STATEMENTS OF OPERATIONS**
*(in thousands, except share and per share data)*

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| **Equity in net income of subsidiary** | $ 7,457 | $ 15,983 |
| Net income | $ 7,457 | $ 15,983 |
| **Net income per share** | | |
| Net income per share attributable to common stockholders – basic and diluted | $ 0.07 | $ 0.14 |
| Weighted-average common shares outstanding – basic and diluted | 109,673,709 | 116,469,884 |

The accompanying notes are an integral part of these condensed financial statements.

**Notes to Consolidated Financial Statements (Continued)**

**Latham Group, Inc.**
**(Parent Company Only)**
**CONDENSED STATEMENTS OF COMPREHENSIVE INCOME**
*(in thousands)*

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Net income | $7,457 | $15,983 |
| Equity in other comprehensive income (loss) of subsidiary | (670) | 2,825 |
| Comprehensive income | $6,787 | $18,808 |

The accompanying notes are an integral part of these condensed financial statements.

**Latham Group, Inc.**
**(Parent Company Only)**
**CONDENSED STATEMENT OF CASH FLOWS**
*(in thousands)*

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| **Cash flows from operating activities:** | | |
| Net income | $ 7,457 | $ 15,983 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Equity in net income of subsidiary | (7,457) | (15,983) |
| Net cash provided by operating activities | — | — |
| **Cash flows from investing activities:** | | |
| Investment in subsidiary | — | (64,938) |
| Net cash used in investing activities | — | (64,938) |
| **Cash flows from financing activities:** | | |
| Proceeds from issuance of common stock | — | 64,938 |
| Net cash provided by financing activities | — | 64,938 |
| **Net increase in cash** | — | — |
| Cash at beginning of period | — | — |
| Cash at end of period | $ — | $ — |
| **Supplemental cash flow information:** | | |
| Cash paid for interest | $ — | $ — |
| **Supplemental disclosure of non-cash investing and financing activities:** | | |
| Related party note entered into for purchase of treasury stock | $ — | $ 64,938 |

The accompanying notes are an integral part of these condensed financial statements.

**Notes to Consolidated Financial Statements (Continued)**

**Notes to Condensed Financial Statements of Registrant (Parent Company Only)**

**1. Basis of Presentation**

These condensed parent company-only financial statements have been prepared in accordance with Rule 12-04, Schedule I of Regulation S-X. Latham Group, Inc. has no material assets or standalone operations other than its ownership in its consolidated subsidiaries. Under the terms of the Credit Agreement entered into by the Latham Pool Products, a wholly owned subsidiary of LIMC, which itself is a wholly owned subsidiary of Latham Group, Inc., Latham Pool Products is restricted from making dividend payments, loans or advances to Latham Group, Inc., unless certain conditions are met. As of December 31, 2019 and 2020, substantially all of the consolidated net assets of Latham Pool Products are considered restricted net assets as defined in Rule 4-08(e)(3) of Regulation S-X.

Latham Group, Inc. is able to transfer assets from Latham Pool Products in order to pay certain tax liabilities.

These condensed parent company financial statements have been prepared using the same accounting principles and policies described in the notes to the condensed financial statements, with the only exception being that the parent company accounts for its subsidiary using the equity method.

**2. Related Party Transactions**

On October 14, 2020 and October 20, 2020, Latham Investment Holdings, LP (“Parent”) purchased an aggregate of 32,902,113 shares of Latham Group, Inc.’s common stock for an aggregate of $64.9 million. On December 28, 2020, Latham Group, Inc. repurchased and retired those 32,902,113 shares of its common stock from Parent in exchange for a note payable in the amount of $64.9 million (the “Parent Note”), equal to the Parent’s original purchase price. The Parent Note bears interest at 0.15% per annum, the applicable federal rate at the time of issuance of the note payable. The principal and all accrued and unpaid interest were due to Parent on October 20, 2023. The Parent Note may be prepaid in part or full at any time without any penalty. During the year ended December 31, 2020, interest expense related to the Parent Note was insignificant. The Parent Note was settled in full on February 2, 2021 (see Note 22).

**22. SUBSEQUENT EVENTS**

The Company has evaluated subsequent events through March 10, 2021, which is the date on which these financial statements were originally issued, and through April 14, 2021, with respect to the stock split described below.

***Debt Recapitalization***

On January 25, 2021, the Company entered into a subsequent amendment to the Term Loan with Nomura to borrow an additional $175.0 million (the “Third Amendment” and collectively with the “Term Loan”, the “Amended Term Loan”). In connection with the Third Amendment, the Company is required to repay the outstanding principal balance of the Amended Term Loan in fixed quarterly payments of $5.8 million, commencing March 31, 2021. The amendment did not change the maturity date of the Term Loan and the Amended Term Loan bears interest under the same terms as the Term Loan. The Company accounted for $165.0 million of the borrowings under the Third Amendment as new debt and $10.0 million of the borrowings under the Third Amendment as a debt modification. The Company recorded an aggregate of $1.2 million of debt issuance costs as a direct reduction to the carrying amount of long-term debt on the consolidated balance sheet.

The Amended Term Loan allowed for the $175.0 million of proceeds to be distributed to Parent. On February 2, 2021, the Company used the proceeds of the Amended Term Loan to settle in full the note payable to Parent of $64.9 million and pay a dividend to Parent of $110.0 million.

***Stock Split***

On April 13, 2021, the Company's certificate of incorporation was amended and restated. Under the amended and restated certificate of incorporation, the Company has authority to issue 500,000,000 shares of common stock, par value $0.0001 per share. On April 12, 2021, the Company's board of directors declared and on April 13, 2021, the Company effected a 109,673.709-for-one stock split of its issued and outstanding shares of common stock. Accordingly, all share and per share data included in these consolidated financial statements and notes thereto have been adjusted retroactively to reflect the impact of the amended and restated certificate of incorporation and the stock split.

## 23. SUBSEQUENT EVENT (UNAUDITED)

***2021 Omnibus Equity Incentive Plan***

On April 12, 2021, the Company's board of directors adopted and the Company's stockholders approved the 2021 Omnibus Equity Incentive Plan (the "Omnibus Incentive Plan"), which will become effective immediately prior to the effectiveness of the registration statement for the Company's initial public offering. The Omnibus Incentive Plan provides for the issuance of incentive stock options, non-qualified stock options, stock appreciation rights, restricted stock, restricted stock units and other stock-based and cash-based awards. The maximum aggregate number of shares reserved for issuance under the Omnibus Incentive Plan is 13,158,430 shares. The maximum grant date fair value of cash and equity awards that may be awarded to a non-employee director under the Omnibus Incentive Plan during any one fiscal year, together with any cash fees paid to such non-employee director during such fiscal year, will be $750 thousand. If any award granted under the Omnibus Incentive Plan expires, terminates, or is canceled or forfeited without being settled, vested or exercised, shares of the Company's common stock subject to such award will again be made available for future grants. Any shares that are surrendered or tendered to pay the exercise price of an award or to satisfy withholding taxes owed, or any shares reserved for issuance, but not issued, with respect to settlement of a stock appreciation right, will not again be available for grant under the Omnibus Incentive Plan.

**20,000,000 Shares**

# Latham Group, Inc.

**Common Stock**

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Prospectus

, 2021

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**Barclays**

**BofA Securities**

**Morgan Stanley**

**Goldman Sachs & Co. LLC**

**Nomura**

**William Blair**

**Baird**

**KeyBanc Capital Markets**

**Truist Securities**

## PART II

## INFORMATION NOT REQUIRED IN PROSPECTUS

### Item 13. Other Expenses of Issuance and Distribution

Set forth below is a table of the registration fee for the Securities and Exchange Commission (the "SEC"), the stock exchange listing fee, the filing fee for the Financial Industry Regulatory Authority ("FINRA") and estimates of all other expenses to be paid by the registrant in connection with the issuance and distribution of the securities described in the registration statement.

| | |
|---|---|
| SEC registration fee | $ 52,695 |
| Stock exchange listing fee | 295,000 |
| FINRA filing fee | 35,000 |
| Printing expenses | 250,000 |
| Legal fees and expenses | 3,200,000 |
| Accounting fees and expenses | 2,180,000 |
| Blue Sky fees and expenses | 15,000 |
| Transfer agent and registrar fees | 5,000 |
| Miscellaneous | 267,305 |
| Total | $ 6,300,000 |

### Item 14. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a corporation may indemnify directors and officers, as well as other employees and individuals against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending, or completed actions, suits, or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee or agent to the registrant. The DGCL provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders, or disinterested directors or otherwise. The registrant's bylaws provide for indemnification by the registrant of its directors, officers, and employees to the fullest extent permitted by the DGCL.

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for unlawful payments of dividends or unlawful stock repurchases, redemptions, or other distributions, or (iv) for any transaction from which the director derived an improper personal benefit. The registrant's certificate of incorporation provides for such limitation of liability.

Reference is made to Item 17 for our undertakings with respect to indemnification for liabilities arising under the Securities Act.

The registrant maintains standard policies of insurance under which coverage is provided (a) to its directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (b) to the registrant with respect to payments which may be made by the registrant to such officers and directors pursuant to the above indemnification provision or otherwise as a matter of law.

The proposed form of underwriting agreement we enter into in connection with the sale of common stock being registered will provide for indemnification of directors and officers of the registrant by the underwriters against certain liabilities.

Under the Stockholders' Agreement, we will agree to indemnify our Principal Stockholders and their affiliates from any losses arising directly or indirectly out of our Principal Stockholders' actual, alleged or deemed control or ability to influence control of us or the actual or alleged act or omission of any director nominated by our Principal Stockholders, including any act or omission in connection with this offering.

We expect to enter into customary indemnification agreements with our executive officers and directors that provide them, in general, with customary indemnification in connection with their service to us or on our behalf.

**Item 15. Recent Sales of Unregistered Securities**

On October 14, 2020 and October 20, 2020, we issued 32,902,113 shares of common stock in aggregate to Parent for $64.9 million. The shares of common stock described above were issued in reliance on the exemption contained in Section 4(a)(2) of the Securities Act on the basis that the transaction did not involve a public offering. No underwriters were involved in the transaction.

In connection with the Reorganization, we will issue 109,673,709 shares of common stock to our Principal Stockholders, our senior management and board members, and our current and former employees. The shares of common stock described above will be issued in reliance on the exemption contained in Section 4(a)(2) of the Securities Act on the basis that the transaction will not involve a public offering. No underwriters will be involved in the transaction.

**Item 16. Exhibits and Financial Statement Schedules**

***(a) Exhibits***

See Exhibit Index immediately preceding the signature page hereto, which is incorporated by reference as if fully set forth herein.

***(b) Financial Statement Schedule***

See "Index to the Consolidated Financial Statements" included on page F-1 for a list of the financial statements included in this registration statement. All schedules not identified above have been omitted because they are not required, are inapplicable, or the information is included in the consolidated financial statements or the related notes contained in this registration statement.

**Item 17. Undertakings**

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and

contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For purposes of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## EXHIBIT INDEX

| Exhibit Number | Exhibit Description |
|---|---|
| 1.1 | Form of Underwriting Agreement |
| 2.1* | Form of Merger Agreement by and between Latham Group, Inc. and Latham Investment Holdings, L.P. |
| 3.1* | Form of Amended and Restated Certificate of Incorporation of Latham Group, Inc., to become effective immediately prior to the completion of this offering |
| 3.2* | Form of Amended and Restated Bylaws of Latham Group, Inc., to become effective immediately prior to the completion of this offering |
| 5.1 | Opinion of Paul, Weiss, Rifkind, Wharton & Garrison LLP as to the validity of the securities being offered |
| 10.1*# | Credit Agreement, dated as of December 18, 2018, among Latham Pool Products, Inc., Latham International Manufacturing Corp., the lenders party thereto and Nomura Corporate Funding Americas, LLC., as administrative agent |
| 10.2* | First Incremental Facility Amendment to the Credit Agreement, dated as of May 29, 2019, among Latham Pool Products, Inc., Latham International Manufacturing Corp., the lenders party thereto and Nomura Corporate Funding Americas, LLC, as administrative agent |
| 10.3* | Second Incremental Facility Amendment to the Credit Agreement, dated as of October 14, 2020, among Latham Pool Products, Inc., Latham International Manufacturing Corp., the lenders party thereto and Nomura Corporate Funding Americas, LLC., as administrative agent |
| 10.4*# | Third Incremental Facility Amendment to the Credit Agreement, dated as of January 25, 2021 among Latham Pool Products, Inc., Latham International Manufacturing Corp., the lenders party thereto and Nomura Corporate Funding Americas, LLC., as administrative agent |
| 10.5* | Form of Stockholders Agreement by and among Latham Group, Inc. and the stockholders party thereto |
| 10.6* | Form of Registration Rights Agreement by and among Latham Group, Inc. and the stockholders party thereto |
| 10.7* | Form of Indemnification Agreement by and among the Latham Group, Inc. and each of its directors and executive officers |
| 10.8†* | Employment Agreement by and between Scott Rajeski and Latham Pool Products, Inc., dated December 17, 2018 |
| 10.9†* | Offer Letter by and between J. Mark Borseth and Latham Pool Products, Inc., dated February 7, 2020, as amended February 11, 2020 |
| 10.10†* | Employment Agreement by and between J. Mark Borseth and Latham Pool Products, Inc., dated February 12, 2020, as amended April 6, 2020 |
| 10.11†* | Offer Letter by and between Joel R. Culp and Latham Pool Products, Inc., dated January 18, 2019 |
| 10.12†* | Employment Agreement by and between Joel R. Culp and Latham Pool Products, Inc., dated February 11, 2019 |
| 10.13†* | Latham Pool Products, Inc. Management Incentive Bonus Plan |
| 10.14†* | Latham Group, Inc. 2021 Omnibus Equity Incentive Plan |
| 10.15†* | Form of Nonqualified Option Award Agreement under the 2021 Omnibus Equity Incentive Plan |
| 10.16†* | Form of Restricted Stock Award Agreement under the 2021 Omnibus Equity Incentive Plan |
| 10.17†* | Form of Restricted Stock Unit Award Agreement under the 2021 Omnibus Equity Incentive Plan |
| 10.18* | Form of Common Stock Purchase Agreement |

| Exhibit Number | Exhibit Description |
|---|---|
| 16.1* | Letter regarding Change in Certifying Accountant |
| 21.1* | Subsidiaries of the registrant |
| 23.1 | Consent of RSM US LLP, independent registered public accounting firm |
| 23.2 | Consent of Deloitte & Touche LLP, independent registered public accounting firm |
| 23.3 | Consent of Paul, Weiss, Rifkind, Wharton & Garrison LLP (included in Exhibit 5.1) |
| 24.1* | Powers of Attorney |

* Previously filed.

† Indicates management contract or compensatory plan.

# Portions of this exhibit have been omitted pursuant to Item 601(a)(v) of Regulation S-K.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Latham, New York, on the 14th day of April, 2021.

**Latham Group, Inc.**

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: Chief Executive Officer and President

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|---|---|
| /s/ Scott M. Rajeski<br>Scott M. Rajeski | Chief Executive Officer and President; Director (Principal Executive Officer) | April 14, 2021 |
| /s/ James Mark Borseth<br>James Mark Borseth | Chief Financial Officer (Principal Financial Officer) | April 14, 2021 |
| /s/ Suraj Kunchala<br>Suraj Kunchala | Vice President and Controller (Principal Accounting Officer) | April 14, 2021 |
| *<br>William M. Pruellage | Director | April 14, 2021 |
| *<br>Andrew D. Singer | Director | April 14, 2021 |
| *<br>Christopher P. O'Brien | Director | April 14, 2021 |
| *<br>Mark P. Laven | Director | April 14 , 2021 |
| *<br>James E. Cline | Director | April 14, 2021 |
| *<br>Robert D. Evans | Director | April 14, 2021 |
| *<br>Alexander L. Hawkinson | Director | April 14, 2021 |
| *<br>Suzan Morno-Wade | Director | April 14, 2021 |

*By: /s/ James Mark Borseth
James Mark Borseth
Attorney-in-Fact

**Exhibit 1.1**

[ ● ] shares of Common Stock

**LATHAM GROUP, INC.**
**UNDERWRITING AGREEMENT**

[ ● ], 2021

Barclays Capital Inc.
BofA Securities, Inc.
Morgan Stanley & Co. LLC
Goldman Sachs & Co. LLC
As Representatives of the several
Underwriters named in Schedule I attached hereto,

c/o Barclays Capital Inc.
745 Seventh Avenue
New York, New York 10019

c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

c/o Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

Ladies and Gentlemen:
fv

Latham Group, Inc., a Delaware corporation (the "***Company***"), proposes to sell [ ● ] shares (the "***Firm Stock***") of the Company's common stock, par value $[ ● ] per share (the "***Common Stock***"). In addition, the Company proposes to grant to the underwriters named in Schedule I (the "***Underwriters***") attached to this agreement (this "***Agreement***") an option to purchase up to an aggregate of [ ● ] additional shares of the Common Stock on the terms set forth in Section 2 (the "***Option Stock***"). The Firm Stock and the Option Stock, if purchased, are hereinafter collectively called the "***Stock***". This Agreement is to confirm the agreement concerning the purchase of the Stock from the Company by the Underwriters.

1. *Representations, Warranties and Agreements of the Company*. The Company represents, warrants and agrees that:

(a) A registration statement on Form S-1 (File No. 333- 254930) relating to the Stock has (i) been prepared by the Company in conformity with the requirements of the Securities Act of 1933, as amended (the "***Securities Act***"), and the rules and regulations of the Securities and Exchange Commission (the "***Commission***") thereunder; (ii) been filed with the Commission under the Securities Act; and (iii) become effective under the Securities Act. Copies of such registration statement and any amendment thereto have been delivered by the Company to you as the representatives (the "***Representatives***") of the Underwriters. As used in this Agreement:

(i) "***Applicable Time***" means [ ● ] P.M. (New York City time) on [ ● ], 2021;

(ii) "***Effective Date***" means the date and time at which such registration statement, or the most recent post-effective amendment thereto, if any, was declared effective by the Commission;

(iii) "***Issuer Free Writing Prospectus***" means each "issuer free writing prospectus" (as defined in Rule 433 under the Securities Act);

(iv) "***Preliminary Prospectus***" means any preliminary prospectus relating to the Stock included in such registration statement or filed with the Commission pursuant to Rule 424(b) under the Securities Act;

(v) "***Pricing Disclosure Package***" means, as of the Applicable Time, the most recent Preliminary Prospectus, together with the information included in Schedule III hereto, if any, and each Issuer Free Writing Prospectus filed or used by the Company at or before the Applicable Time, other than a road show, that is an Issuer Free Writing Prospectus but is not required to be filed under Rule 433 under the Securities Act;

(vi) "***Prospectus***" means the final prospectus relating to the Stock, as filed with the Commission pursuant to Rule 424(b) under the Securities Act;

(vii) "***Registration Statement***" means the registration statement, as amended as of the Effective Date, including any Preliminary Prospectus or the Prospectus, all exhibits to such registration statement and including the information deemed by virtue of Rule 430A under the Securities Act to be part of such registration statement as of the Effective Date;

(viii) "***Testing-the-Waters Communication***" means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Securities Act or Rule 163B under the Securities Act; and

(ix) "***Written Testing-the-Waters Communication***" means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

(b) From the time of initial confidential submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly or through any person authorized to act on its behalf in any Testing-the-Waters Communication) through the date hereof, the Company has been and will be an "emerging growth company," as defined in Section 2(a) of the Securities Act (an "***Emerging Growth Company***").

(c) The Company (i) has not engaged in any Testing-the-Waters Communication with any person other than Testing-the-Waters Communications with the consent of the Representatives with entities that are reasonably believed to be qualified institutional buyers within the meaning of Rule 144A under the Securities Act or with institutions that are reasonably believed to be accredited investors within the meaning of Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act and (ii) has not authorized anyone other than the Representatives to engage in Testing-the-Waters Communications. The Company reconfirms that the Representatives have been authorized to act on its behalf in undertaking Testing-the-Waters Communications. The Company has not distributed, or authorized any other person to distribute, any Written Testing-the-Waters Communications other than those listed on Schedule VI hereto.

(d) The Company was not at the time of initial filing of the Registration Statement and at the earliest time thereafter that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) under the Securities Act) of the Stock, is not on the date hereof and will not be on the applicable Delivery Date (as defined herein), an "ineligible issuer" (as defined in Rule 405 under the Securities Act).

(e) The Registration Statement conformed and will conform in all material respects on the Effective Date and on the applicable Delivery Date, and any amendment to the Registration Statement filed after the date hereof will conform in all material respects when filed, to the requirements of the Securities Act and the rules and regulations thereunder. The Pricing Disclosure Package conformed, and the Prospectus will conform, in all material respects when filed with the Commission pursuant to Rule 424(b) under the Securities Act and on the applicable Delivery Date to the requirements of the Securities Act and the rules and regulations thereunder.

(f) The Registration Statement did not, as of the Effective Date, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the Registration Statement in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(e).

(g) The Prospectus will not, as of its date or as of the applicable Delivery Date, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the Prospectus in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(e).

(h) The Pricing Disclosure Package did not, as of the Applicable Time, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the Pricing Disclosure Package made in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(e).

(i) Each Issuer Free Writing Prospectus listed in Schedule IV hereto, when taken together with the Pricing Disclosure Package, did not, as of the Applicable Time, contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from such Issuer Free Writing Prospectus listed in Schedule IV hereto or the Pricing Disclosure Package in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(e).

(j) No Written Testing-the-Waters Communication, as of the Applicable Time, when taken together with the Pricing Disclosure Package, contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from such Written Testing-the-Waters Communication listed on Schedule VI hereto or the Pricing Disclosure Package in reliance upon and in conformity with written information furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(e). Each Written Testing-the-Waters Communications did not, as of the Applicable Time, and at all times through the completion of the public offer and sale of the Stock will not, include any information that conflicted or conflicts with the information contained in the Registration Statement, the Pricing Disclosure Package or the Prospectus.

(k) Each Issuer Free Writing Prospectus conformed or will conform in all material respects to the requirements of the Securities Act and the rules and regulations thereunder on the date of first use, and the Company has complied with all prospectus delivery and any filing requirements applicable to such Issuer Free Writing Prospectus pursuant to the Securities Act and rules and regulations thereunder.

(l) The Company has not made any offer relating to the Stock that would constitute an Issuer Free Writing Prospectus without the prior written consent of the Representatives, except as set forth on Schedule V hereto. The Company has retained in accordance with the Securities Act and the rules and regulations thereunder all Issuer Free Writing Prospectuses that were not required to be filed pursuant to the Securities Act and the rules and regulations thereunder. The Company has taken all actions necessary so that any "road show" (as defined in Rule 433 under the Securities Act) in connection with the offering of the Stock will not be required to be filed pursuant to the Securities Act and the rules and regulations thereunder.

(m) The Company and each of its Significant Subsidiaries (as defined below) have been duly organized, is validly existing and in good standing as a corporation or other business entity under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation or other business entity in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing would not, in the aggregate, reasonably be expected to have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders' equity, properties, business or prospects of the Company and its subsidiaries taken as a whole (a "***Material Adverse Effect***"). The Company and each of its subsidiaries have all power and authority necessary to own or hold its properties and to conduct the businesses in which it is engaged as described in each of the Pricing Disclosure Package and the Prospectus. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed on Schedule VII hereto. None of the subsidiaries of the Company (other than Latham Pool Products Inc. (U.S.), GL International, LLC, Latham Pool Products Inc. (Canada), Narellan Group Pty Ltd. And Narellan Pools Pty Ltd. (collectively, the "***Significant Subsidiaries***")) is a "significant subsidiary" (as defined in Rule 405 under the Securities Act).

(n) The Company has an authorized capitalization as set forth in each of the Pricing Disclosure Package and the Prospectus as of the date or dates set forth therein, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued, are fully paid and non-assessable, conform in all material respects to the description thereof contained in the Pricing Disclosure Package and the Prospectus and were issued in compliance with federal and state securities laws and not in violation of any preemptive right, resale right, right of first refusal or similar right. Except as disclosed in the Pricing Disclosure Package and the Prospectus, no options, warrants or other rights to purchase or exchange any securities for shares of the Company's capital stock are outstanding. All of the issued shares of capital stock or other ownership interest of each Significant Subsidiary of the Company have been duly authorized and validly issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens, encumbrances, equities or claims under the Credit Agreement, as defined in the Pricing Disclosure Package and the Prospectus, as described in the Pricing Disclosure Package and the Prospectus or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(o) The shares of the Stock to be issued and sold by the Company to the Underwriters hereunder have been duly authorized and, upon payment and delivery in accordance with this Agreement, will be validly issued, fully paid and non-assessable, will conform in all material respects to the description thereof contained in the Pricing Disclosure Package and Prospectus, will be issued in compliance with federal and state securities laws and will be free of statutory and contractual preemptive rights, rights of first refusal and similar rights.

(p) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company.

(q) The issue and sale of the Stock by the Company, the execution, delivery and performance of this Agreement by the Company, the consummation of the transactions contemplated hereby and the application of the proceeds from the sale of the Stock as described under "Use of Proceeds" in the Pricing Disclosure Package and the Prospectus will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company and its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject; (ii) result in any violation of the provisions of the charter or by-laws (or similar organizational documents) of the Company or any of its subsidiaries; or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets, except, with respect to clauses (i) and (iii), defaults, breaches, conflicts or violations that would not reasonably be expected to have a Material Adverse Effect or impair the ability of the applicable parties to perform their obligations under this Agreement.

(r) No consent, approval, authorization or order of, or filing, registration or qualification with, any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets is required for the issue and sale of the Stock by the Company, the execution, delivery and performance of this Agreement by the Company, the consummation of the transactions contemplated hereby, the application of the proceeds from the sale of the Stock as described under "Use of Proceeds" in the Pricing Disclosure Package and the Prospectus, except for the registration of the Stock under the Securities Act and such consents, approvals, authorizations, orders, filings, registrations or qualifications as may be required under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), and applicable state securities laws and/or the bylaws and rules of the Financial Industry Regulatory Authority, Inc. ("***FINRA***") in connection with the purchase and sale of the Stock by the Underwriters.

(s) The historical financial statements (including the related notes) included in the Pricing Disclosure Package comply as to form in all material respects with the requirements of Regulation S-X under the Securities Act and present fairly in all material respects the financial condition, results of operations and cash flows of the entities purported to be shown thereby at the dates and for the periods indicated and have been prepared in conformity with accounting principles generally accepted in the United States applied on a consistent basis throughout the periods involved. The selected financial data and the summary financial information included in the Pricing Disclosure Package present fairly in all material respects the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included therein. All disclosures contained in the most recent Preliminary Prospectus regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the Exchange Act and Item 10 of Regulation S-K of the Securities Act, to the extent applicable.

(t) [reserved].

(u) (i) RSM US LLP ("***RSM***"), who have certified certain financial statements of the Company and its consolidated subsidiaries, whose report appears in the Pricing Disclosure Package and the Prospectus and who have delivered the initial letter referred to in Section 7(f) hereof, are independent public accountants as required by the Securities Act and the rules and regulations thereunder during the periods covered by the financial statements on which they reported contained in the Pricing Disclosure Package and the Prospectus; and (ii) Deloitte & Touche LLP ("***Deloitte***"), who have certified certain financial statements of the Company and its consolidated subsidiaries, whose report appears in the Pricing Disclosure Package and who have delivered the initial letter referred to in Section 7(f) hereof, were independent public accountants as required by the Securities Act and the rules and regulations thereunder during the periods covered by the financial statements on which they reported contained in the Pricing Disclosure Package and the Prospectus.

(v) Except as described in the Pricing Disclosure Package and the Prospectus, the Company and each of its subsidiaries maintain internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States, including, but not limited to, internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States and to maintain accountability for its assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for the Company's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Nothing in this Section 1(t) shall require the Company to comply with Section 404 of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act") as of an earlier date than it would otherwise be required to do so under applicable law.

(w) Except as described in the Pricing Disclosure Package and the Prospectus, (i) the Company and each of its subsidiaries maintain disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act), (ii) such disclosure controls and procedures are designed to ensure that the information is accumulated and communicated to management of the Company and its subsidiaries, including their respective principal executive officers and principal financial officers, as appropriate, and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

(x) Except as described in the Pricing Disclosure Package and the Prospectus, since the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by Deloitte and the audit committee of the board of directors of the Company (the "Audit Committee"), (i) the Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of internal controls that could adversely affect the ability of the Company or any of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls, other than such material weaknesses that have been satisfactorily remediated as of the date of such balance statement or (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and each of its subsidiaries; and (ii) there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, other than any corrective actions with regard to significant deficiencies and material weaknesses.

(y) [reserved].

(z) [reserved].

(aa) Since the date of the latest audited financial statements included in the Pricing Disclosure Package, neither the Company nor any of its subsidiaries has (i) sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree (whether domestic or foreign), (ii) issued or granted any securities (other than pursuant to equity incentive plans or similar arrangements described in the Pricing Disclosure Package and the Prospectus), (iii) incurred any material liability or material obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (iv) entered into any transaction not in the ordinary course of business, or (v) declared or paid any dividend on its capital stock, and since such date, there has not been any change in the capital stock, partnership or limited liability interests, as applicable, or long-term debt of the Company or any of its subsidiaries (other than draw-downs of $8 million on each of March 8 and March 31 under the Credit Agreement) or any adverse change, or any development involving a prospective adverse change, in or affecting the condition (financial or otherwise), results of operations, stockholders' equity, properties, management, business or prospects of the Company and its subsidiaries taken as a whole, in each case except as described in the Pricing Disclosure Package and the Prospectus or as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(bb) Except as described in the Pricing Disclosure Package and the Prospectus, the Company and each of its subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title to all personal property owned by them (other than with respect to intellectual property, title to which is addressed exclusively in Section 1(cc)), in, in each case free and clear of all liens, encumbrances and defects, except such liens, encumbrances and defects as (i) with respect to liens, are pursuant to the Credit Agreement (ii) are described in the Pricing Disclosure Package or, (iii) would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. All assets held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases, with such exceptions as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(cc) The Company and each of its subsidiaries have, and are operating in compliance with, such permits, licenses, franchises, certificates of need and other approvals or authorizations of governmental or regulatory authorities ("***Permits***") as are necessary under applicable law to own their properties and conduct their businesses in the manner described in the Pricing Disclosure Package, except for any of the foregoing that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have fulfilled and performed all of their respective obligations with respect to the Permits, and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder or any such Permits, except for any of the foregoing that would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received written notice of any revocation or modification of any such Permits or has any reason to believe that any such Permits will not be renewed in the ordinary course.

(dd) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company and each of its subsidiaries own or are licensed to use all patents, trademarks, service marks, trade names, copyrights, know-how, designs, inventions, domain names, software, systems and technology (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) (collectively, "***Intellectual Property***") necessary for the conduct of their respective businesses in the manner described in the Pricing Disclosure Package and have no reason to believe that the conduct of their respective businesses or the manufacture or sale of their respective products will conflict with, and have not received any written notice of any claim of conflict with, the Intellectual Property rights of others.

(ee) Except as disclosed in the Pricing Disclosure Package and the Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or, to the Company's knowledge, of which any property or assets of the Company or any of its subsidiaries is the subject that would, in the aggregate, reasonably be expected to have a Material Adverse Effect or would, in the aggregate, reasonably be expected to have a Material Adverse Effect on the performance by the Company of this Agreement or the consummation of the transactions contemplated hereby; and to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

(ff) There are no contracts or other documents required to be described in the Registration Statement or the Pricing Disclosure Package or the Prospectus or filed as exhibits to the Registration Statement, that are not described and filed as required. The statements made in the Pricing Disclosure Package and the Prospectus, insofar as they purport to constitute summaries of the terms of the contracts and other documents described and filed, constitute accurate summaries of the terms of such contracts and documents in all material respects.

(gg) The statements made in the Pricing Disclosure Package, insofar as they purport to constitute summaries of the terms of statutes, rules or regulations, legal or governmental proceedings or contracts and other documents, constitute accurate summaries of the terms of such statutes, rules and regulations, legal and governmental proceedings and contracts and other documents in all material respects.

(hh) The Company and each of its subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is adequate for the conduct of their respective businesses as described in the Pricing Disclosure Package and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries, except where the failure to maintain such insurance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All policies of insurance of the Company and its subsidiaries are in full force and effect, except as such would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; the Company and each of its subsidiaries are in compliance with the terms of such policies in all material respects; and neither the Company nor any of its subsidiaries has received written notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance, except as such would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause other than claims that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not reasonably be expected to have a Material Adverse Effect.

(ii) [reserved].

(jj) No labor disturbance by or dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that would reasonably be expected to have a Material Adverse Effect. The Company and its subsidiaries are in compliance with the labor and employment laws and collective bargaining agreements applicable to their employees, except where the failure to be so in compliance has not had and would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

(kk) Neither the Company nor any of its subsidiaries (i) is in violation of its charter or by-laws (or similar organizational documents), (ii) is in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, (iii) is in violation of any law, statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets or (iv) has failed to obtain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business as described in the Pricing Disclosure Package, except in the case of clauses (ii), (iii) and (iv), to the extent any such conflict, breach, violation or default would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ll) Except as described in the Pricing Disclosure Package, the Company and each of its subsidiaries (i) are, and at all times prior hereto were, in compliance with all laws, regulations, ordinances, rules, orders, judgments, decrees, permits or other legal requirements of any governmental authority, including without limitation any international, foreign, national, state, provincial, regional, or local authority, relating to pollution, the protection of human health or safety (as it relates to exposure to hazardous or toxic substances or wastes), the environment, or natural resources, or to the use, handling, storage, manufacturing, transportation, treatment, discharge, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants ("***Environmental Laws***") applicable to such entity, which compliance includes, without limitation, obtaining, maintaining and complying with all permits and authorizations and approvals required by Environmental Laws to conduct their respective businesses, and (ii) have not received notice or otherwise have knowledge of any actual or alleged violation of Environmental Laws, or of any actual or potential liability for or other obligation concerning the presence, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except in the case of clause (i) or (ii) where such non-compliance, violation, liability, or other obligation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as described in the Pricing Disclosure Package, (x) there are no proceedings that are pending, or known to be contemplated, against the Company or any of its subsidiaries under Environmental Laws in which a governmental authority is also a party, other than such proceedings regarding which it is reasonably believed no monetary sanctions of $300,000 or more will be imposed, (y) the Company and its subsidiaries are not aware of any issues regarding compliance with Environmental Laws, including any pending or proposed Environmental Laws, or liabilities or other obligations under Environmental Laws or concerning hazardous or toxic substances or wastes, pollutants or contaminants, that would reasonably be expected to have a Material Adverse Effect on the capital expenditures, earnings or competitive position of the Company and its subsidiaries, and (y) neither the Company nor any of its subsidiaries anticipate material capital expenditures relating to Environmental Laws.

(mm) Except as would not, in the aggregate, reasonably be expect to have a Material Adverse Effect, the Company and each of its subsidiaries have timely filed all federal, state, local and foreign tax returns required to be filed through the date hereof, subject to permitted extensions, and have timely paid all taxes which have become due and payable, except for taxes, if any, as are being contested in good faith by appropriate proceedings and for which an appropriate reserve has been established in accordance with GAAP. No tax deficiency has been determined adversely to the Company or any of its subsidiaries or any of their respective properties or assets, nor does the Company have any knowledge of any tax deficiencies that have been, or could reasonably be expected to be asserted against the Company or any of its subsidiaries or any of their respective properties or assets, that would, in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company is not, and does not anticipate becoming, a U.S. real property holding corporation for U.S. federal income tax purposes.

(nn) Except as would not, individually or in the aggregate, reasonably be expect to have a Material Adverse Effect, (i) each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended ("***ERISA***")) for which the Company or any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "***Code***")) would have any liability (each a "***Plan***") has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code; (ii) with respect to each Plan subject to Title IV of ERISA (A) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur, (B) no failure to meet the minimum funding standard set forth in Sections 412 of the Code and 303 of ERISA, whether or not waived, has occurred or is reasonably expected to occur, (C) no Plan is or is reasonably expected to be in "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (D) there has been no filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan or the receipt by the Company or any member of its Controlled Group from the Pension Benefit Guaranty Corporation (the "***PBGC***") or the Plan administrator of the notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (E) no conditions contained in Section 303(k)(1)(A) of ERISA for the imposition of a lien shall have been met with respect to any Plan, (F) the fair market value of the assets under each Plan exceeds the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan) and (G) neither the Company or any member of its Controlled Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan", within the meaning of Section 4001(c)(3) of ERISA) ("***Multiemployer Plan***"); and (iii) no Multiemployer Plan is, or is expected to be, "insolvent" (within the meaning of Section 4245 of ERISA), or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 304 of ERISA). Each Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service that it is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification; there is no audit or investigation by the Internal Revenue Service, the U.S. Department of Labor, the PBGC, or any other U.S. federal or state governmental agency or any foreign regulatory agency with respect to the employment or compensation of employees by any of the Company or any of its subsidiaries that would result in a material liability to the Company or any of its subsidiaries; and except as would not, individually or in the aggregate, reasonably be expect to have a Material Adverse Effect, no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption.

(oo) The statistical and market-related data included in the Pricing Disclosure Package are based on or derived from sources that the Company believes to be reliable in all material respects.

(pp) The Company is not, and as of the applicable Delivery Date and, after giving effect to the offer and sale of the Stock and the application of the proceeds therefrom as described under "Use of Proceeds" in each of the Pricing Disclosure Package and the Prospectus, will not be required to be registered as an "investment company" within the meaning of the Investment Company Act of 1940, as amended (the "***Investment Company Act***"), and the rules and regulations of the Commission thereunder.

(qq) The statements set forth in each of the Pricing Disclosure Package and the Prospectus under the captions "Description of Capital Stock" and "Material U.S. Tax Consequences to Non-U.S. Holders of Common Stock" insofar as they purport to summarize the provisions of the laws and documents referred to therein, are accurate summaries in all material respects.

(rr) Except as described in the Pricing Disclosure Package, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act.

(ss) Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against any of them or the Underwriters for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Stock.

(tt) The Company has not sold or issued any securities that would be integrated with the offering of the Stock contemplated by this Agreement pursuant to the Securities Act, the rules and regulations thereunder or the interpretations thereof by the Commission.

(uu) The Company and its affiliates have not taken, directly or indirectly, any action designed to constitute, or that has constituted, or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the shares of the Stock.

(vv) The Stock has been approved for listing, subject to official notice of issuance and evidence of satisfactory distribution on The Nasdaq Global Select Market.

(ww) The Company has not distributed and, prior to the later to occur of any Delivery Date and completion of the distribution of the Stock, will not distribute any offering material in connection with the offering and sale of the Stock other than any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus to which the Representatives have consented in accordance with Section 1(l) or 5(a)(vi) and any Issuer Free Writing Prospectus set forth on Schedule V hereto and, in connection with the Directed Share Program described in Section 3, the enrollment materials prepared by Morgan Stanley & Co. LLC on behalf of the Company.

(xx) Neither the Company nor any subsidiary is in violation of or has received notice of any violation with respect to any federal or state law relating to discrimination in the hiring, promotion or pay of employees, nor any applicable federal or state wage and hour laws, nor any state law precluding the denial of credit due to the neighborhood in which a property is situated, except in each case as would not reasonably be expected to have a Material Adverse Effect.

(yy) Neither the Company nor any of its subsidiaries, directors or officers, nor, to the knowledge of the Company, after due inquiry, employees, agents or other person acting on behalf of the Company or any of its subsidiaries, has in the course of its actions for, or on behalf of, the Company or any of its subsidiaries, directly or indirectly: (i) made any unlawful contribution, gift, or other unlawful expense relating to political activity; (ii) corruptly made or offered to make any bribe, kickback, rebate, payoff, influence payment, or otherwise unlawfully provided anything of value, to any person including any "foreign official" (as defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (collectively, the "***FCPA***")) or domestic government official; or (iii) violated or is in violation of any provision of the FCPA, the Bribery Act 2010 of the United Kingdom, as amended (the "***Bribery Act 2010***"), or any other applicable anti-corruption or anti-bribery statute or regulation. The Company and its subsidiaries and, to the knowledge of the Company, the Company's affiliates, have conducted their respective businesses in compliance with the FCPA, Bribery Act 2010 and all other applicable anti-corruption and anti-bribery statutes or regulations, and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to ensure, continued compliance therewith.

(zz) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions in which the Company or its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, that have been issued, administered or enforced by any governmental agency having jurisdiction over the Company or any such subsidiary (collectively, the "***Money Laundering Laws***") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator or non-governmental authority involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(aaa) Neither the Company nor any of its subsidiaries, directors or officers, nor, to the knowledge of the Company, after due inquiry, any agent, employee or affiliate of the Company or any of its subsidiaries is: (i) currently the subject or the target of any sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority having jurisdiction over the Company or any of its subsidiaries (collectively, "***Sanctions***"); or (ii) located, organized or resident in a country or territory that is the subject or target of Sanctions (currently, Cuba, Iran, North Korea, Syria and the Crimea region of Ukraine); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing or facilitating the activities of any person, or in any country or territory, that at the time of such financing or facilitation and currently is the subject or target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as an underwriter, advisor, investor or otherwise) of Sanctions. The Company and its subsidiaries are in compliance with applicable Sanctions in all material respects and have not engaged in for the past five years, are not now engaged in, and will not engage in, any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction, is or was the subject or target of Sanctions. The Company will maintain in effect and enforce policies and procedures designed to ensure compliance by the Company and its subsidiaries with applicable Sanctions.

(bbb) Each Preliminary Prospectus, the Prospectus and each Issuer Free Writing Prospectus comply, and any further amendments or supplements thereto will comply, with any applicable laws or regulations of foreign jurisdictions in which such Preliminary Prospectus, Prospectus or such Issuer Free Writing Prospectus, as amended or supplemented, if applicable, are distributed in connection with the Directed Share Program (as defined in Section 3). No consent, approval, authorization or order of, or filing, registration or qualification with, any court or governmental agency or body, other than such as have been obtained, is required under the securities laws and regulations of any foreign jurisdiction in which the Shares distributed in connection with the Directed Share Program (the "***Directed Shares***") are offered or sold outside of the United States.

(ccc) The Company has not offered, or caused Morgan Stanley & Co. LLC to offer, Stock to any person pursuant to the Directed Share Program with the specific intent to unlawfully influence (i) a customer or supplier of the Company to alter the customer's or supplier's level or type of business with the Company or (ii) a trade journalist or publication to write or publish favorable information about the Company, its business or its products.

(ddd) Except as would not reasonably be expected to have a Material Adverse Effect, the Company and its subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "***IT Systems***") are adequate for, and Company and its subsidiaries have taken all administrative, technical and organizational measures necessary to protect information technology and Personal Data (as defined below) used in connection with, the operation of the business of the Company and its subsidiaries as currently conducted, free and clear, to the knowledge of the Company after reasonable inquiry, of all material bugs, vulnerabilities, errors, defects, Trojan horses, time bombs, malware and other corruptants. The Company and its subsidiaries have implemented and maintained commercially reasonable controls, policies, procedures, and safeguards to maintain and protect their confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data (including "personal data" as defined by the EU General Data Protection Regulations ("***GDPR***") (EU 2016 679), "personal information" as defined by the California Consumer Privacy Act of 2018 ("***CCPA***") and any personal, personally identifiable, household, sensitive, confidential or regulated data ("***Personal Data***")) used in connection with their businesses, except to the extent that a failure to do so would not reasonably be expected to have a Material Adverse Effect, and there have been no breaches, violations, outages or unauthorized uses of or accesses to any IT System or Personal Data, except for those that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company and its subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations pertaining to the privacy or security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, disclosure, misappropriation or modification.

(eee) Except as would not reasonably be expected to have a Material Adverse Effect, the Company and each of its subsidiaries are, and at all prior times were, in compliance with all applicable data privacy and security laws, statutes, judgments, orders, rules and regulations of any court or arbitrator or any other governmental or regulatory authority and all applicable laws regarding the collection, use, transfer, export, storage, protection, disposal, disclosure or protection, including all privacy and security breach disclosure laws, by the Company and its subsidiaries of Personal Data collected from or provided by third parties (collectively, the "***Privacy Laws***"). The Company and its subsidiaries have in place, comply with, and take commercially appropriate steps to (i) ensure compliance with its privacy policies, all third-party obligations and industry standards regarding Personal Data; and (ii) reasonably protect the security and confidentiality of all Personal Data (collectively, the "***Policies***"), except as such would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. At all times since inception, the Company has provided notice of its privacy policy on its websites, which provides accurate and sufficient notice of Company's then-current privacy practices relating to its subject matter and such privacy policies do not contain any material omissions of the Company's then-current privacy practices and the Company is and has at all times complied in all material respects with such privacy policy. None of such disclosures made or contained in the privacy policies have been inaccurate, misleading, deceptive or in violation of any Privacy Laws or Policies in any respect, except as such would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the knowledge of the Company, the execution, delivery and performance of this Agreement or any other agreement referred to in this Agreement will not result in a breach or violation of any Privacy Laws or Policies, except as such would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any subsidiary has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws and is unaware of any other facts that, individually or in the aggregate, would reasonably indicate non-compliance with any Privacy Laws or Policies. There is no action, suit or proceeding by or, to the Company's knowledge, before any court or governmental agency, authority or body pending or threatened alleging that Company's or any of its subsidiaries' non-compliance with Privacy Laws or Policies.

(fff) No forward looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) included in any of the Registration Statement, the Pricing Disclosure Package or the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

Any certificate signed by any officer of the Company and delivered to the Representatives or counsel for the Underwriters in connection with the offering of the Stock shall be deemed to be a representation and warranty by the Company, as to matters covered thereby, to each Underwriter.

2. *Purchase of the Stock by the Underwriters*. On the basis of the representations, warranties and covenants contained in, and subject to the terms and conditions of, this Agreement, the Company agrees to sell [ ● ] shares of the Firm Stock to the several Underwriters, and each of the Underwriters, severally and not jointly, agrees to purchase the number of shares of the Firm Stock set forth opposite that Underwriter's name in Schedule I hereto. The respective purchase obligations of the Underwriters with respect to the Firm Stock shall be rounded among the Underwriters to avoid fractional shares, as the Representatives may determine.

In addition, the Company grants to the Underwriters an option to purchase up to [ ● ] additional shares of Option Stock. Such option is exercisable in the event that the Underwriters sell more shares of Common Stock than the number of shares of Firm Stock in the offering and as set forth in Section 3 hereof. Each Underwriter agrees, severally and not jointly, to purchase the number of shares of Option Stock (subject to such adjustments to eliminate fractional shares as the Representatives may determine) that bears the same proportion to the total number of shares of Option Stock to be sold on such Delivery Date as the number of shares of Firm Stock set forth in Schedule I hereto opposite the name of such Underwriter bears to the total number of shares of Firm Stock.

The purchase price payable by the Underwriters for both the Firm Stock and any Option Stock is $[ ● ] per share.

The Company is not obligated to deliver any of the Firm Stock or Option Stock to be delivered on the applicable Delivery Date, except upon payment for all such Stock to be purchased on such Delivery Date as provided herein.

3. *Offering of Stock by the Underwriters*. Upon authorization by the Representatives of the release of the Firm Stock, the several Underwriters propose to offer the Firm Stock for sale upon the terms and conditions to be set forth in the Prospectus.

It is understood that approximately 5% of the Firm Stock (the "***Directed Shares***") will initially be reserved by the several Underwriters for offer and sale upon the terms and conditions to be set forth in the most recent Preliminary Prospectus and in accordance with the rules and regulations of FINRA to employees of the Company and its subsidiaries and persons having business relationships with the Company and its subsidiaries who have heretofore delivered to Morgan Stanley & Co. LLC offers or indications of interest to purchase shares of Firm Stock in form satisfactory to Morgan Stanley & Co. LLC (such program, the "***Directed Share Program***") and that any allocation of such Firm Stock among such persons will be made in accordance with timely directions received by Morgan Stanley & Co. LLC from the Company; *provided* that under no circumstances will Morgan Stanley & Co. LLC or any Underwriter be liable to the Company or to any such person for any action taken or omitted in good faith in connection with such Directed Share Program. It is further understood that any Directed Shares not affirmatively reconfirmed for purchase by any participant in the Directed Share Program by [ ● ]:00 A.M., New York City time, on the first business day following the date hereof or otherwise are not purchased by such persons will be offered by the Underwriters to the public upon the terms and conditions set forth in the Prospectus.

The Company agrees to pay all fees and disbursements incurred by the Underwriters in connection with the Directed Share Program and any stamp duties or other taxes incurred by the Underwriters in connection with the Directed Share Program.

4. *Delivery of and Payment for the Stock*. Delivery of and payment for the Firm Stock shall be made at 10:00 A.M., New York City time, on the second full business day following the date of this Agreement or at such other date or place as shall be determined by agreement between the Representatives and the Company. This date and time are sometimes referred to as the "***Initial Delivery Date***". Delivery of the Firm Stock shall be made to the Representatives for the account of each Underwriter against payment by the several Underwriters through the Representatives and of the respective aggregate purchase prices of the Firm Stock being sold by the Company to or upon the order of the Company of the purchase price by wire transfer in immediately available funds to the accounts specified by the Company. Time shall be of the essence, and delivery at the time and place specified pursuant to this Agreement is a further condition of the obligation of each Underwriter hereunder. The Company shall deliver the Firm Stock through the facilities of The Depository Trust Company ("***DTC***") unless the Representatives shall otherwise instruct.

The option granted in Section 2 will expire 30 days after the date of this Agreement and may be exercised in whole or from time to time in part by written notice being given to the Company by the Representatives; *provided* that if such date falls on a day that is not a business day, the option granted in Section 2 will expire on the next succeeding business day. Such notice shall set forth the aggregate number of shares of Option Stock as to which the option is being exercised, the names in which the shares of Option Stock are to be registered, the denominations in which the shares of Option Stock are to be issued and the date and time, as determined by the Representatives, when the shares of Option Stock are to be delivered; *provided*, *however*, that this date and time shall not be earlier than the Initial Delivery Date nor earlier than the second business day after the date on which the option shall have been exercised nor later than the fifth business day after the date on which the option shall have been exercised. Each date and time the shares of Option Stock are delivered is sometimes referred to as an "***Option Stock Delivery Date***", and the Initial Delivery Date and any Option Stock Delivery Date are sometimes each referred to as a "***Delivery Date***".

Delivery of the Option Stock by the Company and payment for the Option Stock by the several Underwriters through the Representatives shall be made at 10:00 A.M., New York City time, on the date specified in the corresponding notice described in the preceding paragraph or at such other date or place as shall be determined by agreement between the Representatives and the Company. On each Option Stock Delivery Date, the Company shall deliver, or cause to be delivered, the Option Stock, to the Representatives for the account of each Underwriter, against payment by the several Underwriters through the Representatives and of the respective aggregate purchase prices of the Option Stock being sold by the Company to or upon the order of the Company of the purchase price by wire transfer in immediately available funds to the accounts specified by the Company. Time shall be of the essence, and delivery at the time and place specified pursuant to this Agreement is a further condition of the obligation of each Underwriter hereunder. The Company shall deliver the Option Stock through the facilities of DTC unless the Representatives shall otherwise instruct.

5. *Further Agreements of the Company and the Underwriters.*

(a) The Company agrees:

(i) To prepare the Prospectus in a form approved by the Representatives and to file such Prospectus pursuant to Rule 424(b) under the Securities Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement; to make no further amendment or any supplement to the Registration Statement or the Prospectus prior to the last Delivery Date except as provided herein; to advise the Representatives, promptly after it receives notice thereof, of the time when any amendment or supplement to the Registration Statement or the Prospectus has been filed and to furnish the Representatives with copies thereof; to advise the Representatives, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus, of the suspension of the qualification of the Stock for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding or examination for any such purpose, or any notice from the Commission objecting to the use of the form of Registration Statement or any post-effective amendment thereto or of any request by the Commission for the amending or supplementing of the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus or suspending any such qualification, to use promptly its best efforts to obtain its withdrawal.

(ii) To furnish promptly to the Representatives and to counsel for the Underwriters a signed copy of the Registration Statement as originally filed with the Commission, and each amendment thereto filed with the Commission, including all consents and exhibits filed therewith.

(iii) To deliver promptly to the Representatives such number of the following documents as the Representatives shall reasonably request: (A) conformed copies of the Registration Statement as originally filed with the Commission and each amendment thereto (in each case excluding exhibits other than this Agreement and the computation of per share earnings), (B) each Preliminary Prospectus, the Prospectus and any amended or supplemented Prospectus, and (C) each Issuer Free Writing Prospectus; and, if the delivery of a prospectus is required at any time after the date hereof in connection with the offering or sale of the Stock or any other securities relating thereto and if at such time any events shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary to amend or supplement the Prospectus in order to comply with the Securities Act, to notify the Representatives and, upon its request, to file such document and to prepare and furnish without charge to each Underwriter and to any dealer in securities as many copies as the Representatives may from time to time reasonably request of an amended or supplemented Prospectus that will correct such statement or omission or effect such compliance.

(iv) To file promptly with the Commission any amendment or supplement to the Registration Statement or the Prospectus that may, in the reasonable judgment of the Company or the Representatives, be required by the Securities Act or requested by the Commission.

(v) Prior to filing with the Commission any amendment or supplement to the Registration Statement or the Prospectus, to furnish a copy thereof to the Representatives and counsel for the Underwriters and obtain the consent of the Representatives to the filing (such consent not to be unreasonably withheld, conditioned or delayed).

(vi) Not to make any offer relating to the Stock that would constitute an Issuer Free Writing Prospectus without the prior written consent of the Representatives.

(vii) To comply with all applicable requirements of Rule 433 under the Securities Act with respect to any Issuer Free Writing Prospectus. If at any time after the date hereof any events shall have occurred as a result of which any Issuer Free Writing Prospectus, as then amended or supplemented, would conflict with the information in the Registration Statement, the Pricing Disclosure Package or the Prospectus or would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or, if for any other reason it shall be necessary to amend or supplement any Issuer Free Writing Prospectus, to notify the Representatives and, upon its request, to file such document and to prepare and furnish without charge to each Underwriter as many copies as the Representatives may from time to time reasonably request of an amended or supplemented Issuer Free Writing Prospectus that will correct such conflict, statement or omission or effect such compliance.

(viii) As soon as practicable after the Effective Date (it being understood that the Company shall have until at least 410 days or, if the fourth quarter following the fiscal quarter that includes the Effective Date is the last fiscal quarter of the Company's fiscal year, 455 days after the end of the Company's current fiscal quarter), to make generally available to the Company's security holders (including by making available on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("***EDGAR***") and to deliver to the Representatives (or make available on EDGAR) an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the Securities Act and the rules and regulations thereunder (including, at the option of the Company, Rule 158).

(ix) Promptly from time to time to take such action as the Representatives may reasonably request to qualify the Stock for offering and sale under the securities or Blue Sky laws of Canada and such other jurisdictions as the Representatives may reasonably request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Stock; *provided*, that in connection therewith the Company shall not be required to (A) qualify as a foreign corporation in any jurisdiction in which it would not otherwise be required to so qualify, (B) file a general consent to service of process in any such jurisdiction, or (C) subject itself to taxation in any jurisdiction in which it would not otherwise be subject.

(x) For a period commencing on the date hereof and ending on the 180th day after the date of the Prospectus (the "***Lock-Up Period***"), not to, directly or indirectly, (A) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock, or sell or grant options, rights or warrants with respect to any shares of Common Stock or securities convertible into or exchangeable for Common Stock, (B) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of such shares of Common Stock, whether any such transaction described in clause (A) or (B) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, (C) file, confidentially submit, or cause to be confidentially submitted or filed, a registration statement, including any amendments thereto, with respect to the registration of any shares of Common Stock or securities convertible, exercisable or exchangeable into Common Stock or any other securities of the Company (other than (i) any confidential or non-public submissions to the Commission of any registration statement under the Securities Act only if (w) no public announcement of such confidential or non-public submission shall be made, (x) if any demand was made for, or any right exercised with respect to, such registration of shares of Common Stock or securities convertible, exercisable or exchangeable into Common Stock, no public announcement of such demand or exercise of rights shall be made, (y) the Company shall provide written notice at least two business days prior to such confidential or non-public submission to Barclays Capital Inc. and BofA Securities, Inc. and (z) no such confidential or non-public submission shall become a publicly available registration statement during the Lock-Up Period; or (ii) any registration statement on Form S-8), or (D) publicly disclose the intention to do any of the foregoing, in each case without the prior written consent of Barclays Capital Inc. and BofA Securities, Inc., on behalf of the Underwriters, and to cause each officer, director and stockholder of the Company set forth on Schedule II hereto to furnish to the Representatives, prior to the Initial Delivery Date, a letter or letters, substantially in the form of Exhibit A hereto (the "***Lock-Up Agreements***"). The restrictions contained in the preceding sentence shall not apply to (a) the Stock to be sold hereunder, (b) shares of Common Stock issued to effect the reorganization described in the Pricing Disclosure Package and the Prospectus, (c) the issuance by the Company of shares of Common Stock upon the conversion or exchange of convertible or exchangeable securities outstanding as of the date of this Agreement described in the Pricing Disclosure Package and Prospectus, (d) the issuance by the Company of options to purchase shares of Common Stock and other equity incentive compensation or awards, including restricted stock or restricted stock units pursuant to employee stock option plans or similar plans existing on the date of this Agreement and described in the Pricing Disclosure Package and Prospectus, (e) any shares of Common Stock issued upon the exercise of options granted under such stock option or similar plans existing on the date of this Agreement, or under stock option or similar plans of companies acquired by the Company as of the date of this Agreement, and, in each case, described in the Pricing Disclosure Package and Prospectus, (f) the filing by the Company of any registration statement on Form S-8 with the Commission relating to the offering of securities pursuant to the terms of such stock option or similar plans described in the Pricing Disclosure Package and Prospectus and (g) the issuance of securities in connection with (i) the acquisition by the Company or any subsidiary of the securities, businesses, property or other assets of another person or entity or pursuant to any employee benefit plan assumed by the Company or any subsidiary in connection with any such acquisition and (ii) joint ventures or acquisitions and other strategic transactions; *provided* that in the case of the preceding clauses (g), the aggregate number of shares issued in all such acquisitions and transactions does not exceed 5.0% of the Company's outstanding common stock following the offering of the Stock contemplated by this Agreement and each recipient of such shares executes a Lock-Up Agreement.

(xi) If Barclays Capital Inc. and BofA Securities, Inc., in their sole discretion, agree to release or waive the restrictions set forth in a Lock-Up Agreement for an officer or director of the Company and provides the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver in accordance with FINRA Rule 5131 (which may include by issuing a press release substantially in the form of Exhibit B hereto), and containing such other information as Barclays Capital Inc. or BofA Securities, Inc. may require with respect to the circumstances of the release or waiver and/or the identity of the officer(s) and/or director(s) with respect to which the release or waiver applies, in accordance with FINRA Rule 5131.

(xii) To apply the net proceeds from the sale of the Stock being sold by the Company substantially in accordance with the description as set forth in the Prospectus under the caption "Use of Proceeds."

(xiii) If the Company elects to rely upon Rule 462(b) under the Securities Act, the Company shall file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) under the Securities Act by 10:00 P.M., Washington, D.C. time, on the date of this Agreement, and the Company shall at the time of filing pay the Commission the filing fee for the Rule 462(b) Registration Statement.

(xiv) In connection with the Directed Share Program, to ensure that the Directed Shares will be restricted from sale, transfer, assignment, pledge or hypothecation to the same extent as sales and dispositions of Common Stock by the Company are restricted pursuant to Section 5(a)(x), and Morgan Stanley & Co. LLC will notify the Company as to which Directed Share Participants will need to be so restricted. At the request of Morgan Stanley & Co. LLC, the Company will direct the transfer agent to place stop transfer restrictions upon such securities for such period of time as is consistent with Section 5(a)(x).

(xv) To comply with all applicable securities and other applicable laws, rules and regulations in each foreign jurisdiction in which the Directed Shares are offered in connection with the Directed Share Program.

(xvi) Company will promptly notify the Representatives if the Company ceases to be an Emerging Growth Company at any time prior to the time when a prospectus relating to the offering or sale of the Stock or any other securities relating thereto is not required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule).

(xvii) If at any time following the distribution of any Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such untrue statement or omission. The Company will promptly notify the Representatives of (A) any distribution by the Company of Written Testing-the-Waters Communications and (B) any request by the Commission for information concerning the Written Testing-the-Waters Communications.

(xviii) The Company and its affiliates will not take, directly or indirectly, any action designed to or that has constituted or that reasonably would be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Stock.

(xix) The Company will do and perform all things required or necessary to be done and performed under this Agreement by it prior to each Delivery Date, and to satisfy all conditions precedent to the Underwriters' obligations hereunder to purchase the Stock.

(xx) The Company will deliver to each Underwriter (or its agent), on or prior to the date of execution of this Agreement, a properly completed and executed Certification Regarding Beneficial Owners of Legal Entity Customers or applicable exemption certificate (the "***FinCEN Certification***"), together with copies of identifying documentation, of the Company and the Company undertakes to provide such additional supporting documentation as each Underwriter may reasonably request in connection with the verification of the FinCEN Certification.

(b) Each Underwriter severally agrees that such Underwriter shall not include any "issuer information" (as defined in Rule 433 under the Securities Act) in any "free writing prospectus" (as defined in Rule 405 under the Securities Act) used or referred to by such Underwriter without the prior consent of the Company (any such issuer information with respect to whose use the Company has given its consent, "***Permitted Issuer Information***"); *provided* that (i) no such consent shall be required with respect to any such issuer information contained in any document filed by the Company with the Commission prior to the use of such free writing prospectus, and (ii) "issuer information", as used in this Section 5(b), shall not be deemed to include information prepared by or on behalf of such Underwriter on the basis of or derived from issuer information.

6. *Expenses*. The Company agrees, whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, to pay all expenses, costs, fees and taxes incident to and in connection with (a) the authorization, issuance, sale and delivery of the Stock and any stamp duties or other taxes payable in that connection, and the preparation and printing of certificates for the Stock; (b) the preparation, printing and filing under the Securities Act of the Registration Statement (including any exhibits thereto), any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, and any amendment or supplement thereto; (c) the distribution of the Registration Statement (including any exhibits thereto), any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, and any amendment or supplement thereto, all as provided in this Agreement; (d) the distribution of this Agreement, any supplemental agreement among Underwriters, and any other related documents in connection with the offering, purchase, sale and delivery of the Stock; (e) any required review by the FINRA of the terms of sale of the Stock (including the reasonable fees and expenses of counsel to the Underwriters in an amount that is not greater than $35,000); (f) the listing of the Stock on The Nasdaq Global Select Market and/or any other exchange; (g) the qualification of the Stock under the securities laws of the several jurisdictions as provided in Section 5(a)(ix) and the preparation, printing and distribution of a Blue Sky Memorandum (including the reasonable fees and expenses of counsel to the Underwriters in an amount that is not greater than $15,000); (h) the preparation, printing and distribution of one or more versions of the Preliminary Prospectus and the Prospectus for distribution in Canada, including in the form of a Canadian "wrapper" (including the reasonable fees and expenses of Canadian counsel to the Underwriters in an amount that is not greater than $15,000); (i) the offer and sale of shares of the Stock by the Underwriters in connection with the Directed Share Program, including the fees and disbursements of counsel to the Underwriters related thereto, the costs and expenses of preparation, printing and distribution of the Directed Share Program material and all stamp duties or other taxes incurred by the Underwriters in connection with the Directed Share Program; (j) the investor presentations on any "road show" or any Testing-the-Waters Communication, undertaken in connection with the marketing of the Stock, including, without limitation, expenses associated with any electronic road show, travel and lodging expenses of the representatives and officers of the Company and 50% of the cost of any aircraft chartered in connection with the road show, with the remaining 50% of the cost of such aircraft to be paid by the Underwriters; and (k) all other costs and expenses incident to the performance of the obligations of the Company under this Agreement; *provided* that, except as provided in this Section 6 and in Section 11, the Underwriters shall pay their own costs and expenses, including the costs and expenses of their counsel and the expenses of advertising any offering of the Stock made by the Underwriters.

7. *Conditions of Underwriters' Obligations*. The respective obligations of the Underwriters hereunder are subject to the accuracy, when made and on each Delivery Date, of the representations and warranties of the Company contained herein, to the performance by the Company of their obligations hereunder, and to each of the following additional terms and conditions:

(a) The Prospectus shall have been timely filed with the Commission in accordance with Section 5(a)(i). The Company shall have complied with all filing requirements applicable to any Issuer Free Writing Prospectus used or referred to after the date hereof; no stop order suspending the effectiveness of the Registration Statement or preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus shall have been issued and no proceeding or examination for such purpose shall have been initiated or threatened by the Commission; and any request of the Commission for inclusion of additional information in the Registration Statement or the Prospectus or otherwise shall have been complied with. If the Company has elected to rely upon Rule 462(b) under the Securities Act, the Rule 462(b) Registration Statement shall have become effective by 10:00 P.M., Washington, D.C. time, on the date of this Agreement.

(b) [reserved].

(c) All corporate proceedings and other legal matters incident to the authorization, form and validity of this Agreement, the Stock, the Registration Statement, the Prospectus and any Issuer Free Writing Prospectus, and all other legal matters relating to this Agreement and the transactions contemplated hereby shall be reasonably satisfactory in all material respects to counsel for the Underwriters, and the Company shall have furnished to such counsel all documents and information that they may reasonably request to enable them to pass upon such matters.

(d) Paul, Weiss, Rifkind, Wharton & Garrison LLP shall have furnished to the Representatives its written opinion, as counsel to the Company, addressed to the Underwriters and dated such Delivery Date, in form and substance reasonably satisfactory to the Representatives.

(e) The Representatives shall have received from Latham & Watkins LLP, counsel for the Underwriters, such opinion and negative assurance letter, dated such Delivery Date, with respect to the issuance and sale of the Stock, the Registration Statement, the Prospectus and the Pricing Disclosure Package and other related matters as the Representative may reasonably require, and the Company shall have furnished to such counsel such documents as they reasonably request for the purpose of enabling them to pass upon such matters.

(f) At the time of execution of this Agreement, the Representatives shall have received (A) from the Chief Financial Officer of the Company, a written certificate (a "CFO Certificate"), in a form reasonably satisfactory to the Representatives and dated the date hereof, as to certain financial information included in the Registration Statement, the Prospectus and the Pricing Disclosure Package and (B) from RSM US LLP and Deloitte & Touche LLP, respectively, a letter, in form and substance reasonably satisfactory to the Representatives, addressed to the Underwriters and dated the date hereof (i) confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission, and (ii) stating, as of the date hereof (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Pricing Disclosure Package, as of a date not more than three days prior to the date hereof), the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings.

(g) With respect to the CFO Certificate and letters of RSM US LLP and Deloitte & Touche LLP referred to in the preceding paragraph and delivered to the Representatives concurrently with the execution of this Agreement (each, an "***initial letter***"), the Company shall have furnished to the Representatives (A) a bring-down CFO Certificate, in a form reasonably satisfactory to the Representatives and dated such Delivery Date, as to certain financial information included in the Registration Statement, the Prospectus and the Pricing Disclosure Package and (B) a letter from RSM US LLP and Deloitte & Touche LLP, respectively (each, a "***bring-down letter***"), addressed to the Underwriters and dated such Delivery Date (i) confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission, (ii) stating, as of the date of the bring-down letter (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Prospectus, as of a date not more than three days prior to the date of the bring-down letter), the conclusions and findings of such firm with respect to the financial information and other matters covered by the initial letter, and (iii) confirming in all material respects the conclusions and findings set forth in the initial letter.

(h) The Company shall have furnished to the Representatives a certificate, dated such Delivery Date, of its Chief Executive Officer and its Chief Financial Officer as to such matters as the Representatives may reasonably request, including, without limitation, a statement:

(i) That the representations, warranties and agreements of the Company in Section 1 are true and correct on and as of such Delivery Date, and the Company has complied with all its agreements contained herein and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to such Delivery Date;

(ii) That no stop order suspending the effectiveness of the Registration Statement has been issued; and no proceedings or examination for that purpose have been instituted or, to the knowledge of such officers, threatened; and

(iii) That they have examined the Registration Statement, the Prospectus and the Pricing Disclosure Package, and, in their opinion, (A) (1) the Registration Statement, as of the Effective Date, (2) the Prospectus, as of its date and on the applicable Delivery Date, and (3) the Pricing Disclosure Package, as of the Applicable Time, did not and do not contain any untrue statement of a material fact and did not and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (except in the case of the Registration Statement, in the light of the circumstances under which they were made) not misleading, and (B) since the Effective Date, no event has occurred that should have been set forth in a supplement or amendment to the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus that has not been so set forth; and

(iv) To the effect of Section 7(i) (*provided* that no representation with respect to the judgment of the Representatives need be made) and Section 7(j).

(i) Except as described in the Pricing Disclosure Package and the Prospectus, (i) Neither the Company nor any of its subsidiaries shall have sustained, since the date of the latest audited financial statements included in the Pricing Disclosure Package, any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, or (ii) since such date there shall not have been any adverse change in the capital stock or long-term debt of the Company (other than draw-downs of $8 million on each of March 8 and March 31 under the Credit Agreement) or any of its subsidiaries or any adverse change, or any development involving a prospective adverse change, in or affecting the condition (financial or otherwise), results of operations, stockholders' equity, properties, management, business or prospects of the Company and its subsidiaries taken as a whole, the effect of which, in any such case described in clause (i) or (ii), is, individually or in the aggregate, in the reasonable judgment of the Representatives, so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Stock being delivered on such Delivery Date on the terms and in the manner contemplated in the Prospectus.

(j) Subsequent to the execution and delivery of this Agreement there shall not have occurred any of the following: (i) (A) trading in securities generally on any securities exchange that has registered with the Commission under Section 6 of the Exchange Act (including the New York Stock Exchange, The Nasdaq Global Select Market, The Nasdaq Global Market or The Nasdaq Capital Market), or (B) trading in any securities of the Company on any exchange or in the over-the-counter market, shall have been suspended or materially limited or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or such market by the Commission, by such exchange or by any other regulatory body or governmental authority having jurisdiction, (ii) a general moratorium on commercial banking activities shall have been declared by federal or state authorities, (iii) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States or there shall have been a declaration of a national emergency or war by the United States, or (iv) there shall have occurred such a material adverse change in general economic, political or financial conditions, including, without limitation, as a result of terrorist activities after the date hereof (or the effect of international conditions on the financial markets in the United States shall be such) or any other calamity or crisis, either within or outside the United States, in each case as to make it, in the reasonable judgment of the Representatives, impracticable or inadvisable to proceed with the public offering or delivery of the Stock being delivered on such Delivery Date on the terms and in the manner contemplated in the Prospectus.

(k) The Nasdaq Global Select Market shall have approved the Stock for listing, subject only to official notice of issuance and evidence of satisfactory distribution.

(l) The Lock-Up Agreements between the Representatives and the officers, directors and stockholders of the Company set forth on Schedule II, delivered to the Representatives on or before the date of this Agreement, shall be in full force and effect on such Delivery Date.

(m) On or prior to each Delivery Date, the Company shall have furnished to the Underwriters such further certificates and documents as the Representatives may reasonably request.

(n) FINRA shall not have raised any objection with respect to the fairness or reasonableness of the underwriting, or other arrangements of the transactions, contemplated hereby.

All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

8. *Indemnification and Contribution.*

(a) The Company hereby agrees to indemnify and hold harmless each Underwriter or its affiliates, directors, officers and employees and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to purchases and sales of Stock), to which that Underwriter or affiliate, director, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in (A) any Preliminary Prospectus, the Registration Statement, the Prospectus or in any amendment or supplement thereto, (B) any Issuer Free Writing Prospectus or in any amendment or supplement thereto, (C) any Permitted Issuer Information used or referred to in any "free writing prospectus" (as defined in Rule 405 under the Securities Act) used or referred to by any Underwriter, (D) any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Stock, including any "road show" (as defined in Rule 433 under the Securities Act) not constituting an Issuer Free Writing Prospectus and any Written Testing-the-Waters Communication (collectively "***Marketing Materials***"), or (ii) the omission or alleged omission to state in any Preliminary Prospectus, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto or in any Permitted Issuer Information, any Marketing Materials, any material fact required to be stated therein or necessary to make the statements therein not misleading, and shall reimburse each Underwriter and each such affiliate, director, officer, employee or controlling person promptly upon demand for any legal or other documented out-of-pocket expenses reasonably incurred by that Underwriter, affiliate, director, officer, employee or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; *provided*, *however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto or in any Permitted Issuer Information, any Marketing Materials, in reliance upon and in conformity with written information concerning such Underwriter furnished to the Company through the Representatives by or on behalf of any Underwriter specifically for inclusion therein, which information consists solely of the information specified in Section 8(e). The foregoing indemnity agreement is in addition to any liability which the Company may otherwise have to any Underwriter or to any affiliate, director, officer, employee or controlling person of that Underwriter.

(b) Each Underwriter, severally and not jointly, shall indemnify and hold harmless the Company, its directors, officers and employees, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the Company or any such director, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto or any Marketing Materials , or (ii) the omission or alleged omission to state in any Preliminary Prospectus, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto or any Marketing Materials, any material fact required to be stated therein or necessary to make the statements therein not misleading, but in each case only to the extent that the untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information concerning such Underwriter furnished to the Company through the Representatives by or on behalf of that Underwriter specifically for inclusion therein, which information is limited to the information set forth in Section 8(e). The foregoing indemnity agreement is in addition to any liability that any Underwriter may otherwise have to the Company or any such director, officer, employee or controlling person.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the claim or the commencement of that action; *provided*, *however*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have under this Section 8 except to the extent it has been materially prejudiced (through the forfeiture of substantive rights and defenses) by such failure and, *provided*, *further*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have to an indemnified party otherwise than under this Section 8. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 8 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable and documented out-of-pocket costs of investigation; *provided*, *however*, that the indemnified party shall have the right to employ counsel to represent jointly the indemnified party and those other indemnified parties and their respective directors, officers, employees and controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought under this Section 8 if (i) the indemnified party and the indemnifying party shall have so mutually agreed; (ii) the indemnifying party has failed within a reasonable time to retain counsel reasonably satisfactory to the indemnified party; (iii) the indemnified party and its directors, officers, employees and controlling persons shall have reasonably concluded that there may be legal defenses available to them that are different from or in addition to those available to the indemnifying party; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the indemnified parties or their respective directors, officers, employees or controlling persons, on the one hand, and the indemnifying party, on the other hand, and representation of both sets of parties by the same counsel would be inappropriate due to actual or potential differing interests between them, and in any such event the reasonable and documented fees and expenses of such separate counsel shall be paid by the indemnifying party. It is understood and agreed that the indemnifying party shall not, in connection with any action or claims or related action or claim in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all indemnified parties. No indemnifying party shall (x) without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld, conditioned or delayed), settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include a statement as to, or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party, or (y) be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with the consent of the indemnifying party or if there be a final judgment for the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment in accordance with this Agreement. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for reasonable and documented fees and expenses of counsel as contemplated by Section 8(a) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request or disputed in good faith the indemnified party's entitlement to such reimbursement prior to the date of such settlement.

(d) If the indemnification provided for in this Section 8 shall for any reason be unavailable to or insufficient to hold harmless an indemnified party under Section 8(a), 8(b) or 8(f) in respect of any loss, claim, damage or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Stock, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, with respect to the statements or omissions that resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, with respect to such offering shall be deemed to be in the same proportion as the total net proceeds from the offering of the Stock purchased under this Agreement (before deducting expenses) received by the Company, as set forth in the table on the cover page of the Prospectus, on the one hand, and the total underwriting discounts and commissions received by the Underwriters with respect to the shares of the Stock purchased under this Agreement , as set forth in the table on the cover page of the Prospectus, on the other hand. The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 8(d) were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 8(d) shall be deemed to include, for purposes of this Section 8(d), any documented out-of-pocket legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8(d), in no event shall an Underwriter be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the offering of the Stock exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute as provided in this Section 8(d) are several in proportion to their respective underwriting obligations and not joint.

(e) The Underwriters severally confirm and the Company acknowledges and agrees that the statements regarding delivery of shares by the Underwriters set forth on the cover page of, and the concession and reallowance figures and the paragraph relating to stabilization by the Underwriters appearing under the caption "Underwriting" in, the Pricing Disclosure Package and the Prospectus are correct and constitute the only information concerning such Underwriters furnished in writing to the Company by or on behalf of the Underwriters specifically for inclusion in any Preliminary Prospectus, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto or in any Marketing Materials.

(f) The Company shall indemnify and hold harmless Morgan Stanley & Co. LLC (including its affiliates, directors, officers and employees) and each person, if any, who controls Morgan Stanley & Co. LLC within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act ("MS Entities"), from and against any loss, claim, damage or liability or any action in respect thereof to which any of the MS Entities may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action (i) arises out of, or is based upon, any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the approval of the Company for distribution to Directed Share Participants in connection with the Directed Share Program or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) arises out of, or is based upon, the failure of the Directed Share Participant to pay for and accept delivery of Directed Shares that the Directed Share Participant agreed to purchase, or (iii) is otherwise related to the Directed Share Program; provided that the Company shall not be liable under (iii) for any loss, claim, damage, liability or action that is determined in a final judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the MS Entities. The Company shall reimburse the MS Entities promptly upon demand for any legal or other expenses reasonably incurred by them in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred.

9. *Defaulting Underwriters*.

(a) If, on any Delivery Date, any Underwriter defaults in its obligations to purchase the Stock that it has agreed to purchase under this Agreement, the remaining non-defaulting Underwriters may in their discretion arrange for the purchase of such Stock by the non-defaulting Underwriters or other persons satisfactory to the Company on the terms contained in this Agreement. If, within 36 hours after any such default by any Underwriter, the non-defaulting Underwriters do not arrange for the purchase of such Stock, then the Company shall be entitled to a further period of 36 hours within which to procure other persons satisfactory to the non-defaulting Underwriters to purchase such Stock on such terms. In the event that within the respective prescribed periods, the non-defaulting Underwriters notify the Company that they have so arranged for the purchase of such Stock, or the Company notifies the non-defaulting Underwriters that it has so arranged for the purchase of such Stock, either the non-defaulting Underwriters or the Company may postpone such Delivery Date for up to seven full business days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Underwriters may be necessary in the Registration Statement, the Prospectus or in any other document or arrangement, and the Company agrees to promptly prepare any amendment or supplement to the Registration Statement, the Prospectus or in any such other document or arrangement that effects any such changes. As used in this Agreement, the term "Underwriter," unless the context requires otherwise, includes any party not listed in Schedule I hereto that, pursuant to this Section 9, purchases Stock that a defaulting Underwriter agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Stock of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the total number of shares of the Stock that remains unpurchased does not exceed one-eleventh of the total number of shares of all the Stock, then the Company shall have the right to require each non-defaulting Underwriter to purchase the total number of shares of Stock that such Underwriter agreed to purchase hereunder plus such Underwriter's pro rata share (based on the total number of shares of Stock that such Underwriter agreed to purchase hereunder) of the Stock of such defaulting Underwriter or Underwriters for which such arrangements have not been made; *provided* that the non-defaulting Underwriters shall not be obligated to purchase more than 110% of the total number of shares of Stock that it agreed to purchase on such Delivery Date pursuant to the terms of Section 2.

(c) If, after giving effect to any arrangements for the purchase of the Stock of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the total number of shares of Stock that remains unpurchased exceeds one-eleventh of the total number of shares of all the Stock, or if the Company shall not exercise the right described in paragraph (b) above, then this Agreement shall terminate without liability on the part of the non-defaulting Underwriters. Any termination of this Agreement pursuant to this Section 9 shall be without liability on the part of the Company, except that the Company will continue to be liable for the payment of expenses as set forth in Sections 6 and 11 and except that the provisions of Section 8 shall not terminate and shall remain in effect.

(d) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company or any non-defaulting Underwriter for damages caused by its default.

10. *Termination*. The obligations of the Underwriters hereunder may be terminated by the Representatives by notice given to and received by the Company prior to delivery of and payment for the Firm Stock if, prior to that time, any of the events described in Sections 7(i) and 7(j) shall have occurred or if the Underwriters shall decline to purchase the Stock for any reason permitted under this Agreement.

11. *Reimbursement of Underwriters' Expenses*. If (a) the Company shall fail to tender the Stock for delivery to the Underwriters for any reason, or (b) the Underwriters shall decline to purchase the Stock for any reason permitted under this Agreement, the Company will reimburse the Underwriters for all reasonable out-of-pocket expenses (including fees and disbursements of counsel for the Underwriters) incurred by the Underwriters in connection with this Agreement and the proposed purchase of the Stock, and upon demand the Company shall pay the full amount thereof to the Representatives. If this Agreement is terminated pursuant to Section 9 by reason of the default of one or more Underwriters, the Company shall not be obligated to reimburse any defaulting Underwriter on account of those expenses.

12. *Research Analyst Independence*. The Company acknowledges that the Underwriters' research analysts and research departments are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that such Underwriters' research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of their respective investment banking divisions. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriters with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by such Underwriters' investment banking divisions. The Company acknowledges that each of the Underwriters is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

13. *No Fiduciary Duty*. The Company acknowledges and agrees that in connection with this offering, sale of the Stock or any other services the Underwriters may be deemed to be providing hereunder, notwithstanding any preexisting relationship, advisory or otherwise, between the parties or any oral representations or assurances previously or subsequently made by the Underwriters: (a) no fiduciary or agency relationship between the Company and any other person, on the one hand, and the Underwriters, on the other hand, exists; (b) the Underwriters are not acting as advisors, expert or otherwise and are not providing a recommendation or investment advice, to the Company or its shareholders, including, without limitation, with respect to the determination of the public offering price of the Stock, and such relationship between the Company, on the one hand, and the Underwriters, on the other hand, is entirely and solely commercial, based on arms-length negotiations and, as such, not intended for use by any individual for personal, family or household purposes; (c) any duties and obligations that the Underwriters may have to the Company shall be limited to those duties and obligations specifically stated herein; (d) the Underwriters and their respective affiliates may have interests that differ from those of the Company and (e) does not constitute a solicitation of any action by the Underwriters. The Company hereby waives (x) any claims that the Company may have against the Underwriters with respect to any breach of fiduciary duty in connection with this offering and (y) agree that none of the activities of the Underwriters in connection with the transactions contemplated herein constitutes a recommendation, investment advice or solicitation of any action by the Underwriters with respect to any entity or natural person. Each of the Company has consulted their own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate.

14. *Notices, etc.* All statements, requests, notices and agreements hereunder shall be in writing, and:

(a) if to the Underwriters, shall be delivered or sent by mail or facsimile transmission to Barclays Capital Inc., 745 Seventh Avenue, New York, New York 10019, Attention: Syndicate Registration (Fax: (646) 834-8133), with a copy, in the case of any notice pursuant to Section 8(c), to the Director of Litigation, Office of the General Counsel, Barclays Capital Inc., 745 Seventh Avenue, New York, New York 10019; BofA Securities, Inc., One Bryant Park, New York, New York 10036, attention of Syndicate Department (facsimile: (646) 855-3073), with a copy to ECM Legal (facsimile: (212) 230-8730); Morgan Stanley & Co. LLC, 1585 Broadway, New York, New York 10036, Attention: Equity Syndicate Desk, with a copy to the Legal Department; Goldman Sachs & Co. LLC, 200 West Street, New York, New York 10282-2198, Attention: Registration Department; and

(b) if to the Company, shall be delivered or sent by mail or by email to the address of the Company set forth in the Registration Statement, Attention: Jason Duva.

Any such statements, requests, notices or agreements shall take effect at the time of receipt thereof. The Company shall be entitled to act and rely upon any request, consent, notice or agreement given or made on behalf of the Underwriters by Barclays Capital Inc.

15. *Persons Entitled to Benefit of Agreement*. This Agreement shall inure to the benefit of and be binding upon the Underwriters, the Company, and their respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that (a) indemnity agreement of the Company contained in this Agreement shall also be deemed to be for the benefit of the directors, officers and employees of the Underwriters and each person or persons, if any, who control any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and (b) the indemnity agreement of the Underwriters contained in Section 8(b) of this Agreement shall be deemed to be for the benefit of the directors, officers and employees of the Company, and each person, if any, who controls the Company and any person controlling the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act. Nothing in this Agreement is intended or shall be construed to give any person, other than the persons referred to in this Section 15, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

16. *Survival*. The respective indemnities, rights of contributions, representations, warranties and agreements of the Company and the Underwriters contained in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall survive the delivery of and payment for the Stock and shall remain in full force and effect, regardless of any investigation made by or on behalf of any of them or any person controlling any of them.

17. *Definition of the Terms "Business Day", "Affiliate" and "Subsidiary"*. For purposes of this Agreement, (a) "***business day***" means each Monday, Tuesday, Wednesday, Thursday or Friday that is not a day on which banking institutions in New York are generally authorized or obligated by law or executive order to close, and (b) "***affiliate***" and "***subsidiary***" have the meanings set forth in Rule 405 under the Securities Act.

18. *Governing Law*. This Agreement and any transaction contemplated by this Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles that would result in the application of any other law than the laws of the State of New York (other than Section 5-1401 of the General Obligations Law).

19. *Waiver of Jury Trial*. The Company and the Underwriters hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

20. *Counterparts*. This Agreement may be executed in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original but all such counterparts shall together constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

21. *Headings*. The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

22. *Recognition of the U.S. Special Resolution Regimes*.

(a) In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

For purposes of this Section 24, a "***BHC Act Affiliate***" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k). "***Covered Entity***" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b). "***Default Right***" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable. "***U.S. Special Resolution Regime***" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

If the foregoing correctly sets forth the agreement between the Company and the Underwriters, please indicate your acceptance in the space provided for that purpose below.

Very truly yours,

**LATHAM GROUP, INC.**

By: _____
Name:
Title:

[*Signature Page to Underwriting Agreement*]

Accepted:

Barclays Capital Inc.
BofA Securities, Inc.
Morgan Stanley & Co. LLC
Goldman Sachs & Co. LLC

For themselves and as Representatives
of the several Underwriters named
in Schedule I hereto

By Barclays Capital Inc.

By: _____
Name:
Title:

By BofA Securities, Inc.

By: _____
Name:
Title:

By Morgan Stanley & Co. LLC

By: _____
Name:
Title:

By Goldman Sachs & Co. LLC

By: _____
Name:
Title:

**SCHEDULE I**

| Underwriters | Number of Shares of Firm Stock | Number of Shares of Option Stock |
|---|---|---|
| Barclays Capital Inc. | | |
| BofA Securities, Inc. | | |
| Morgan Stanley & Co., LLC | | |
| Goldman Sachs & Co. LLC | | |
| Nomura Securities International, Inc. | | |
| William Blair & Company, LLC | | |
| Robert W. Baird & Co. Incorporated | | |
| KeyBanc Capital Markets Inc. | | |
| Truist Securities, Inc. | | |
| Total | | |

**SCHEDULE II**
**PERSONS DELIVERING LOCK-UP AGREEMENTS**

Directors

Scott M. Rajeski

James E. Cline

Robert D. Evans

Alexander L. Hawkinson

Mark P. Laven

Andrew D. Singer

Christopher P. O'Brien

William M. Pruellage

Suzan Morno-Wade

Officers

Scott M. Rajeski

J. Mark Borseth

Jeff A. Leake

Joel R. Culp

Kaushal B. Dhruv

Melissa C. Feck

Joshua D. Cowley

Jason Duva

Stockholders

Pamplona Capital Partners V, L.P.

Wynnchurch Capital Partners, IV, L.P.

WC Partners Executive IV, L. P.

**SCHEDULE III**

**ORALLY CONVEYED PRICING INFORMATION**

1. $[ ● ] per share.

2. [ ● ]shares of Firm Stock and [ ● ] shares of Option Stock.

**SCHEDULE IV**

**ISSUER FREE WRITING PROSPECTUSES – ROAD SHOW MATERIALS**

[ ● ]

**SCHEDULE V**

**ISSUER FREE WRITING PROSPECTUS**

[ ● ]

**SCHEDULE VI**

**WRITTEN TESTING-THE-WATERS COMMUNICATIONS**

[ ● ]

**SCHEDULE VII**

**SUBSIDIARIES**

1. Latham Intermediate Holdings, LLC
2. Latham US, LLC
3. Latham Purchaser Holdings, LLC
4. Latham Purchaser Parent, Inc.
5. LPP Holdings, Inc.
6. Latham International Holdings, Inc.
7. Latham International Manufacturing Corp.
8. Latham Pool Products, Inc.
9. GL international, LLC
10. LPP US, LLC
11. Latham Pool Products ULC
12. Pool Cover Specialists, LLC
13. Pacific Pools Europe S.A.R.L.
14. Narellan Group Pty Ltd.
15. Narelan Pools (NZ) Pty Ltd
16. Narellan Pools International Pty Ltd
17. Narellan Franchise Pty Ltd
18. Narellan Pools Pty Ltd
19. Narellan Innovations Pty Ltd
20. Narellan Innovations Unit Trust
21. Narellan Pools (Canada) Ltd

**EXHIBIT A**

**LOCK-UP LETTER AGREEMENT**

Barclays Capital Inc.
BofA Securities, Inc.
Morgan Stanley & Co. LLC
Goldman and Sachs & Co. LLC

As Representatives of the several
Underwriters named in Schedule I attached hereto,

c/o Barclays Capital Inc.
745 Seventh Avenue
New York, New York 10019

c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

c/o Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

Ladies and Gentlemen:

The undersigned understands that you and certain other firms (the "***Underwriters***") propose to enter into an Underwriting Agreement (the "***Underwriting Agreement***") providing for the purchase by the Underwriters of shares (the "***Stock***") of Common Stock, par value $0.0001 per share (the "***Common Stock***"), of Latham Group, Inc., a Delaware corporation (the "***Company***"), and that the Underwriters propose to reoffer the Stock to the public (the "***Offering***"). Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Underwriting Agreement.

In consideration of the execution of the Underwriting Agreement by the Underwriters, and for other good and valuable consideration, the undersigned hereby irrevocably agrees that, without the prior written consent of Barclays Capital Inc. and BofA Securities, Inc., on behalf of the Underwriters, the undersigned will not, directly or indirectly, (1) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of Common Stock (including, without limitation, shares of Common Stock that may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and shares of Common Stock that may be issued upon exercise of any options or warrants) or securities convertible into or exercisable or exchangeable for Common Stock, (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of shares of Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, (3) make any demand for or exercise any right or cause to be confidentially submitted or filed a registration statement, including any amendments thereto, with respect to the registration of any shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock or any other securities of the Company (other than as explicitly set forth herein), or (4) publicly disclose the intention to do any of the foregoing for a period commencing on the date hereof and ending on the 180th day after the date of the Prospectus relating to the Offering (such 180-day period, the "***Lock-Up Period***").

The foregoing restrictions are expressly agreed to preclude the undersigned from engaging in any hedging or other transaction which is designed to or which reasonably could be expected to lead to or result in a sale or disposition of Common Stock or any other securities of the Company even if such Common Stock or other securities of the Company would be disposed of by someone other than the undersigned, including, without limitation, any short sale or any purchase, sale or grant of any right (including without limitation any put or call option, forward, swap or any other derivative transaction or instrument) with respect to any Common Stock, or any other security of the Company that includes, relates to, or derives any significant part of its value from Common Stock or other securities of the Company.

The foregoing restrictions shall not apply to:

(a) the shares of Common Stock to be sold to the Company by the undersigned, if any, solely to the extent specifically disclosed in the Prospectus relating to the Offering, and the exercise of an option or warrant to the extent the shares of Common Stock acquired upon exercise are sold pursuant to such sales;

(b) transactions relating to shares of Common Stock or other securities acquired in the open market after the completion of the Offering if and only if (i) such sales are not required to be reported in any public report or filing with the Commission and (ii) the undersigned does not otherwise voluntarily effect any public filing or report regarding such sales;

(c) bona fide gifts, sales or other dispositions of shares of any class of the Company's capital stock, in each case that are made exclusively between and among the undersigned or members of the undersigned's family (including to any trust, limited partnership, limited liability company or other entity for the direct or indirect benefit of the undersigned or any members of the undersigned's family), or affiliates of the undersigned, including its subsidiaries, partners (if a partnership) or members (if a limited liability company) stockholders (if a corporation) or any investment fund or other entity controlling, controlled by, managing, or managed by or under common control with the undersigned or affiliates of the undersigned (including, for the avoidance of doubt, where the undersigned is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership); *provided* that it shall be a condition to any transfer pursuant to this clause (c) that (i) the transferee/donee agrees to be bound by the terms of this Lock-Up Letter Agreement (including, without limitation, the restrictions set forth in the preceding sentence) to the same extent as if the transferee/donee were a party hereto, (ii) each party (donor, donee, transferor or transferee) shall not be required by law (including without limitation the disclosure requirements of the Securities Act of 1933, as amended (the ***Securities Act***"), and the Securities Exchange Act of 1934, as amended (the "***Exchange Act***")) to make, and shall agree to not voluntarily make, any filing or public announcement of the transfer or disposition prior to the expiration of the Lock-Up Period, and (iii) the undersigned notifies Barclays Capital Inc. and BofA Securities, Inc. at least two business days prior to the proposed transfer or disposition;

(d) transfers of shares of Common Stock or any security convertible into Common Stock by will, testamentary document or intestate succession upon the death of the undersigned, *provided* that the transferee or transferees thereof agree to be bound in writing by the restrictions set forth herein;

(e) transfers of shares of Common Stock by operation of law, such as pursuant to a qualified domestic order or in connection with a divorce settlement, *provided* that the transferee or transferees thereof agree to be bound in writing by the restrictions set forth herein, and provided further that no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of shares of Common Stock, shall be required or shall be voluntarily made during the Lock-Up Period;

(f) (A) the exercise of warrants or the exercise of stock options granted pursuant to the Company's stock option/incentive plans or otherwise outstanding on the date hereof and the receipt by the undersigned from the Company of shares of Common Stock upon such exercise; *provided*, that the restrictions shall apply to shares of Common Stock issued upon such exercise or conversion, (B) transfers of shares of Common Stock to the Company upon the "net" or "cashless" exercise of stock options or other equity awards granted pursuant to the Company's stock option/incentive plans; and (C) forfeitures of shares of Common Stock to the Company to satisfy tax withholding requirements of the undersigned or the Company upon the vesting, during the Lock-Up Period, of equity based awards granted under the Company's stock option/incentive plans or pursuant to other stock purchase arrangements described in the registration statement in connection with the Offering; *provided* that, in the case of each of (B) and (C), the underlying shares of Common Stock shall continue to be subject to the restrictions on transfer set forth in this Lock Up Agreement, and provided further that, if required, any public report or filing under Section 16 of the Exchange Act shall indicate in the footnotes thereto the nature of the transaction;

(g) the establishment of any contract, instruction or plan that satisfies all of the requirements of Rule 10b5-1 (a "***Rule 10b5-1 Plan***") under the Exchange Act; *provided*, *however*, that no sales of Common Stock or securities convertible into, or exchangeable or exercisable for, Common Stock, shall be made pursuant to a Rule 10b5-1 Plan prior to the expiration of the Lock-Up Period (as the same may be extended pursuant to the provisions hereof); *provided further,* that the Company is not required to report the establishment of such Rule 10b5-1 Plan in any public report or filing with the Commission under the Exchange Act during the Lock-Up Period and does not otherwise voluntarily effect any such public filing or report regarding such Rule 10b5-1 Plan;

(h) transfers of shares of Common Stock pursuant to a bona fide third-party tender offer made to all holders of the Company's capital stock after the consummation of the Offering or other transaction, including, without limitation, any merger, consolidation or other similar transaction involving a change of control of the Company (including, without limitation, entering into any lock-up, voting or similar agreement pursuant to which the undersigned may agree to transfer, sell, tender or otherwise dispose of the undersigned's shares of Common Stock in connection with any such transaction, or vote any of the undersigned's shares of Common Stock in favor of any such transaction), *provided* that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the undersigned's shares of Common Stock shall remain subject to the provisions of this Lock-Up Letter Agreement;

(i) the redemption by the Company or its affiliates of shares of Common Stock held by or on behalf of an employee in connection with the termination of such employee's employment; *provided, however,* that, if required, any public report or filing under Section 16 of the Exchange Act shall indicate in the footnotes thereto the nature of the transaction; and

(j) transfers or transactions to effect the reorganization described in the Pricing Disclosure Package and the Prospectus.

Notwithstanding anything to contrary herein, the undersigned shall be permitted to make one or more demands for or exercise of rights with respect to any confidential or non-public submission for registration of any shares of Common Stock or securities convertible, exercisable or exchangeable into Common Stock or any other securities of the Company (provided that, in the case of any such confidential or non-public submission demand, (i) no public announcement of such confidential or non-public submission shall be made, (ii) if any demand was made for, or any right exercised with respect to, such registration of shares of Common Stock or securities convertible, exercisable or exchangeable into Common Stock, no public announcement of such demand or exercise of rights shall be made, (iii) the Company shall provide written notice at least two business days prior to such confidential or non-public submission to Barclays Capital Inc. and BofA Securities, Inc. and (iv) no such confidential or non-public submission shall become a publicly available registration statement during the Lock-Up Period).

If the undersigned is an officer or director of the Company, (i) the undersigned agrees that the foregoing provisions shall be equally applicable to any issuer-directed Stock, as referred to in FINRA Rule 5131(d)(2)(A) that the undersigned may purchase in the Offering pursuant to an allocation of Stock that is directed in writing by the Company, (ii) Barclays Capital Inc. and BofA Securities, Inc. agree that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of shares of Common Stock, Barclays Capital Inc. and BofA Securities, Inc. will notify the Company of the impending release or waiver and (iii) the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by issuing a press release through a major news service (as referred to in FINRA Rule 5131(d)(2)(B)) at least two business days before the effective date of the release or waiver or, as applicable, to disclose such release or waiver in the publicly filed registration statement in connection with a secondary offering. Any release or waiver granted by Barclays Capital Inc. and BofA Securities, Inc. hereunder to any such officer or director that is announced via press release shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if both (a) the release or waiver is effected solely to permit a transfer not for consideration or that is to an immediate family member (as defined in FINRA Rule 5130(i)(5)), and (b) the transferee has agreed in writing to be bound by the same terms described in this letter that are applicable to the transferor, to the extent and for the duration that such terms remain in effect at the time of the transfer.

In furtherance of the foregoing, the Company and its transfer agent are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Letter Agreement.

The undersigned understands that the Company and the Underwriters will proceed with the Offering in reliance on this Lock-Up Letter Agreement.

Whether or not the Offering actually occurs depends on a number of factors, including, without limitation, market conditions. Any Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the parties thereto.

The undersigned acknowledges and agrees that the Underwriters have not provided any recommendation or investment advice nor have the Underwriters solicited any action from the undersigned with respect to the Offering and the undersigned has consulted their own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate.

**This Lock-Up Letter Agreement and any transaction contemplated by this Lock-Up Letter Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles that would result in the application of any other law than the laws of the State of New York (other than Section 5-1401 of the General Obligations Law).**

Notwithstanding anything herein to the contrary, this Lock-Up Letter Agreement shall be of no further force or effect and the undersigned shall be released from all obligations under this agreement upon the earlier to occur, if any, of (i) September 30, 2021, in the event the Underwriting Agreement has not been executed by that date, (ii) prior to the execution of the Underwriting Agreement by the parties thereto, the date the Company files an application to withdraw the Registration Statement related to the Offering, (iii) prior to the execution of the Underwriting Agreement by the parties thereto, the date either the Underwriters, on the one hand, or the Company, on the other hand, notifies the other(s) in writing that it does not intend to proceed with the Offering, or (iv) the date of termination of the Underwriting Agreement (other than the provisions thereof which survive termination) prior to payment for and delivery of the shares of Common Stock to be sold thereunder.

[*Signature page follows*]

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Letter Agreement and that, upon request, the undersigned will execute any additional documents necessary in connection with the enforcement hereof. Any obligations of the undersigned shall be binding upon the heirs and executors (in the case of individuals), personal representatives, successors and assigns of the undersigned.

Very truly yours,

By: _____
Name:
Title:

Dated: _____

**EXHIBIT B**
**Form of Press Release**

Latham Group, Inc.
[*Insert date*]

Latham Group, Inc., (the "***Company***") announced today that Barclays Capital Inc. and BofA Securities, Inc., book-running managers in the Company's recent public sale of [ ● ] shares of common stock are [waiving][releasing] a lock-up restriction with respect to [ ● ] shares of the Company's common stock held by [certain officers or directors][an officer or director][5] of the Company. The [waiver][release] will take effect on [*insert date*], and the shares may be sold or otherwise disposed of on or after such date.

This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.

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5 If Barclays Capital Inc. and BofA Securities, Inc. so request in writing (either in or accompanying the notice to the Company about the impending release or waiver), the Company will include in the press release such other information as Barclays Capital Inc. and BofA Securities, Inc.may require regarding the circumstances of the release or waiver and/or the identity of the officer(s) or director(s) with respect to which the release or waiver applies.

**Exhibit 5.1**

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064

212-373-3000

212-757-3990

April 14, 2021

Latham Group, Inc.
787 Watervliet Shaker Road
Latham, New York 12110

Registration Statement on Form S-1
(Registration No. 333-254930)

Ladies and Gentlemen:

We have acted as special counsel to Latham Group, Inc., a Delaware corporation (the "Company") in connection with the Registration Statement on Form S-1, as amended (the "Registration Statement") of the Company, filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "Act"), and the rules and regulations thereunder (the "Rules"). You have asked us to furnish our opinion as to the legality of the securities being registered under the Registration Statement. The Registration Statement relates to the registration under the Act of up to 23,000,000 shares of the Company's common stock, par value $0.0001 per share (the "Shares") that may be offered by the Company (including shares issuable by the Company upon exercise of the underwriters' over-allotment option).

In connection with the furnishing of this opinion, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (collectively, the "Documents"):

1. the Registration Statement;

2. the form of the Underwriting Agreement (the "Underwriting Agreement"), included as Exhibit 1.1 to the Registration Statement;

3. the form of the Amended and Restated Certificate of Incorporation of the Company included as Exhibit 3.1 to the Registration Statement (the "Amended and Restated Certificate of Incorporation");

4. the form of the Amended and Restated Bylaws of the Company included as Exhibit 3.2 to the Registration Statement; and

5. the form of the Merger Agreement (the "Merger Agreement") between the Company and Latham Investment Holdings, L.P. included as Exhibit 2.1 to the Registration Statement.

In addition, we have examined (i) such corporate records of the Company that we have considered appropriate, including a copy of the certificate of incorporation, as amended, and bylaws, as amended, of the Company, certified by the Company as in effect on the date of this letter and copies of resolutions of the board of directors of the Company relating to the issuance of the Shares, certified by the Company and (ii) such other certificates, agreements and documents that we deemed relevant and necessary as a basis for the opinions expressed below. We have also relied upon the factual matters contained in the representations and warranties of the Company made in the Documents and upon certificates of public officials and the officers of the Company.

In our examination of the documents referred to above, we have assumed, without independent investigation, the genuineness of all signatures, the legal capacity of all individuals who have executed any of the documents reviewed by us, the authenticity of all documents submitted to us as originals, the conformity to the originals of all documents submitted to us as certified, photostatic, reproduced or conformed copies of valid existing agreements or other documents, the authenticity of all the latter documents and that the statements regarding matters of fact in the certificates, records, agreements, instruments and documents that we have examined are accurate and complete.

Based upon the above, and subject to the stated assumptions, exceptions and qualifications, we are of the opinion that the Shares have been duly authorized by all necessary corporate action on the part of the Company and, when issued, delivered and paid for as contemplated in the Registration Statement and in accordance with the terms of the Underwriting Agreement, the Shares will be validly issued, fully paid and non-assessable.

The opinions expressed above are limited to the General Corporation Law of the State of Delaware. Our opinion is rendered only with respect to the laws, and the rules, regulations and orders under those laws, that are currently in effect.

We hereby consent to use of this opinion as an exhibit to the Registration Statement and to the use of our name under the heading “Legal Matters” contained in the prospectus included in the Registration Statement. In giving this consent, we do not thereby admit that we come within the category of persons whose consent is required by the Act or the Rules.

Very truly yours,

/s/ PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

**Exhibit 10.1**

**EXECUTION VERSION**

# CREDIT AND GUARANTY AGREEMENT

dated as of

December 18, 2018

among

**LATHAM PURCHASER, INC.**,
as the Borrower prior to the consummation of the Acquisition,

**LATHAM POOL PRODUCTS, INC.**,
as the Borrower immediately upon the consummation of the Acquisition,

**LATHAM INTERNATIONAL MANUFACTURING CORP.**,
as Holdings,

**THE OTHER SUBSIDIARIES OF HOLDINGS FROM TIME TO TIME PARTY HERETO**,

**THE LENDERS FROM TIME TO TIME PARTY HERETO**,

and

**NOMURA CORPORATE FUNDING AMERICAS, LLC**,
as Administrative Agent and L/C Issuer

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**NOMURA SECURITIES INTERNATIONAL, INC.**,
as Sole Lead Arranger and Sole Bookrunner

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**SCHEDULES**



**EXHIBITS** *Form of*

**CREDIT AND GUARANTY AGREEMENT**

This CREDIT AND GUARANTY AGREEMENT, dated as of December 18, 2018, by and among LATHAM PURCHASER, INC., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition (as defined below), the "**Borrower**"), LATHAM POOL PRODUCTS, INC., a Delaware corporation ("**LPP**" and, immediately upon consummation of the Acquisition, the "**Borrower**"), LATHAM INTERNATIONAL MANUFACTURING CORP., a Delaware corporation ("**Holdings**"), each other subsidiary of Holdings from time to time party hereto, each lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**"), the other L/C Issuers party hereto from time to time and NOMURA CORPORATE FUNDING AMERICAS, LLC (acting through one or more sub-agents or designees), as Administrative Agent and an L/C Issuer.

**RECITALS**

WHEREAS, pursuant to the terms of the Acquisition Agreement, Purchaser will acquire, directly or indirectly, all of the issued and outstanding capital stock of LPP Holdings Inc., a Delaware corporation (the "**Target**") (such acquisition, the "**Acquisition**");

WHEREAS, substantially concurrently with the consummation of the Acquisition, all indebtedness for borrowed money (other than contingent obligations not then due and payable and that by their terms survive the termination of the Existing Facilities (as defined below)) under (i) that certain Second Amended and Restated Credit Agreement, dated as of June 29, 2015, among LPP, the lenders from time to time party thereto, Bank of Montreal, as administrative agent, and the other parties thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time (the "**Existing ABL Facility**") and (ii) that certain Credit Agreement, dated as of June 29, 2015, among LPP, NewStar Financial, Inc., Franklin Square Holdings, L.P. and the lenders from time to time party thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time (the "**Existing Term Facility**" and, together with the Existing ABL Facility, the "**Existing Facilities**"), in each case, will be repaid, redeemed, defeased, discharged, refinanced, replaced or terminated, as applicable and all liens related thereto released (the "**Refinancing**");

WHEREAS, to fund the Refinancing and a portion of the consideration for the Acquisition, the Borrower has requested that the Lenders extend credit on the Closing Date in the form of (i) Initial Term Loans in an aggregate principal amount equal to $215,000,000 and (ii) the Initial Revolving Credit Facility in an aggregate amount of $30,000,000, subject to the terms and conditions set forth herein; and

WHEREAS, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein.

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

ARTICLE 1
DEFINITIONS AND ACCOUNTING TERMS

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

"**1934 Act**" means the Securities Exchange Act of 1934.

"**Acceptable Discount**" has the meaning specified in Section 2.06(d)(iii).

"**Acceptable Intercreditor Agreement**" means a customary intercreditor agreement, subordination agreement, collateral trust agreement or other intercreditor arrangement (which may, if applicable, consist of a payment waterfall) in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, which shall be deemed acceptable to the Lenders if it is posted to the Platform and (i) is accepted by the Required Lenders and/or (ii) not otherwise objected to by the Required Lenders within ten (10) Business Days of being posted.

"**Acceptance Date**" has the meaning specified in Section 2.06(d)(ii).

"**Acquired EBITDA**" means, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary for any period, the amount for such period of Consolidated EBITDA of such Acquired Entity or Business or Converted Restricted Subsidiary (determined as if references to Holdings and the Restricted Subsidiaries in the definition of Consolidated EBITDA were references to such Acquired Entity or Business and its Subsidiaries or to such Converted Restricted Subsidiary and its Subsidiaries), as applicable, all as determined on a consolidated basis for such Acquired Entity or Business or Converted Restricted Subsidiary, as applicable.

"**Acquired Entity or Business**" has the meaning specified in the definition of the term "Consolidated EBITDA."

"**Acquisition**" has the meaning specified in the recitals hereto.

"**Acquisition Agreement**" means that certain Stock Purchase Agreement, dated as of November 7, 2018 (together with all exhibits, annexes, schedules and other disclosure letters thereto, collectively, as modified, amended, supplemented, consented to or waived), by and among (i) the Purchaser, (ii) Latham Investment Holdings, L.P., a Delaware limited partnership, (iii) the Target, (iv) the Stockholders referred to therein, (v) the Optionholders referred to therein and (vi) LPP Seller Rep Inc., a Delaware corporation.

"**Additional Agreements**" has the meaning specified in Section 9.10(d).

"**Additional Guarantor**" has the meaning specified in Section 6.13(b)(i).

"**Additional Loans**" means the Additional Revolving Credit Loans and the Additional Term Loans.

"**Additional Refinancing Lender**" has the meaning specified in Section 2.19(a).

"**Additional Revolving Credit Commitments**" means any revolving credit commitments added pursuant to Sections 2.16, 2.18 or 2.19.

"**Additional Revolving Credit Facility**" means any credit facility comprised of Additional Revolving Credit Commitments added pursuant to Sections 2.16, 2.18 or 2.19.

"**Additional Revolving Credit Loans**" means any revolving loans made pursuant to an Additional Revolving Credit Facility.

"**Additional Term Commitments**" means any term commitments added pursuant to Sections 2.16, 2.18 or 2.19.

"**Additional Term Facility**" means (a) on or prior to the applicable funding date of the applicable Class of Additional Term Loans added pursuant to Sections 2.16, 2.18 or 2.19, the aggregate amount of the Additional Term Commitments of such Class at such time and (ii) thereafter, the aggregate principal amount of the Additional Term Loans of such Class of all Additional Term Lenders of the applicable Class outstanding at such time added pursuant to Sections 2.16, 2.18 or 2.19.

"**Additional Term Loans**" means any term loans made pursuant to an Additional Term Facility.

" **Administrative Agent**" means Nomura, together with (or acting through) one or more Persons acting as sub-agents in accordance with Section 9.02 or its designees (any such designees designated or identified after the Closing Date to be reasonably acceptable to the Borrower), in their respective capacities as administrative agent and collateral agent under any of the Loan Documents, or any successor in such capacities.

"**Administrative Agent's Office**" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders. The Administrative Agent's Office shall at all times be located in the United States.

"**Administrative Questionnaire**" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"**Affiliate**" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. "**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, through the ability to exercise voting power, by contract or otherwise. "**Controlling**" and "**Controlled**" have meanings correlative thereto.

"**Affiliated Debt Fund**" means a Sponsor Affiliated Lender that is a bona fide debt fund or investment vehicle that is primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit and that exercise independent discretion from the private equity business of the Sponsor.

"**Affiliated Lender Assignment and Assumption**" has the meaning specified in Section 11.07(k)(5).

"**Agent-Related Persons**" means the Administrative Agent, together with its Affiliates, sub-agents and designees and the officers, directors, employees, agents and attorneys-in-fact of such Persons.

"**Aggregate Commitments**" means the Commitments of all the Lenders.

"**Aggregate Revolving Credit Commitments**" means, at any time, the aggregate amount of the Revolving Credit Commitments of the Revolving Credit Lenders at such time.

"**Agreement**" means this Credit and Guaranty Agreement.

"**Agreement Currency**" has the meaning specified in Section 11.26.

"**All-In-Rate**" means, as to any Indebtedness, the effective yield applicable thereto calculated by the Administrative Agent in consultation with the Borrower in a manner consistent with generally accepted financial practices, taking into account (a) interest rate margins (with such interest rate margin and interest spreads to be determined by reference to the Eurocurrency Rate), (b) interest rate floors (subject to the proviso set forth below), (c) any amendment to the relevant interest rate margins and interest rate floors prior to the applicable date of determination and (d) original issue discount and upfront or similar fees (based on an assumed four-year life to maturity) paid by the Borrower to the Lenders in connection with the Initial Term Loans or any applicable Incremental Term Loan Class, but excluding (i) any amendment, arrangement, commitment, structuring or underwriting fees that are not paid to or shared with all relevant lenders generally in connection with the commitment or syndication of such indebtedness, (ii) any consent fees paid to consenting lenders, ticking, unused line or similar fees or (iii) any other fee that is not paid directly by the Borrower generally to all relevant lenders ratably in the primary syndication of such indebtedness; *provided*, however, that (A) to the extent that the Eurocurrency Rate (with an Interest Period of three months) or Base Rate (without giving effect to any floor specified in the definition thereof) is less than any floor applicable to the Term Loans in respect of which the All-In-Rate is being calculated on the date on which the All-In-Rate is determined, the amount of the resulting difference will be deemed added to the interest rate margin applicable to the relevant Indebtedness for purposes of calculating the All -In-Rate, (B) to the extent that the Eurocurrency Rate (for a period of three months) or Base Rate (without giving effect to any floor specified in the definition thereof) is greater than any applicable floor on the date on which the All-In-Rate is determined, the floor will be disregarded in calculating the All-In-Rate and (C) any stepdowns in interest rate margins shall be disregarded in calculating the All-In-Rate.

"**Alternate Currency**" means, (x) in the case of Revolving Credit Loans, Canadian dollars and, (y) in the case of Letters of Credit, Canadian dollars (*provided* that the aggregate face amount of Letters of Credit issued and outstanding in Canadian dollars shall not exceed $500,000 at any time), and, in each case, each other currency (other than Canadian dollars) that is approved in accordance with Section 1.12.

"**Applicable Amortization Percentage**" means:

| Applicable Fiscal Quarter | Quarterly Amortization Percentage |
|---|---|
| From the fiscal quarter ended March 31, 2019 through and including the fiscal quarter ended December 31, 2020 | 0.625% |
| From the fiscal quarter ended March 31, 2021 through the Initial Term Loan Maturity Date | 1.25% |

"**Applicable Asset Sale Proceeds**" has the meaning specified in Section 2.06(b)(i)(A)(2).

"**Applicable Discount**" has the meaning specified in Section 2.06(d)(iii).

"**Applicable ECF Proceeds**" has the meaning specified in Section 2.06(b)(iii).

"**Applicable Margin**" means a percentage per annum equal to:

(a) with respect to (i) any Initial Revolving Credit Loan, (ii) the Commitment Fee in respect of any Initial Revolving Credit Commitments and (iii) the L/C Fee in respect of any Initial Revolving Credit Commitments, (A) until and including the date on which the first financial statements after the Closing Date are delivered under Section 6.01, the percentages per annum set forth below for Pricing Level 2 and (B) thereafter, the following percentages per annum based upon the First Lien Net Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

**Initial Revolving Credit Facility**

| Pricing Level | First Lien Net Leverage Ratio | Eurocurrency Rate/L/C Fee | Base Rate | Commitment Fee |
|---|---|---|---|---|
| 1 | ≤ 3.50:1.00 | 4.50% | 3.50% | 0.375% |
| 2 | > 3.50:1.00 | 4.75% | 3.75% | 0.50% |

(b) (i) with respect to any Initial Term Loans that are Eurocurrency Rate Loans, 6.00% and

(ii) with respect to any Initial Term Loans that are Base Rate Loans, 5.00%.

Any increase or decrease in the Applicable Margin resulting from a change in the First Lien Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); *provided* that at the option of the Administrative Agent or the Required Lenders, Pricing Level 2 shall apply as of the first Business Day after the date on which a Compliance Certificate was required to have been delivered but was not delivered, and shall continue to so apply to and including the date on which such Compliance Certificate is so delivered (and thereafter the Pricing Level otherwise determined in accordance with this definition shall apply).

"**Appropriate Lender**" means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuers and (ii) if any Letters of Credit have been issued pursuant to Section 2.04, the Revolving Credit Lenders, (c) with respect to Revolving Credit Loans of any Class, the Lenders of such Class and (d) with respect to Term Loans of any Class, the Lenders of such Class.

"**Approved Foreign Bank**" has the meaning specified in clause (k) of the definition of "**Cash Equivalents**".

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

"**Arranger**" means Nomura Securities International, Inc. (acting through such of its Affiliates as it deems appropriate), in its capacity as the sole lead arranger and sole bookrunner of the Facilities.

"**Assignment and Assumption**" means an Assignment and Assumption substantially in the form of Exhibit A or any other form (including electronic documentation generated by DebtDomain or other electronic platform) approved by the Administrative Agent.

" **Attorney Costs**" means and includes all reasonable and documented, out-of-pocket fees, expenses and disbursements of any law firm or other external counsel.

"**Attributable Indebtedness**" means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"**Auto-Renewal Letter of Credit**" has the meaning specified in Section 2.04(b)(iii).

" **Available Amount**" means, at any time (the "**Available Amount Reference Time**"), an amount equal to:

(a) the sum, without duplication, of:

(i) the greater of (x) $5,000,000 and (y) 10.0% of Consolidated EBITDA as of the last day of the most recently ended Test Period; *plus*

(ii) an amount equal to the Excess Cash Flow Retained Amount (the amount under this clause (ii) is referred to herein as the "**Growth Amount**"; *provided* that the Growth Amount shall not be less than zero); *plus*

(iii) 100% of the aggregate amount of contributions (other than in the form of Disqualified Equity Interests) to the common capital of Holdings (including mergers or consolidations that have a similar effect, with the amount of any non-cash contributions made in connection therewith being determined based on the fair market value (as reasonably determined by the Borrower) thereof) or the net proceeds of the issuance of Qualified Equity Interests of Holdings (or any direct or indirect parent thereof) contributed to Holdings and thereafter contributed to the Borrower as Qualified Equity Interests and, in each case to the extent not otherwise applied under this Agreement and not constituting a Cure Amount, received in cash during the period from and including the Business Day immediately following the Closing Date through and including the Available Amount Reference Time; *plus*

(iv) the aggregate principal amount of any Indebtedness or Disqualified Equity Interests, in each case, of Holdings or any Restricted Subsidiary issued after the Closing Date (other than Indebtedness or such Disqualified Equity Interests issued to Holdings or a Restricted Subsidiary), which has been converted into or exchanged for Qualified Equity Interests of Holdings or any Equity Interests of any direct or indirect parent of Holdings; *plus*

(v) to the extent not already reflected as a return of capital or deemed reduction with respect to such Investment for purposes of determining the amount of such Investment pursuant to clause (b) below or any other provision of Section 7.02, the net proceeds received by the Borrower or any Restricted Subsidiary after the Closing Date in connection with the sale or other disposition to a Person (other than Holdings or any Restricted Subsidiary) of any Investment made pursuant to Section 7.02(t) received in cash or Cash Equivalents (in an amount not to exceed the original amount of such Investment); *plus*

(vi) to the extent not already reflected as a return of capital or deemed reduction with respect to such Investment for purposes of determining the amount of such Investment pursuant to clause (b) below or any other provision of Section 7.02, the proceeds received by the Borrower or any Restricted Subsidiary after the Closing Date in connection with returns, profits, distributions and similar amounts, repayments of loans and the release of guarantees received on any Investment made pursuant to Section 7.02(t) (in an amount not to exceed the original amount of such Investment); *plus*

(vii) to the extent not already reflected as a return of capital or deemed reduction with respect to such Investment for purposes of determining the amount of such Investment pursuant to clause (b) below or any other provision of Section 7.02, an amount equal to the sum of (A) in the event any Unrestricted Subsidiary has been redesignated as a Restricted Subsidiary pursuant to Section 6.15 or has been merged, consolidated or amalgamated with or into, or is liquidated into, Borrower or any Restricted Subsidiary, the amount of the Investments of Holdings or any Restricted Subsidiary in such Subsidiary made pursuant to Section 7.02(t) (in an amount not to exceed the original amount of such investment) and (B) the fair market value (as reasonably determined by the Borrower) of the property or assets of any Unrestricted Subsidiary that have been transferred, conveyed, or otherwise distributed to the Borrower or any Restricted Subsidiary after the Closing Date from any dividend or other distribution by an Unrestricted Subsidiary; *plus*

(viii) the amount of any Declined Proceeds; *minus*

(b) the aggregate amount of (i) any Investments outstanding at such time pursuant to Section7.02(t) (net of any return of capital in respect of such Investment or deemed reduction in the amount of such Investment, including, without limitation, upon the redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary or the sale, transfer, lease or other disposition of any such Investment, in each case to the extent any resulting Investment is permitted under another paragraph of Section 7.02), (ii) the initial principal amount of any Indebtedness incurred prior to such time pursuant to Section 7.03(cc) (net of any forgiveness of principal of such Indebtedness by the lender thereof; provided that such forgiveness is not included in clause (a)(iv) above), (iii) any Restricted Payments made prior to such time pursuant to Section 7.06(g) or any Restricted Prepayment made prior to such time pursuant to Section 7.08(c) (and, for purposes of this clause (b), without taking account of the intended usage of the Available Amount at such Available Amount Reference Time).

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Bankruptcy Event**" means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, 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 Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, *provided*, *further*, that such ownership interest does not result in or provide such Person 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 Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"**Base Rate**" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day which is announced and/or published in the Money Rates section of The Wall Street Journal as the "**prime rate**" (or, if a range of rates is so announced and/or published, the highest of such rates) and (c) the Eurocurrency Rate for a one month Interest Period as determined at or about 11:00 am London time two Business Days prior to such date (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%.

"**Base Rate Loan**" means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

"**Basel III**" means the agreement on capital adequacy, stress testing and liquidity standards contained in "Basel III: a global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee in December 2010, each as amended, and any further guidance or standards published by the Basel Committee in relation to "Basel III".

"**Basel Committee**" means the Basel Committee on Banking Supervision.

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230.

" **Benefit Plan**" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code that is subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"**Bona Fide Lending Affiliate**" means, with respect to any Competitor, any debt fund, investment vehicle, regulated bank entity or unregulated lending entity (in each case, other than a Person that was separately identified to the Arranger on or prior to November 7, 2018 as a Disqualified Institution) that is (i) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business and (ii) managed, sponsored or advised by any Person that is Controlling, Controlled by or under common Control with such Competitor or Affiliate thereof, as applicable, but only to the extent that no personnel involved with the investment in such Competitor or affiliate thereof, as applicable, (x) makes (or has the right to make or participate with others in making) investment decisions on behalf of such debt fund, investment vehicle, regulated bank entity or unregulated lending entity or (y) has access to any information (other than information that is publicly available) relating to Holdings or any entity that forms a part of any of its businesses (including any of its subsidiaries).

"**Borrower**" has the meaning specified in the introductory paragraph to this Agreement.

"**Borrower Materials**" has the meaning specified in Section 6.02(d).

"**Borrowing**" means a borrowing consisting of simultaneous Loans of the same Type and Class and, in the case of Eurocurrency Rate Loans, having the same Interest Period.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office with respect to Loan Obligations denominated in Dollars is located and:

(i) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan or Letter of Credit denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan or Letter of Credit or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day that is also a London Banking Day;

(ii) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan or Letter of Credit denominated in a currency other than Dollars, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(iii) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars in respect of a Eurocurrency Rate Loan or Letter of Credit denominated in a currency other than Dollars, or any other dealings in any currency other than Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan or Letter of Credit (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

"**Capital Expenditures**" means, without duplication, any expenditure for any purchase or other acquisition of any asset that would be classified as a fixed or capital asset on a consolidated balance sheet of Holdings and its Subsidiaries prepared in accordance with GAAP, including capitalized software development costs.

" **Capitalized Leases**" means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases on a balance sheet of the lessee.

"**Cash Collateral**" has the meaning specified in Section 2.04(g).

"**Cash Collateral Account**" means a deposit account at the Administrative Agent or its designee in the name of the Administrative Agent or its designee and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner satisfactory to the Administrative Agent or its designee.

"**Cash Collateralize**" has the meaning specified in Section 2.04(g).

" **Cash Equivalents**" means any of the following types of Investments, to the extent owned by Holdings or any of the Restricted Subsidiaries:

(a) operating deposit accounts maintained by the Restricted Companies;

(b) securities issued or unconditionally guaranteed by the United States government or any agency or instrumentality thereof having maturities of not more than 12 months from the date of acquisition thereof or other durations approved by the Administrative Agent;

(c) securities issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than 12 months from the date of acquisition thereof or other durations approved by the Administrative Agent and, at the time of acquisition, having a rating of at least "A-2" or "P-2" (or long-term ratings of at least "A3" or "A-") from either S&P or Moody's, or, with respect to municipal bonds, a rating of at least MIG 2 or VMIG 2 from Moody's (or the equivalent thereof);

(d) commercial paper issued by any Lender that is a commercial bank or any bank holding company owning any Lender;

(e) commercial paper maturing not more than 12 months after the date of creation thereof or other durations approved by the Administrative Agent and, at the time of acquisition, having a rating of at least A-1 or P-1 from either S&P or Moody's and commercial paper maturing not more than 90 days after the creation thereof and, at the time of acquisition, having a rating of at least A-2 or P-2 from either S&P or Moody's;

(f) domestic and eurocurrency time deposits, certificates of deposit or bankers' acceptances maturing no more than one year after the date of acquisition thereof or other durations approved by the Administrative Agent which are either issued by any Lender or any other banks having combined capital and surplus of not less than $100,000,000 (or in the case of foreign banks, the Dollar equivalent thereof) or are insured by the Federal Deposit Insurance Corporation for the full amount thereof;

(g) repurchase agreements with a term of not more than 30 days for, and secured by, underlying securities of the type without regard to maturity described in clauses (b), (c) and (f) above entered into with any bank meeting the qualifications specified in clause (f) above or securities dealers of recognized national standing;

(h) investments maintained in money market funds (as well as asset-backed securities and corporate securities that are eligible for inclusion in money market funds); and

(i) solely with respect to any Non-U.S. Subsidiary, non-Dollar denominated (i) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of a country other than one that is subject to sanctions administered or enforced by OFAC, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctioning authority, (any such bank being an " **Approved Foreign Bank**") and maturing within 12 months of the date of acquisition or other durations approved by the Administrative Agent and (ii) equivalents of demand deposit accounts which are maintained with an Approved Foreign Bank.

" **Cash Management Obligations**" means all obligations of any Loan Party with respect to any overdraft and related liabilities arising from treasury, depository and cash management services, credit card services, including purchasing card services, or any automated clearing house transfers of funds provided by the Administrative Agent, a Lender, an L/C Issuer, the Arranger or any Affiliate of any of the foregoing.

"**Casualty Event**" means any event that gives rise to the receipt by Holdings or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

"**CFC**" means a direct or indirect Subsidiary of Holdings that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"**Change in Law**" means the occurrence, after the date of this Agreement, of any of the following:

(a) the adoption or taking effect of any Law, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd Frank Act**") and all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "**Change in Law**", regardless of the date enacted, adopted, implemented or issued.

"**Change of Control**" means the earliest to occur of:

(a) (i) at any time prior to a Qualifying IPO, the Permitted Holders cease to own, in the aggregate, directly or indirectly, beneficially, Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings, or (ii) at any time upon or after the consummation of a Qualifying IPO, the acquisition by any "person" or "group" (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the 1934 Act, but excluding any employee benefit plan and/or any person acting as the trustee, agent or other fiduciary or administrator therefor), in each case of the foregoing, other than a Permitted Holder, becomes the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of Equity Interests representing more than the greater of (x) 35% of the total voting power of all of the outstanding voting stock of Holdings and (y) the percentage of the total voting power of all of the outstanding voting stock of Holdings owned directly or indirectly by the Permitted Holders; unless, in the case of either clauses (a)(i) or (a)(ii) above, the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the board of directors of Holdings; or

(b) at any time immediately following the consummation of the Acquisition, Holdings shall cease to directly or indirectly own and control 100% of the Equity Interests of the Borrower.

"**Charges**" means any charge, expenses, cost, accrual or reserve of any kind.

"**Class**" when used with respect to (a) any Loan or Credit Extension, refers to whether such Loan, or the Loans comprising such Credit Extension, are Initial Term Loans, Additional Term Loans of any series established as a separate "Class" pursuant to Section 2.16, 2.18 and/or 2.19, Initial Revolving Credit Loans or Additional Revolving Credit Loans of any series established as a separate "Class" pursuant to Section 2.16, 2.18 and/or 2.19, (b) any Commitment, refers to whether such Commitment is an Initial Term Commitment, an Additional Term Commitment of any series established as a separate "Class" pursuant to Section 2.16, 2.18 and/or 2.19, an Initial Revolving Credit Commitment, an Additional Revolving Credit Commitment of any series established as a separate "Class" pursuant to Section 2.16, 2.18 and/or 2.19, (c) any Lender, refers to whether such Lender has a Loan or Commitment of a particular Class and (d) any Revolving Outstandings, refers to whether such Revolving Outstandings is attributable to a Revolving Credit Commitment of a particular Class.

"**Closing Date**" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 11.01, which date is December 18, 2018.

"**Closing Date Material Adverse Effect**" has the meaning assigned to the term "Material Adverse Effect" in the Acquisition Agreement as in effect on November 7, 2018.

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended.

"**Collateral**" means all of the " **Collateral**" referred to in the Collateral Documents and all of the other property and assets that are or are required under the terms hereof or of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties; *provided* that "Collateral" shall not include any Excluded Asset.

"**Collateral Documents**" means, collectively, (i) the Security Agreement, (ii) each Mortgage, (iii) each Intellectual Property Security Agreement, (iv) any supplement to any of the foregoing delivered to the Administrative Agent pursuant to Section 6.13 and (v) each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

"**Commitment**" means an Initial Term Commitment, Initial Revolving Credit Commitment, an Additional Term Commitment or an Additional Revolving Credit Commitment, as the context may require.

"**Commitment Fee**" has the meaning specified in Section 2.10(b).

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

"**Compensation Period**" has the meaning specified in Section 2.13(b)(ii).

"**Competitor**" means a competitor of the Borrower or any of its Subsidiaries.

"**Compliance Certificate**" means a certificate substantially in the form of Exhibit B.

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

"**Consolidated Depreciation and Amortization Expense**" means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees or costs, capitalized expenditures, customer acquisition costs and incentive payments, conversion costs and contract acquisition costs, the amortization of original issue discount resulting from the issuance of Indebtedness at less than par and amortization of favorable or unfavorable lease assets or liabilities, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"**Consolidated EBITDA**" means, as of any date for the applicable period ending on such date with respect to any Person on a consolidated basis, the sum of (a) Consolidated Net Income, *plus* (b) an amount which, in the determination of Consolidated Net Income for such period, has been deducted (other than with respect to clauses (viii) and (xxii)) and not added back for, without duplication,

(i) provision for taxes based on income or profits, revenue or capital, including, without limitation, state, provincial, territorial, local, foreign, unitary, excise, property, franchise and similar taxes and foreign withholding and similar taxes of such Person paid or accrued during such period, including any additions to such taxes and any penalties and interest relating to any such taxes,

(ii) total interest expense (including (v) net losses or any obligations under any Swap Contracts or other derivative instruments entered into for the purpose of hedging interest rate, currency or commodities risk, (w) bank fees, (x) costs of surety bonds in connection with financing activities, to the extent the same were deducted (and not added back) in calculating such Consolidated Net Income), (y) all cash dividend payments or other distributions (excluding items eliminated in consolidation) on any series of preferred stock and/or Disqualified Equity Interests of such Person or Restricted Subsidiary of such Person and (z) all cash dividend or other distributions (excluding items eliminated in consolidation) made to make interest payments on the Indebtedness of any parent entity,

(iii) Consolidated Depreciation and Amortization Expense of such Person for such period,

(iv) any Charges incurred in connection with the Transactions or related to any actual or proposed or contemplated Investment, acquisition, disposition or recapitalization or the incurrence of Indebtedness (including a refinancing thereof) or any Investment (including any Permitted Acquisition), acquisition, disposition, recapitalization, or Equity Issuance (including any expense relating to enhanced accounting functions or other transactions costs associated with becoming a public company) (in each case, whether or not consummated or permitted hereunder), including (A) such fees, expenses or charges (including rating agency fees and related expenses and/or letter of credit fees) related to the offering or incurrence of the Loans and any other credit facilities or the offering or incurrence of any other debt securities and any Securitization Fees and (B) any amendment or other modification of the this Agreement, any Securitization Facility and/or Permitted Receivables Financing and any other credit facilities or any other debt securities, in each case, whether or not consummated,

(v) (i) Charges attributable to the undertaking and/or implementation of cost savings initiatives, operating expense reductions and other synergies and similar initiatives, integration, transition, reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, facilities opening and preopening (including unused warehouse space costs), business optimization and other restructuring and integration costs (including those related to tax restructurings), charges, accruals, reserves and other Charges (including, without limitation, inventory optimization programs, software development costs, systems implementation and upgrade expenses, costs related to the closure or consolidation of facilities (including but not limited to severance, rent termination costs, moving costs and legal costs), costs related to strategic initiatives and curtailments or modifications to pension and post-retirement employment benefit plans (including any settlement of pension liabilities), costs related to entry into new markets (including unused warehouse space costs), strategic initiatives and contracts, consulting fees, signing costs, retention or completion bonuses, expansion and relocation expenses, severance payments, and modifications to pension and post-retirement employee benefit plans, new systems design and implementation costs and project startup costs and consulting fees incurred in connection with any of the foregoing and (ii) Charges associated with acquisition related litigation and settlements thereof,

(vi) non-cash charges, write-downs, expenses, losses or items reducing Consolidated Net Income for such period including (i) any impairment charges, amortization (or write offs) of financing costs (including debt discount, debt issuance costs and commissions and other fees associated with Indebtedness, including the Loans) of such Person and its Subsidiaries, (ii) the impact of acquisition method accounting adjustment and any non-cash write-up, write-down or write-off with respect to re-valuing assets and liabilities in connection with the Transactions or any Investment (including any Permitted Acquisition) and/or (iii) any non-cash losses realized in such period in connection with adjustments to any Plan due to changes in actuarial assumptions, valuation or studies (provided that if any such non-cash charge, write-down or item represents an accrual or reserve for a cash expenditure for a future period then the cash payment in such future period shall be subtracted from Consolidated EBITDA when paid), or other items classified by the Borrower as special items less other non-cash items of income increasing Consolidated Net Income (excluding any such non-cash item of income to the extent it represents a receipt of cash in any future period),

(vii) the amount of board of director fees, management, monitoring, advisory, consulting, refinancing, subsequent transaction and exit fees (including termination fees) and related indemnities and expenses paid or accrued in such period to any member of the board of directors of Holdings, any Permitted Holder or any Affiliate of a Permitted Holder to the extent permitted under Section 7.07,

(viii) without duplication of any such amounts otherwise added back in determining Consolidated EBITDA, whether through pro forma adjustment or otherwise, the amount of (A) pro forma "run rate" cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings), operating expense reductions and other synergies (in each case, net of amounts actually realized) related to the Transactions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions (x) that have been taken, (y) with respect to which substantial steps have been taken or that are expected to be taken (in the good faith determination of the Borrower) within 12 months after the Closing Date (or, to the extent identified in the QoE or otherwise identified to the Administrative Agent, undertaken or implemented prior to the Closing Date) or (B) pro forma adjustments, including pro forma "run rate" cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings), operating expense reductions, and other synergies (in each case net of amounts actually realized) related to Dispositions, acquisitions, Investments, operating improvements, restructurings, cost savings initiatives and certain other similar initiatives and specific transactions, or related to restructuring initiatives, cost savings initiatives and other initiatives that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions (x) that have been taken or (y) with respect to which substantial steps have been taken or that are expected to be taken within 12 months after the date of consummation of such acquisition, disposition or other specified transaction or the initiation of such restructuring initiative, cost savings initiative or other initiatives; *provided* that the amount that may be added back to Consolidated EBITDA pursuant to this clause (viii) shall not, for any Test Period, exceed 20.0% of Consolidated EBITDA (calculated after giving effect to such adjustments),

(ix) the amount of loss or discount on sale of Securitization Assets, Receivables Assets and related assets in connection with a Qualified Securitization Financing and/or Permitted Receivables Financing,

(x) (x) any Charges incurred as a result of, in connection with or pursuant to any management equity plan, profits interest or stock option plan or other management or employee benefit plan or agreement, pension plan, any severance agreement, any stock subscription or shareholder agreement, and (y) any Charges in connection with the rollover, acceleration or payout of Equity Interests held by management, in each case under this clause (y), to the extent such Charges, as applicable, are funded with net cash proceeds contributed to such Person as a capital contribution or as a result of the sale or issuance of Qualified Equity Interests of such Person (solely to the extent not increasing the Available Amount or constitutes a Cure Amount),

(xi) cash actually received (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (c)(i) below and for any previous period and not added back,

(xii) any Charges included in Consolidated Net Income attributable to non-controlling interests pursuant to the application of Accounting Standards Codification Topic 810-10-45,

(xiii) realized foreign exchange losses resulting from the impact of foreign currency changes on the valuation of assets or liabilities on the balance sheet of the Borrower and its Restricted Subsidiaries,

(xiv) net realized losses from Swap Contracts or embedded derivatives that require similar accounting treatment and the application of Accounting Standard Codification Topic 815 and related pronouncements,

(xv) [reserved],

(xvi) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-wholly owned Subsidiary,

(xvii) non-cash minority interest reductions and with respect to any JV Entity, an amount equal to the proportion of those items described in clauses (ii) and (iii) above relating to such JV Entity's corresponding to the Borrower's and the Restricted Subsidiaries' proportionate share of such JV Entity's Consolidated Net Income (determined as if such JV Entity were a Restricted Subsidiary) to the extent the same was deducted (and not added back) in calculating Consolidated Net Income,

(xviii) earnout and contingent consideration obligations (including those accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments,

(xix) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of the initial application of FASB Accounting Standards Codification 715, and any other items of a similar nature

(xx) (y) the amount of Charges relating to payments made to option holders of the Borrower or any parent entity in connection with, or as a result of, any distribution being made to equityholders of such Person or its parent entities, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution, to the extent permitted under this Agreement,

(xxi) Public Company Costs,

(xxii) adjustments and add backs that are consistent with Article 11 of Regulation S-X,

(xxiii) any costs or expenses associated with the Transactions, and

(xxiv) adjustments and add backs (without regard to the amount or time periods specified therein) reflected in (i) the financial model provided to the Arranger on November 7, 2018 (the "**Sponsor Model**"), (ii) the quality of earnings report provided to the Arranger prior to November 7, 2018 (such report, as updated from time to time after the date thereof and prior to the Closing Date with the consent of the Arranger, the "**QoE**") and (iii) any quality of earnings report made available to the Administrative Agent and prepared by a nationally recognized accounting firm (or other accounting firm reasonably acceptable to the Administrative Agent) in connection with any Permitted Acquisition or permitted Investment, as updated from time to time with the consent of the Administrative Agent; *minus*

(c) an amount which, in the determination of Consolidated Net Income, has been included for:

(i) (A) non-cash gains and (B) all extraordinary, unusual or non-recurring gains,

(ii) any gains realized upon the Disposition of property outside of the ordinary course of business,

(iii) net realized gains from Swap Contracts or embedded derivatives that require similar accounting treatment and the application of Accounting Standard Codification Topic 815 and related pronouncements, in each case, that were entered into for non-speculative purposes,

(iv) the amount of gain on sale of Securitization Assets, Receivables Assets and related assets in connection with a Qualified Securitization Financing and/or Permitted Receivables Financing, and

(v) any net pension or other post-employment benefit gains representing actuarial gains, and

(d) excluding the effects of:

(i) any unrealized losses or gains in respect of Swap Contracts, and

(ii) any losses or gains in respect of purchase accounting adjustments for earnout obligations arising from acquisitions, all as determined in accordance with GAAP, where applicable.

Unless the context otherwise requires, each reference to "**Consolidated EBITDA**" in this Agreement shall deemed to refer to the Consolidated EBITDA of Holdings and its Restricted Subsidiaries. There shall be included in determining Consolidated EBITDA for any period, without duplication, (A) the Acquired EBITDA of any Person, property, business or asset acquired by the Borrower or any Restricted Subsidiary during such period (but not the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired), to the extent not subsequently sold, transferred or otherwise disposed of by the Borrower or such Restricted Subsidiary during such period (each such Person, property, business or asset acquired and not subsequently so disposed of, an "**Acquired Entity or Business**"), and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary during such period (each a "**Converted Restricted Subsidiary**"), based on the actual Acquired EBITDA of such Acquired Entity or Business or Converted Restricted Subsidiary for such period (including the portion thereof occurring prior to such acquisition) and (B) without duplication of clause (b)(viii) of the definition of Consolidated EBITDA, an adjustment in respect of each Acquired Entity or Business equal to the amount of the Pro Forma Adjustment with respect to such Acquired Entity or Business for such period (including the portion thereof occurring prior to such acquisition) as specified in a certificate executed by a Responsible Officer and delivered to the Lenders and the Administrative Agent. For purposes of determining Consolidated EBITDA for any period, there shall be excluded the Disposed EBITDA of any Person, property, business or asset (other than an Unrestricted Subsidiary) sold, transferred or otherwise disposed of, closed or classified as discontinued operations by the Borrower or any Restricted Subsidiary during such period (each such Person, property, business or asset so sold or disposed of, a " **Sold Entity or Business**") and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each a "**Converted Unrestricted Subsidiary**"), based on the actual Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer or disposition). Notwithstanding the foregoing, but subject to any adjustment set forth above with respect to any transactions occurring after the Closing Date, Consolidated EBITDA shall be $235,000 for the fiscal quarter ended March 31, 2018, $28,629,000 for the fiscal quarter ended June 30, 2018 and $19,793,000 for the fiscal quarter ended September 30, 2018 as may be adjusted on a Pro Forma Basis.

"**Consolidated First Lien Secured Debt**" means, as to any Person at any date of determination, the aggregate principal amount of Consolidated Total Debt outstanding on such date that is secured by a first-priority Lien on any assets or property of the Restricted Companies.

"**Consolidated Net Income**" means, as of any date for the applicable period ending on such date with respect to any Person and its Subsidiaries on a consolidated basis, net income, excluding, without duplication,

(i) any net income (loss) of any Person if such Person is not a Restricted Subsidiary (including any net income (loss) from investments recorded in such Person under the equity method of accounting), except that Holdings' equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed or that (as reasonably determined by an Officer of the Borrower) could have been distributed by such Person during such period to Holdings or a Restricted Subsidiary as a dividend or other distribution or return on investment (subject, in the case of a dividend or other distribution or return on investment to a Restricted Subsidiary, to the limitations contained in clause (ii) below);

(ii) solely for the purpose of determining the Available Amount, any net income (loss) of any Restricted Subsidiary (other than any Guarantor) if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Borrower or a Guarantor by operation of the terms of such Restricted Subsidiary's charter or any agreement, instrument, judgment, decree, order, statute or governmental rule or regulation applicable to such Restricted Subsidiary or its shareholders (other than (a) restrictions that have been waived or other-wise released and (b) restrictions pursuant to the Loan Documents), except that the Borrower's equity in the net income of any such Restricted Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed or that could have been distributed by such Restricted Subsidiary during such period to the Borrower or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend to another Restricted Subsidiary, to the limitation contained above in this clause (ii));

(iii) any net gain (or loss), together with any related provisions for taxes on any such gain (or the tax effect of any such loss), realized upon the sale or other disposition of any asset (including pursuant to any sale/leaseback transaction) or disposed or discontinued operations of Holdings or any Restricted Subsidiaries which is sold or otherwise disposed outside the ordinary course of business (as determined in good faith by the Borrower);

(iv) any extraordinary, exceptional, unusual or nonrecurring gain, loss, charge or expense (including relating to the Transactions), or any charges, expenses or reserves in respect of any restructuring, relocation, redundancy or severance expense, or relocation costs, one time compensation charges, integration and facilities' opening costs and other business optimization expenses and operating improvements (including related to new product introductions), systems development and establishment costs, accruals or reserves (including restructuring and integration costs related to acquisitions after the Closing Date and adjustments to existing reserves), whether or not classified as restructuring expense on the consolidated financial statements, signing costs, retention or completion bonuses, transition costs, costs related to closure/consolidation of facilities, internal costs in respect of strategic initiatives and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities), contract terminations and professional and consulting fees incurred with any of the foregoing;

(v) the cumulative effect of a change in law, regulation or accounting principles, including any impact resulting from an election by the Borrower to apply IFRS at any time following the Closing Date;

(vi) any (i) non-cash compensation charge or expense arising from any grant of stock, stock options or other equity based awards and any non-cash deemed finance charges in respect of any pension liabilities or other provisions or on the re-valuation of any benefit plan obligation and (ii) income (loss) attributable to deferred compensation plans or trusts;

(vii) all deferred financing costs written off and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness and any net gain (loss) from any write-off or forgiveness of Indebtedness;

(viii) any realized or unrealized gains or losses in respect of any obligations under any Swap Contracts or any ineffectiveness recognized in earnings related to hedge transactions or the fair value of changes therein recognized in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of any obligations under any Swap Contracts;

(ix) any fees and expenses (including any transaction or retention bonus or similar payment) incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, asset disposition, issuance or repayment of Indebtedness, issuance of Capital Stock, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Financial Accounting Standards Codification No. 805 and gains or losses associated with Financial Accounting Standards Codification No. 460);

(x) any unrealized foreign currency translation increases or decreases or transaction gains or losses in respect of Indebtedness of any Person denominated in a currency other than the functional currency of such Person, including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from Swap Contracts for currency exchange risk) or other obligations of Holdings or any Restricted Subsidiary owing to the Holdings or any Restricted Subsidiary and any unrealized foreign exchange gains or losses relating to translation of assets and liabilities denominated in foreign currencies;

(xi) any unrealized or realized gain or loss due solely to fluctuations in currency values and the related tax effects, determined in accordance with GAAP;

(xii) any recapitalization accounting or acquisition method accounting effects including, but not limited to, adjustments to inventory, property and equipment, software and other intangible assets and deferred revenue in component amounts required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to Holdings and the Restricted Subsidiaries), as a result of any consummated acquisition, or the amortization or write-off of any amounts thereof (including any write-off of in process research and development);

(xiii) any impairment charge, write-down or write-off, including impairment charges, write-downs or write-offs relating to goodwill, intangible assets, long-lived assets, investments in debt and equity securities (including any losses with respect to the foregoing in bankruptcy, insolvency or similar proceedings) and the amortization of intangibles arising pursuant to GAAP or as a result of a change in law or regulation;

(xiv) any effect of income (loss) from the early extinguishment or cancellation of Indebtedness or any obligations under any Swap Contracts or other derivative instruments;

(xv) accruals and reserves that are established or adjusted (including any adjustment of estimated payouts on existing earn-outs) that are so required to be established as a result of the Transactions in accordance with GAAP, or changes as a result of adoption or modification of accounting policies;

(xvi) any net unrealized gains and losses resulting from Hedging Obligations or embedded derivatives that require similar accounting treatment and the application of Topic 815 and related pronouncements or mark to market movement of other financial instruments pursuant to Accounting Standards Codification 825 and related pronouncements;

(xvii) any costs or expenses associated with the Transactions;

(xviii) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures and any deferred tax expense associated with tax deductions or net operating losses arising as a result of the Transactions, or the release of any valuation allowances related to such item;

(xix) effects of adjustments to accruals and reserves during a period relating to any change in the methodology of calculating reserves for returns, rebates and other chargebacks (including government program rebates); and

(xx) any net gain (or loss) from disposed, abandoned or discontinued operations and any net gain (or loss) on disposal of disposed, discontinued or abandoned operations.

In addition, to the extent not already excluded (or included, as applicable) from the Consolidated Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall be increased by (i) any expenses and charges that are reimbursed by indemnification or other reimbursement provisions in connection with any investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed and only to the extent that such amount is (A) not denied by the applicable payor in writing within 180 days and (B) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), and (ii) to the extent covered by insurance (including business interruption insurance) and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (A) not denied by the applicable carrier in writing within 180 days and (B) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within such 365 days), expenses with respect to liability or casualty events or business interruption and/or, with respect to business interruption insurance, an amount representing the earnings for the applicable period that such proceeds are intended to replace and, provided, further that solely for purposes of calculating Excess Cash Flow, the income or loss of any Person accrued prior to the date on which such Person becomes a Restricted Subsidiary of such Person or is merged into or consolidated with such Person or any Restricted Subsidiary of such Person or the date that such other Person's assets are acquired by such Person or any Restricted Subsidiary of such Person, in each case, shall be excluded in calculating Consolidated Net Income.

"**Consolidated Senior Secured Debt**" means, as to any Person at any date of determination, the aggregate principal amount of Consolidated Total Debt outstanding on such date that is secured by a Lien on any assets or property of the Restricted Companies.

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

" **Consolidated Total Debt**" means, as to any Person at any date of determination, the aggregate principal amount of all third party Indebtedness for borrowed money, Indebtedness evidenced by bonds, debentures and similar instruments, unreimbursed drawings under letters of credit, Capital Leases and purchase money Indebtedness; *provided* that "Consolidated Total Debt" shall be calculated (i) net of the Unrestricted Cash Amount, (ii) excluding any obligation, liability or indebtedness of such Person if, upon or prior to the maturity thereof, such Person has irrevocably deposited with the proper Person in trust or Escrow the necessary funds (or evidences of indebtedness) for the payment, redemption or satisfaction of such obligation, liability or indebtedness, and thereafter such funds and evidences of such obligation, liability or indebtedness or other security so deposited are not included in the calculation of Unrestricted Cash Amount and (iii) based on the initial stated principal amount of any Indebtedness that is issued at a discount to its initial stated principal amount without giving effect to any such discounts; *provided* that Consolidated Total Debt shall not include (x) Letters of Credit (or other letters of credit, bankers' acceptances and bank guarantees), except to the extent of Unreimbursed Amounts (or unreimbursed amounts) thereunder, (y) obligations under Swap Contracts entered into and (z) Indebtedness in respect of any Qualified Securitization Financing and/or Permitted Receivables Financing.

"**Contract Consideration**" shall have the meaning given to such term in the definition of "Excess Cash Flow".

"**Contractual Obligation**" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"**Control**", "**Controlled**" and "**Controlling**" have the meanings specified in the definition of "Affiliate."

"**Converted Restricted Subsidiary**" has the meaning specified in the definition of "Consolidated EBITDA."

"**Converted Unrestricted Subsidiary**" has the meaning specified in the definition of "Consolidated EBITDA."

"**Credit Agreement Refinancing Indebtedness**" means (i) Permitted First Priority Refinancing Debt, (ii) Permitted Junior Priority Refinancing Debt, (iii) Permitted Unsecured Refinancing Debt or (iv) Indebtedness incurred pursuant to a Refinancing Amendment, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or in part, any Class of existing Term Loans, or any then-existing Refinancing Indebtedness (solely for purposes of this definition, "**Refinanced Debt**"); *provided* that (a) such Indebtedness shall not have a greater principal amount than the principal amount of the Refinanced Debt plus accrued interest, fees and premiums (if any) thereon and reasonable fees and expenses associated with the refinancing, (b) such Refinanced Debt shall be repaid, defeased or satisfied and discharged on a dollar-for-dollar basis, and all accrued, interest, fees and premiums (if any) in connection therewith shall be paid, substantially concurrently with the incurrence of such Refinancing Indebtedness in accordance with the provisions of Section 2.06(a), (c) such Indebtedness has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Refinanced Debt and the maturity date of such Indebtedness shall be no earlier than, (x) in the case of any such Refinancing Indebtedness that is secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security, the latest maturity date applicable to the Refinanced Debt and (y) in the case of any such Refinancing Indebtedness that is secured by a Lien that is junior to the Initial Term Loans in right of payment or with respect to security or is unsecured, the date that is ninety-one (91) days following the latest maturity date applicable to the Refinanced Debt, (d) such Indebtedness is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligation (except customary asset sale or change-of-control provisions that provide for the prior repayment in full of the Loans and all other Obligations), in each case prior to (x) in the case of any such Refinancing Indebtedness that is secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security, the Latest Term Maturity Date at the time such Indebtedness is incurred and (y) in the case of any such Refinancing Indebtedness that is secured by a Lien that is junior to the Initial Term Loans in right of payment or with respect to security or is unsecured, the date that is ninety-one (91) days following the Latest Term Maturity Date at the time such Indebtedness is incurred, (e) such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, (f) if secured, such Indebtedness is not secured by any assets that are not Collateral and (g) the terms and conditions of any such modified, refinanced, refunded, renewed or extended Indebtedness shall be consistent with the requirements for Refinancing Indebtedness required by Section 2.19.

"**Credit Extension**" means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

"**Cure Amount**" has the meaning specified in Section 8.04. "**Cure Right**" has the meaning specified in Section 8.04.

" **Debt Issuance**" means the issuance by any Person and its Subsidiaries of any Indebtedness for borrowed money.

"**Debtor Relief Laws**" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"**Declined Proceeds**" has the meaning specified in Section 2.06(b)(ix).

"**Default**" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"**Default Rate**" means an interest rate equal to (a) the Base Rate plus (b) the Applicable Margin, if any, applicable to Base Rate Loans plus (c) 2.0% per annum; *provided* that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

"**Defaulting Lender**" means any Lender that (a) has failed, within one Business Day of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in L/C Obligations or (iii) pay over to the Administrative Agent, any L/C Issuer or any other Lender any other amount required to be paid by it hereunder, unless in the case of clause (i) above, such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or the Administrative Agent, any L/C Issuer or any other Lender in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent, any L/C Issuer or any other Lender or the Borrower, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding L/C Obligations under this Agreement, *provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Administrative Agent, L/C Issuer or Lender's and the Borrower's receipt of such certification in form and substance satisfactory to it and the Administrative Agent or (d) has become (or any parent company thereof has become) either the subject of a (i) Bankruptcy Event or (ii) a Bail-In Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, the L/C Issuer and each other Lender promptly following such determination.

"**Discount Range**" has the meaning specified in Section 2.06(d)(ii).

"**Discounted Prepayment Option Notice**" has the meaning specified in Section 2.06(d)(ii).

"**Discounted Voluntary Prepayment**" has the meaning specified in Section 2.06(d)(i).

"**Discounted Voluntary Prepayment Notice**" has the meaning specified in Section 2.06(d)(v).

"**Disposed EBITDA**" means, with respect to any Sold Entity or Business or any Converted Unrestricted Subsidiary for any period, the amount for such period of Consolidated EBITDA of such Sold Entity or Business or such Converted Unrestricted Subsidiary, all as determined on a consolidated basis for such Sold Entity or Business or such Converted Unrestricted Subsidiary.

"**Disposition**" or "**Dispose**" means the sale, transfer, license, lease or other disposition of any property by any Person (including any sale and leaseback transaction and any sale of Equity Interests, but excluding any issuance by such Person of its own Equity Interests), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"**Disqualified Equity Interests**" means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Latest Maturity Date.

"**Disqualified Institution**" means (i) such Persons (or related funds of such Persons) that have been specified in writing to the Administrative Agent prior to November 7, 2018, (ii) competitors of the Borrower and its Restricted Subsidiaries that have been specified in writing to the Administrative Agent from time to time, (iii) in the case of clauses (i) and (ii), any Affiliates of Persons described in clauses (i) or (ii) (other than, in the case of clause (ii), Affiliates that are Bona Fide Lending Affiliates) that are (A) specified in writing to the Administrative Agent from time to time or (B) readily identifiable as affiliates by virtue of the similarity of their names; it being understood that any subsequent designation of a Disqualified Institution shall not apply retroactively to disqualify any Person that has previously acquired an assignment or participation interest in or for which the "trade date" with respect to an assignment or participation interest has occurred in respect of the Facilities and (iv) any Excluded Affiliates.

"**Dissenting Lenders**" has the meaning specified in Section 11.01(f).

"**Dodd Frank Act**" has the meaning specified in the definition of the term "Change in Law".

"**Dollar**" and "**$**" means lawful money of the United States.

"**Dollar Equivalent**" means, at any time, (a) with respect to any amount denominated in Dollars, such amount and (b) with respect to any amount denominated in any currency other than Dollars, the equivalent amount thereof in Dollars as reasonably determined by the Administrative Agent, in consultation with the Borrower, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date or other relevant date of determination) for the purchase of Dollars with such other currency.

"**EEA Financial Institution**" means (a) any institution established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Effective Yield**" means, as to any Loans of any Class, the effective yield on such Loans in an amount equal to the sum of (a) the applicable margin, (b) the interest rate (exclusive of applicable margin) after giving effect to any interest rate floors or similar devices and (c) all upfront or similar fees and OID (amortized over the shorter of (x) the original stated life of such Loans and (y) the four years following the date of incurrence thereof) payable generally to Lenders making such Loans, but excluding amendment fees, arrangement fees, structuring fees, commitment fees, underwriting fees or other fees payable to any lead arranger (or its affiliates) in connection with the commitment or syndication of such Indebtedness, consent fees paid to consenting Lenders, ticking fees on undrawn commitments and any other fees not paid or payable generally to all Lenders in the primary syndication of such Indebtedness.

"**Eligible Assignee**" means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any Person (other than a natural person) approved by (A) the Administrative Agent, and in the case of any assignment of a Revolving Credit Commitment or Revolving Lenders, the L/C Issuers and Swingline Lender and (B) unless a Specified Event of Default is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed); *provided* that "Eligible Assignee" shall not include any Disqualified Institution or, other than as set forth in Section 11.07(k) or (l), Holdings or any Affiliate or Subsidiary of Holdings.

"**Environmental Laws**" means any and all applicable Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution, the protection of the environment, human health and safety (as related to exposure to Hazardous Materials) or the release of any Hazardous Materials into the environment.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Restricted Company resulting from or based upon (a) any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Equity Contribution**" means cash equity contributions by the Investors equal to at least 40.0% of the sum of (1) the aggregate gross proceeds of the Initial Term Loans and Initial Revolving Facilities borrowed on the Closing Date (excluding the aggregate gross proceeds of the Initial Term Loans and Initial Revolving Facilities borrowed to fund additional upfront fees or OID required by the terms of the "market flex" provisions of the Arranger Fee Letter), and (2) the amount of such cash contribution and the fair market value of the equity of management rolled over or invested and the fair market value of the equity acquired by the Sponsor or any other Investors, in each case on the Closing Date.

"**Equity Interests**" means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

"**Equity Issuance**" means any issuance for cash by any Person and its Subsidiaries to any other Person of (a) its Equity Interests, (b) any of its Equity Interests pursuant to the exercise of options or warrants, (c) any of its Equity Interests pursuant to the conversion of any debt securities to equity or (d) any options or warrants relating to its Equity Interests. A Disposition shall not be deemed to be an Equity Issuance.

"**ERISA**" means the Employee Retirement Income Security Act of 1974.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) under common control with Holdings within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"**ERISA Event**" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by Holdings or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by Holdings or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in "reorganization" (within the meaning of Section 4241 of ERISA) or is in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 304 of ERISA); (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums not yet due or premiums due but not yet delinquent under Section 4007 of ERISA, upon Holdings or any ERISA Affiliate or (g) the occurrence of any Foreign Plan Event.

"**Escrow**" means an escrow, trust, collateral or similar account or arrangement with a third party that is not Holdings or its Restricted Subsidiaries.

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

"**Eurocurrency Rate**" means:

(a) with respect to any Credit Extension:

(i) denominated in Dollars, the rate per annum equal to the London Interbank Offered Rate ("LIBOR") or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;

(ii) denominated in Canadian dollars, the rate per annum equal to the Canadian Dealer Offered Rate ("CDOR"), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at or about 10:00 a.m. (Toronto, Ontario time) on the Rate Determination Date with a term equivalent to such Interest Period;

(iii) with respect to a Credit Extension denominated in any other Alternate Currency, the rate per annum as designated with respect to such Alternate Currency at the time such Alternate Currency is approved by the Administrative Agent and the Lenders pursuant to Section 1.12(a); and

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

provided that (i) to the extent a comparable or successor rate is approved by the Administrative Agent in connection with any rate set forth in this definition, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent in consultation with the Borrower and (ii) if the Eurocurrency Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

"**Eurocurrency Rate Loan**" means a Loan that bears interest at a rate based on the Eurocurrency Rate.

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

"**Excess Cash Flow**" means for any fiscal year of Holdings, the excess, if any, of:

(a) the sum, without duplication, of

(i) Consolidated Net Income for such fiscal year,

(ii) the amount of all non-cash charges (including depreciation and amortization) deducted in arriving at such Consolidated Net Income but excluding any non-cash charge to the extent that it represents an accrual or reserve for potential cash charge in any future fiscal year or amortization of a prepaid cash gain that was paid in a prior fiscal year, in each case, for such fiscal year,

(iii) decreases in Working Capital for such fiscal year, and

(iv) the aggregate net amount of non-cash loss on the disposition of property by the Borrower and its Restricted Subsidiaries during such fiscal year other than sales of inventory in the ordinary course of business), to the extent deducted in arriving at such Consolidated Net Income;

*minus*

(b) the sum, without duplication, of

(i) the amount of all non-cash credits included in arriving at such Consolidated Net Income and cash Charges to the extent excluded from Consolidated Net Income pursuant to clauses (i) through (xx) of the definition thereof and not otherwise subtracted therefrom,

(ii) Capital Expenditures, Permitted Acquisitions (including any earnout, installment and deferred purchase price payments or other payment in respect thereof) and other Investments (other than Investments pursuant to Section 7.02(a) , (d), (f) (with respect to Restricted Payments permitted under Section 7.06), (l), (r), (w) , (cc) and (dd)), in each case, to the extent made in cash and not financed with (x) the proceeds of long-term Indebtedness (other than any revolving Indebtedness (including under any Revolving Credit Commitment)) or (y) the proceeds of asset Dispositions and Casualty Events referred to in clause (b)(vi) below for such fiscal year or any prior fiscal year,

(iii) without duplication of amounts deducted in calculating the prepayment under Section 2.06(b)(iii), the aggregate amount of all principal payments and purchases of Indebtedness of the Borrower and its Restricted Subsidiaries made during such fiscal year (including (A) scheduled principal payments with respect to Indebtedness pursuant to Section 2.08(b) (or any equivalent provision in any Refinancing Amendment with respect to the Term Loans), (B) the principal component of payments in respect of Capitalized Leases, (C) the amount of any mandatory prepayment of Term Loans pursuant to Section 2.06(b)(i) of this Agreement, but excluding (1) all other prepayments of the Term Loans, (2) all repayments of any revolving credit facility arrangements (except to the extent there is an equivalent permanent reduction in commitments thereunder that is not being made in connection with a refinancing or replacement thereof and other than in respect of the Revolving Credit Loans and the Revolving Credit Commitments which, for the avoidance of doubt, shall be permitted to be deducted in calculating the prepayment under Section 2.06(b)(iii) as and to the extent provided therein)), and (3) in each case any such payments and purchases to the extent financed with the proceeds of long-term Indebtedness (other than revolving Indebtedness),

(iv) increases in Working Capital for such fiscal year,

(v) the aggregate net amount of non-cash gain on the disposition of property by the Borrower and its Restricted Subsidiaries during such fiscal year (other than sales of inventory in the ordinary course of business), to the extent included in arriving at such Consolidated Net Income,

(vi) proceeds of all Dispositions of assets pursuant to Sections 7.05(k)(ii), 7.05(p), 7.05(r), 7.05(t) and 7.05(u), and proceeds of all Casualty Events, in each case received in such fiscal year and to the extent included in arriving at such Consolidated Net Income,

(vii) proceeds received by the Restricted Companies from insurance claims (including, without limitation, with respect to casualty events, business interruption or product recalls) which reimburse prior business expenses, to the extent included in arriving at such Consolidated Net Income,

(viii) cash payments made in satisfaction of non-current liabilities (other than (A) payments in respect of Indebtedness under this Agreement or (B) regularly scheduled principal payments of any other Indebtedness),

(ix) cash fees and expenses incurred in connection with any Investment permitted under Section 7.02, Equity Issuance or Debt Issuance (whether or not consummated),

(x) cash indemnity payments received pursuant to indemnification provisions in any agreement in connection with any Permitted Acquisition or any other Investment permitted hereunder,

(xi) costs incurred related to implementations that are deferred in accordance with GAAP,

(xii) any required up-front Cash payments in respect of Swap Contracts to the extent not financed with the proceeds of long-term Indebtedness (other than revolving Indebtedness) and not deducted in arriving at such Consolidated Net Income,

(xiii) the amount of Restricted Payments paid in cash during such fiscal year pursuant to Section 7.06 (other than Section 7.06(b), (c), (g), (j), (m) and (o)) except to the extent that such Restricted Payments were financed with the proceeds of an incurrence or issuance of long-term Indebtedness of the Borrower or its Restricted Subsidiaries (other than revolving Indebtedness);

(xiv) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and its Restricted Subsidiaries during such fiscal year that are required to be made in connection with any prepayment of Indebtedness except to the extent that such amounts were financed with the proceeds of a Cure Amount or an incurrence or issuance of long-term Indebtedness of the Borrower or its Restricted Subsidiaries (other than revolving Indebtedness);

(xv) the aggregate amount of expenditures actually made by the Borrower and its Restricted Subsidiaries in cash during such fiscal year (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such fiscal year and were not financed with the proceeds of a Cure Amount or an incurrence or issuance of long-term Indebtedness of the Borrower or its Restricted Subsidiaries (other than revolving Indebtedness);

(xvi) the amount of cash taxes and Tax distributions (including penalties and interest) paid or Tax reserves set aside or payable (without duplication) in such fiscal year to the extent they exceed the amount of Tax expense or Tax income deducted or included, as applicable, in determining Consolidated Net Income for such fiscal year;

(xvii) without duplication of amounts deducted from Excess Cash Flow in respect of a prior period, at the option of Holdings, the aggregate consideration (including earn-outs) required to be paid in cash by the Borrower or the Restricted Subsidiaries pursuant to binding contracts, irrevocable notices, commitments, letters of intent or purchase orders (the "**Contract Consideration**") entered into or delivered, as applicable, prior to or during such fiscal year relating to Capital Expenditures, any Investments pursuant to Section 7.02 (other than Investments pursuant to 7.02(a), (d), (f) (with respect to Restricted Payments permitted under Section 7.06), (l), (w), (cc) and (dd)) and Restricted Payments pursuant to Section 7.06 (other than Section 7.06(b), (c), (g), (i), (m) and (o)), in each case to be consummated or made during the period of four consecutive fiscal quarters of Holdings following the end of such fiscal year (except in each case to the extent financed with a Cure Amount or the proceeds of an incurrence or issuance of long-term Indebtedness (other than revolving Indebtedness)); *provided* that to the extent the aggregate amount actually utilized in cash to finance such Capital Expenditures, Investments or Restricted Payments during such subsequent period of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such subsequent period of four consecutive fiscal quarters; and

(xviii) the amount of cash interest paid or reserves set aside or payable (without duplication) in such fiscal year to the extent they exceed the amount of interest expense or interest income deducted or included, as applicable, in determining Consolidated Net Income for such fiscal year.

"**Excess Cash Flow Percentage**" means, as of any date of determination, (a) if the First Lien Net Leverage Ratio is greater than 3.50:1.00, 90%, (b) if the First Lien Net Leverage Ratio is less than or equal to 3.50:1.00 and greater than 3.00:1.00, 75%, (c) if the First Lien Net Leverage Ratio is less than or equal to 3.00:1.00 and greater than 2.50:1.00, 50%, (d) if the First Lien Net Leverage Ratio is less than or equal to 2.50:1.00 and greater than 2.00:1.00, 25% and (e) if the First Lien Net Leverage Ratio is less than or equal to 2.00:1.00, 0%; it being understood and agreed that, for purposes of this definition as it applies to the determination of the amount of Excess Cash Flow that is required to be applied to prepay the Term Loans under Section 2.06(b)(iii) for any fiscal year, the First Lien Net Leverage Ratio shall be determined on a Pro Forma Basis on the scheduled date of prepayment (after giving effect to any cash pay-down or reductions made after year-end and prior to the Excess Cash Flow payment date).

"**Excess Cash Flow Period**" means each fiscal year of the Borrower (commencing with the fiscal year ending December 31, 2019).

"**Excess Cash Flow Retained Amount**" means, at any date of determination, an amount, not less than zero that is equal to the aggregate cumulative sum of the Excess Cash Flow that is not required to be applied as a mandatory prepayment under Section 2.06(b)(iii) for all Excess Cash Flow Periods ending after the Closing Date, and prior to such date of determination.

"**Excess Cash Flow Threshold**" means $1,000,000.

"**Excluded Affiliates**" means any Affiliates or employees of a Lender that are engaged as principals primarily in private equity, mezzanine financing or venture capital (other than a limited number of senior employees who are required, in accordance with industry regulations or any Lender's internal policies and procedures to act in a supervisory capacity and any Lender's internal legal, compliance, risk management, credit or investment committee members).

"**Excluded Assets**" means with respect to any Loan Party, (i) any (x) fee-owned real property other than Material Real Property and (y) all leasehold interests (it being understood and agreed that no action shall be required with respect to creation or perfection of security interests with respect to such leases, including to obtain landlord waivers, estoppels or collateral access letters); (ii) commercial tort claims in which the amount claimed is less than $3,000,000 individually and letter of credit rights with a value of less than $3,000,000 (to the extent not constituting a supporting obligation), in each case, except to the extent perfection can be achieved by filing a UCC-1 financing statement, (iii) motor vehicles and other assets subject to certificates of title, except to the extent perfection can be achieved by filing a UCC-1 financing statement; (iv) pledges and security interests prohibited by applicable Law, rule or regulation or agreement with any governmental authority after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other similar applicable law; (v) Equity Interests issued by, or assets of, any Person other than wholly-owned Subsidiaries; (vi) any lease, license or other agreement or any property subject to a purchase money security interest, Capitalized Lease or similar arrangement permitted hereunder to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement, purchase money arrangement or Capitalized Lease or create a right of termination in favor of any other party thereto (other than Holdings or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other similar applicable Law, other than proceeds and receivables thereof; (vii) any governmental licenses (but not the proceeds thereof) or state or local franchises, charters and authorizations and any other property or asset the grant or perfection of a security interest in which would require governmental consent, except to the extent such consent has been obtained, to the extent security interests in such licenses, franchises, charters or authorizations, properties or assets are prohibited or restricted thereby including any legally effective prohibition on restriction after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other similar applicable law other than proceeds thereof; (viii) "intent-to-use" trademark applications prior to the filing of a "Statement of Use" or "Amendment to Alleged Use" with respect thereto and to the extent, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal Law; (ix) Equity Interests issued by, or assets of, Unrestricted Subsidiaries, Immaterial Subsidiaries, captive insurance subsidiaries, not-for-profit subsidiaries, broker-dealer subsidiaries or special purpose entities, (x) margin stock (within the meaning of Regulation U), (xi) [reserved], (xii) assets the grant or perfection of a security interest in which would result in material adverse Tax consequences to the Borrower or Holdings (or such other direct or indirect parent entity of the Borrower) or any of their respective subsidiaries as reasonably determined by the Borrower in consultation with the Administrative Agent, (xiii) Equity Interests of any CFC or FSHCO in excess of 65% of the issued and outstanding voting stock, (xiv) any segregated funds held in escrow for a the benefit of an unaffiliated third party (including such funds in Escrow) and (xv) other assets as to which the Administrative Agent and the Borrower shall reasonably and mutually determine that the costs, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweigh the benefit to the Lenders of the security afforded thereby.

"**Excluded Subsidiary**" means (a) any Subsidiary that is prohibited or restricted by (i) applicable Law, rule or regulation or (ii) by any contractual obligation that, in the case of this clause (ii), is existing on the Closing Date or at the time of acquisition thereof after the Closing Date (to the extent not entered into in contemplation of such acquisition) for so long as such restriction is continuing, in each case, from guaranteeing the Facilities or which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guarantee unless such consent approval, license or authorization has been received, (b) any Subsidiary for which the provision of a Guarantee would result in material adverse Tax consequences to the Borrower or Holdings (or such other direct or indirect parent entity of the Borrower) or any of their respective subsidiaries (as reasonably determined by the Borrower in consultation with the Administrative Agent), (c) any non-wholly owned Subsidiary or any JV Entity, (d) any Unrestricted Subsidiary, (e) any Immaterial Subsidiary, (f) any direct or indirect U.S. Subsidiary of a Non-U.S. Subsidiary of the Borrower that is a CFC, (g) any CFC or any FSHCO, (h) not-for-profit Subsidiaries, captive insurance Subsidiaries and special purpose entities, if any, used for permitted securitization facilities or other facilities requiring non-consolidation, (i) solely in the case of any Secured Hedging Obligation that constitutes a "swap" within the meaning of section 1(a)(47) of the Commodity Exchange Act, any subsidiary of Holdings that is not an "Eligible Contract Participant" as defined under the Commodity Exchange Act, (j) any Restricted Subsidiary acquired pursuant to a Permitted Acquisition or similar investment financed with Indebtedness permitted to be assumed pursuant to Section 7.03 (and not incurred in contemplation of such acquisition) and any Restricted Subsidiary thereof that guarantees such Indebtedness, in each case to the extent, and so long as, such Indebtedness prohibits any such Restricted Subsidiary from becoming a Guarantor, (k) any Subsidiary that is or is required to be registered as an "investment company" under the Investment Company Act of 1940 and (l) any other Subsidiary in circumstances where the Borrower and the Administrative Agent reasonably agree that the cost or burden of providing a Guaranty outweighs the benefit afforded thereby.

"**Excluded Swap Obligation**" means with respect to any Guarantor (a) any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, 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 Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation or (b) any other Swap Obligation designated as an "Excluded Swap Obligation" of such Guarantor as specified in any agreement between the relevant Loan Party and swap counterparty applicable to such Swap Obligations. 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 any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case,

(i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 3.09) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any withholding Taxes imposed pursuant to FATCA.

"**Excluded Unrestricted Subsidiary"** has the meaning specified in Section 6.15.

"**Existing ABL Facility**" has the meaning assigned to such term in the recitals hereto.

"**Existing Facilities**" has the meaning assigned to such term in the recitals hereto.

"**Existing Term Facility**" has the meaning assigned to such term in the recitals hereto.

"**Extended Revolving Credit Commitment**" has the meaning specified in Section 2.18(a)(ii).

"**Extended Revolving Credit Loans**" has the meaning specified in Section 2.18(a)(ii).

"**Extended Term Loans**" has the meaning specified in Section 2.18(a)(iii).

"**Extension**" has the meaning specified in Section 2.18(a).

"**Extension Amendment**" means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent (to the extent required by Section 2.18), (c) each Lender that agrees to an Extension and (d) to the extent relating to the Revolving Credit Commitments and the L/C Issuer, in accordance with Section 2.18, and delivered to the Administrative Agent.

"**Extension Offer**" has the meaning specified in Section 2.18(a).

"**Facility**" means each Term Facility or each Revolving Credit Facility, as the context may require.

"**FATCA**" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code or any of the foregoing.

"**FCPA**" has the meaning specified in Section 5.08(b).

" **Federal Funds Rate**" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the immediately preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) quoted to the Administrative Agent on such day on such transactions by three (3) federal funds brokers of recognized standing as determined by the Administrative Agent.

"**Fee Letters**" means (i) that certain Agency Fee Letter, dated as of November 7, 2018, by and between Purchaser and Nomura and (ii) that certain Agency Fee Letter, dated as of November 7, 2018, by and between Purchaser and Nomura (the "**Arranger Fee Letter**").

"**Financial Covenant**" means the covenant set forth in Section 7.11.

"**First Lien Net Leverage Ratio**" means, as of any date of determination, the ratio of (a) Consolidated First Lien Secured Debt on such date to (b) Consolidated EBITDA as of the last day of the most recently ended Test Period, in each case, of the Borrower and its Restricted Subsidiaries on a consolidated basis.

"**Fixed Amounts**" has the meaning specified in Section 1.08(c).

" **Fixed Incremental Amount**" means (i) the greater of $26,500,000 and 50% of Consolidated EBITDA of Holdings for the most recently ended Test Period *minus* (ii) the aggregate principal amount of all Incremental Facilities and/or Incremental Equivalent Debt incurred or issued in reliance on amounts under this definition and the aggregate amount of Ratio Debt incurred or issued under clause (a)(i) of the definition thereof.

"**Flood Insurance Laws**" means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004, and any regulations promulgated thereunder, as now or hereafter in effect or any successor statute or regulations thereto.

"**Foreign Asset Sale**" has the meaning specified in Section 2.06(b)(viii).

"**Foreign Lender**" means (a) if the Borrower is a U.S. Person, a Recipient that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Recipient that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for Tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"**Foreign Plan**" means any material written employee benefit plan, program, policy, arrangement or agreement maintained or contributed to by any Loan Party or any of their respective Subsidiaries with respect to employees employed outside the United States.

"**Foreign Plan Event**" means, with respect to any Foreign Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure in any material respect to make the required contributions or payments, under any applicable law, on or before the due date for such contributions or payments, (c) the receipt of a notice from a Governmental Authority relating to the intention to terminate any such Foreign Plan, or alleging the insolvency of any such Foreign Plan, (d) the incurrence of liability by any Loan Party or any their respective Subsidiaries under applicable law on account of the complete or partial termination of such Foreign Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any material transaction that is prohibited under any applicable law and that would reasonably be expected to result in the incurrence of any material liability by any Loan Party or any of their respective Subsidiaries, or the imposition on any Loan Party or any of their respective Subsidiaries of any material fine, excise tax or penalty resulting from any noncompliance with any applicable law.

"**Foreign Recovery Event**" has the meaning specified in Section 2.06(b)(viii).

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

"**Fronting Exposure**" means, at any time there is a Defaulting Lender, with respect to any L/C Issuer, such Defaulting Lender's Pro Rata Share of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"**FSHCO**" means any direct or indirect U.S. Subsidiary of the Borrower that has no material assets other than the equity (including instruments treated as equity for U.S. federal income tax purposes) and/or debt of one or more Non-U.S. Subsidiaries that are CFCs and/or FSHCOs of the Borrower.

"**Fund**" means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit.

"**GAAP**" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"**Governmental Authority**" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, Taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee or any successor or similar authority to any of the foregoing).

"**Granting Lender**" has the meaning specified in Section 11.07(i).

"**Growth Amount**" has the meaning specified in clause (a)(ii) of the definition of "Available Amount."

"**Guarantee**" means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition of assets or other transactions permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"**Guaranteed Obligations**" means (a) in respect of the Guarantee by the Borrower set forth in Article 10 of this Agreement, (i) all Secured Hedging Obligations of each other Loan Party and (ii) all Cash Management Obligations of each other Loan Party and (b) in respect of the Guarantee by Holdings and any other Loan Party (other than the Borrower) set forth in Article 10 of this agreement or in any other guaranty or guaranty supplement delivered pursuant to Section 6.13, (i) all Obligations of each other Loan Party, (ii) all Secured Hedging Obligations of each other Loan Party and (iii) all Cash Management Obligations of each other Loan Party, in each case of the obligations described in clauses (i), (ii) and (iii) above, now or hereafter existing (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, fees, indemnities, contract causes of action, costs, expenses or otherwise. Notwithstanding the foregoing, the Guaranteed Obligations of any Guarantor shall not include any Excluded Swap Obligations of such Guarantor.

"**Guarantors**" means, collectively, (i) Holdings, (ii) the Borrower and (ii) each Subsidiary Guarantor (with each Subsidiary Guarantor as of the Closing Date listed on Schedule 1.01A). The Borrower shall be considered a Guarantor hereunder solely with respect to its Guaranteed Obligations under Article 10.

"**Guaranty**" means, collectively, the Guarantee by the Guarantors set forth in Article 10 of this Agreement together with any other guaranty or guaranty supplement delivered pursuant to Section 6.13 (which Guarantee provided by the Borrower shall refer solely to its Guarantee with respect to its Guaranteed Obligations under Article 10).

"**Guaranty Supplement**" has the meaning specified in Section 10.09.

"**Hazardous Materials**" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law as hazardous, toxic, pollutants or contaminants or words of similar meaning or effect.

"**Hedge Agreement**" means any Swap Contract permitted under Article 6 or 7 that is entered into by and between Holdings or any of the Restricted Subsidiaries and any Hedge Bank.

"**Hedge Bank**" means any Person that is, at the time that it enters into a Hedge Agreement, the Administrative Agent, the Arranger, a Lender, L/C Issuer or an Affiliate of the Administrative Agent, the Arranger, a Lender, L/C Issuer or any other Person designated in writing to the Administrative Agent from time to time; provided that such Person, if not already bound by the provisions thereof, acknowledges and agrees to be bound by the provisions of Article 9, Section 11.06, Section 11.09, Section 11.17, Section 11.21, Section 11.22 and other provisions applicable to Lenders generally.

"**Holdings**" has the meaning specified in the introductory paragraph to this Agreement.

"**Honor Date**" has the meaning specified in Section 2.04(c)(i).

" **Immaterial Subsidiary**" means any Restricted Subsidiary of Holdings contributing less than 2.50% of the consolidated revenues of Holdings and its Restricted Subsidiaries, in each case, for the most recently ended Test Period for which financial statements have been delivered pursuant to Section 6.01(a) or (b), as applicable; *provided* that the aggregate Consolidated Total Assets (as so determined) and aggregate revenues (as so determined) of all Immaterial Subsidiaries shall not exceed 5.0% of the consolidated revenues of Holdings and its Restricted Subsidiaries for the relevant Test Period, as the case may be.

"**Incremental Cap**" means

(a) the Fixed Incremental Amount, plus

(b) [reserved], plus

(c) [reserved], plus

(d) (i) the amount of any optional prepayment of any Loan in accordance with Section 2.06(a) and/or the amount of any permanent reduction of any Revolving Credit Commitment, (ii) the amount paid in Cash in respect of any reduction in the outstanding amount of any Term Loan resulting from any assignment of such Term Loan to (and/or purchase of such Term Loan by) Holdings and/or any of its Restricted Subsidiaries (including in connection with debt buybacks made by the Borrower in an amount equal to the discounted amount actually paid in respect thereof pursuant to Section 2.06(d), Section 10.07 and/or otherwise, and/or the application of yank-a-bank provisions that result in a reduction of such Loans) and (iii) the amount of any optional prepayment of any Indebtedness (together with a permanent reduction of the applicable commitment in the case of revolving Indebtedness) that is *pari passu* with the Initial Term Loans in right of payment and with respect to security, so long as, in the case of any such optional prepayment, the relevant prepayment or assignment and/or purchase was not funded with the proceeds of any long-term Indebtedness (other than revolving Indebtedness), in each case to the extent any Incremental Facilities or Incremental Equivalent Debt have not been incurred in reliance of such amounts, plus

(e) an unlimited amount so long as, in the case of this clause (e), after giving effect to the relevant Incremental Facility or Incremental Equivalent Debt, (i) if such Incremental Facility or Incremental Equivalent Debt is secured by a Lien on the Collateral that is *pari passu* with the Lien securing the Obligations that are secured on a first lien basis, the First Lien Net Leverage Ratio does not exceed 3.25:1.00, (ii) if such Incremental Facility or Incremental Equivalent Debt is secured by a Lien on the Collateral that is junior to the Lien securing the Secured Obligations that are secured on a first lien basis, the Senior Secured Net Leverage Ratio does not exceed 3.75:1.00 or (iii) if such Incremental Facility or Incremental Equivalent Debt is unsecured, the Total Net Leverage Ratio does not exceed 4.50:1.00, in each case described in this clause (e), calculated on a Pro Forma Basis, including the application of the proceeds thereof (without "netting" the cash proceeds of the applicable Incremental Facility or Incremental Equivalent Debt), and in the case of any Incremental Revolving Credit Commitments, assuming a full drawing of such Incremental Revolving Credit Commitments.

provided that:

(x) Incremental Facilities and Incremental Equivalent Debt may be incurred under one or more of clauses (a) through (e) of this definition as selected by the Borrower in its sole discretion,

(y) if Incremental Facilities or Incremental Equivalent Debt are intended to be incurred under clause (e) of this definition and any other clause of this definition in a single transaction or series of substantially concurrent related transactions, (A) incurrence of the portion of such Incremental Facilities or Incremental Equivalent Debt to be incurred under clause (e) of this definition shall first be calculated without giving effect to any Incremental Facilities or Incremental Equivalent Debt to be incurred under all other clauses of this definition, but giving full pro forma effect the use of proceeds of all such Incremental Facilities or Incremental Equivalent Debt and related transactions, and (B) thereafter, incurrence of the portion of such Incremental Facilities or Incremental Equivalent Debt to be incurred under such other applicable clauses of this definition shall be calculated, and

(z) any portion of Incremental Facilities or Incremental Equivalent Debt incurred under clauses (a) through (d) of this definition may be reclassified, as the Borrower elects from time to time, as incurred under clause (e) of this definition if such portion of Incremental Facilities or Incremental Equivalent Debt could at such time be incurred under clause (e) of this definition on a pro forma basis; provided, that upon delivery of any financial statements pursuant to Section 6.01 following the initial incurrence of such Incremental Facilities or Incremental Equivalent Debt under clauses (a) through (d) of this definition, if such Incremental Facilities or Incremental Equivalent Debt could, based on any such financial statements, have been incurred under clause (e) of this definition, then such Incremental Facilities or Incremental Equivalent Debt shall automatically be reclassified as incurred under the applicable provision of clause (e) above. Once such Incremental Facilities or Incremental Equivalent Debt is reclassified in accordance with the preceding sentence, it shall not further be reclassified as incurred under the original basket pursuant to which such item was originally incurred.

"**Incremental Effective Date**" has the meaning specified in Section 2.16(e).

"**Incremental Equivalent Debt**" means Indebtedness incurred by any Loan Party (other than Holdings) in the form of senior secured or unsecured notes or loans or junior secured or unsecured notes or loans and/or commitments in respect of any of the foregoing issued, incurred or implemented in lieu of loans under an Incremental Facility; provided, that:

(a) the aggregate outstanding amount thereof shall not exceed the Incremental Cap (as in effect at the time of determination, including giving effect to any reclassification on or prior to such date of determination),

(b) no Event of Default exists immediately prior to or after giving effect to such loans or notes; *provided* that if the proceeds of such Incremental Equivalent Debt are intended to be applied to finance a Limited Condition Transaction, (i) at the option of the Borrower, the date of determination for compliance with this clause (b) shall be an LCT Test Date and (ii) no Specified Event of Default shall exist on such date,

(c) the Weighted Average Life to Maturity applicable to such notes or loans (other than customary bridge loans; *provided*, that any loans, notes, securities or other Indebtedness which are exchanged for or otherwise replace such bridge loans shall be subject to the requirements of this clause (c)) is no shorter than the Weighted Average Life to Maturity of the then-existing Initial Term Loans (without giving effect to any prepayments thereof),

(d) the final maturity date with respect to such notes or loans (other than customary bridge loans; provided, that any loans, notes, securities or other Indebtedness which are exchanged for or otherwise replace such bridge loans shall be subject to the requirements of this clause (d)) is no earlier than (x) in the case of any such notes or loans that are secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security, the stated Maturity Date applicable to the latest maturing Class of Term Loans on the date of the issuance or incurrence, as applicable, thereof and (y) in the case of any such notes or loans that are secured by a Lien that is junior to the Initial Term Loans in right of payment or with respect to security or that are unsecured, the date that is ninety-one (91) days following the stated Maturity Date applicable to the latest maturing Class of Term Loans on the date of the issuance or incurrence, as applicable, thereof,

(e) subject to clauses (c) and (d), may otherwise have an amortization schedule as determined by the Borrower and the lenders providing such Incremental Equivalent Debt,

(f) in the case of any such Indebtedness in the form of term loans secured by the Collateral on a pari passu basis with the Initial Term Loans in right of payment and with respect to security, the All-In-Rate applicable thereto will not be more than 0.50% per annum higher than the All-In-Rate in respect of the Initial Term Loans unless the Applicable Margin (and/or, as provided in the proviso below, the Base Rate floor or Eurocurrency Rate floor) with respect to the Initial Term Loans is adjusted to be equal to the All-In-Rate applicable to such Indebtedness, minus 0.50% per annum, provided that, unless otherwise agreed by the Borrower in its sole discretion, that any increase in All-In-Rate to any Initial Term Loan due to the application or imposition of a Base Rate floor or Eurocurrency Rate floor on any such Indebtedness shall be effected solely through an increase in (or implementation of, as applicable) any Base Rate floor or Eurocurrency Rate floor applicable to such Initial Term Loan,

(g) if such Incremental Equivalent Debt is secured, such Incremental Equivalent Debt shall (x) not be secured by any assets that are not Collateral (*provided* that, in the case of any Incremental Equivalent Debt that is funded into Escrow pursuant to customary escrow arrangements, such Incremental Equivalent Debt may be secured only by the applicable funds and related assets held in Escrow (and the proceeds thereof) until the time of the release from Escrow of such funds (and may not be secured by any other assets prior to such release)) and (y) be subject to an Acceptable Intercreditor Agreement (which may be effective (or entered into) only immediately after such release from Escrow referred to in clause (x)),

(h) if guaranteed, shall not be guaranteed by any Person that is not a Loan Party,

(i) (x) any such Incremental Equivalent Debt secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security may share on a pro rata basis or a less than pro rata basis (but not a greater than pro rata basis) in any mandatory or voluntary prepayments with the then outstanding Term Loans and (y) any such Incremental Equivalent Debt secured by a Lien that is junior to the Initial Term Loans in right of payment or with respect to security or are unsecured may not share in any mandatory or voluntary prepayments with the then outstanding Term Loans, and

(j) except as otherwise specified above (including with respect to margin, pricing, maturity and/or fees), the other terms of any such Incremental Equivalent Debt, shall be on terms and pursuant to documentation to be determined between the Borrower and the lenders providing such Incremental Equivalent Debt; *provided*, that to the extent such terms and documentation are more favorable to the lenders providing such Incremental Equivalent Debt (except to the extent permitted above) than the terms of this Agreement are to the Lenders, such terms shall be reasonably satisfactory to the Administrative Agent (except for covenants or other provisions applicable only to the periods after the latest maturity date of all of the existing Facilities) (it being understood that if any financial maintenance covenant is added for the benefit of any such Incremental Equivalent Debt, such financial maintenance covenant (except to the extent only applicable after the maturity date of such Incremental Equivalent Debt) may also be added for the benefit of all of the Facilities; it being understood and agreed that no consent of any Lender shall be required in connection with any amendment adding such financial maintenance covenant; it being acknowledged and agreed by each Lender that the Administrative Agent, in its capacity as such, shall have no liability with respect to such acknowledgment and each Lender hereby irrevocably waives to the fullest extent permitted by Law any claims with respect to such acknowledgment.

"**Incremental Facility**" has the meaning specified in Section 2.16(a).

"**Incremental Joinder**" has the meaning specified in Section 2.16(d).

"**Incremental Revolving Credit Commitments**" has the meaning specified in Section 2.16(c).

"**Incremental Term Loan Class**" has the meaning specified in Section 2.16(b).

"**Incremental Term Loans**" has the meaning specified in Section 2.16(b).

"**Incurrence-Based Amounts**" has the meaning specified in Section 1.08(c).

"**Indebtedness**" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) (i) all obligations of such Person for borrowed money and (ii) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments or agreements to the extent the same would appear as a liability on a balance sheet (excluding footnotes thereto) of such Person in accordance with GAAP;

(b) the maximum available amount of all letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under Swap Contracts (with the amount of such net obligations being deemed to be the aggregate Swap Termination Value thereof as of such date);

(d) all obligations of such Person to pay the deferred purchase price of property or services, (other than (i) accrued expenses and trade accounts payable in the ordinary course of business (including on an inter-company basis), (ii) any earn-out obligation until such obligation (A) appears in the liabilities section of the balance sheet of such Person (excluding the footnotes thereto) in accordance with GAAP and (B) has not been paid within 7 days after becoming due and payable, (iii) any earn-out obligation that appears in the liabilities section of the balance sheet of such Person, to the extent (A) such Person is indemnified for the payment thereof by a solvent Person reasonably acceptable to the Administrative Agent or (B) amounts to be applied to the payment therefor are in escrow and (iv) liabilities associated with customer prepayments and deposits in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests;

(h) indebtedness or similar financing obligations of such Person under any Permitted Recourse Receivables Financing; and

(i) all Guarantees of such Person in respect of the obligations under any of the foregoing paragraphs of other Persons;

provided that (i) the amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith, (ii) Indebtedness of Holdings and its Restricted Subsidiaries shall exclude intercompany Indebtedness incurred in the ordinary course of business so long as such intercompany Indebtedness (A) has a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and (B) of any Loan Party owed to any Restricted Subsidiary that is not a Loan Party is unsecured and subordinated to the Obligations and evidenced by the Intercompany Note and (iii) the Indebtedness of any person shall exclude Indebtedness incurred in advance of, and the proceeds of which are to be applied in connection with, the consummation of a transaction solely to the extent the proceeds thereof are and continue to be held in an Escrow and are not otherwise made available to such person.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or JV Entity (other than a JV Entity that is itself a corporation, company, or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person's liability for such Indebtedness is expressly limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt, (B) exclude (i) deferred or prepaid revenue, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the seller and (iii) Indebtedness of any parent entity of Holdings appearing on the balance sheet of Holdings and/or the Borrower solely by reason of push down accounting under GAAP and (C) exclude obligations under or in respect of Qualified Securitization Financing and/or Permitted Non-Recourse Factoring.

"**Indemnified Liabilities**" has the meaning specified in Section 11.05.

"**Indemnified Taxes**" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

"**Indemnitees**" has the meaning specified in Section 11.05.

"**Information**" has the meaning specified in Section 11.09.

"**Initial Revolver Maturity Date**" means December 18, 2023, or, as to any Initial Revolving Credit Lender for which the Initial Revolver Maturity Date is extended pursuant to Section 2.18, the date to which the Initial Revolver Maturity Date is so extended or, in each case, if such day is not a Business Day, the next preceding Business Day.

"**Initial Revolving Credit Borrowing**" means a borrowing consisting of simultaneous Initial Revolving Credit Loans of the same Type and in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Initial Revolving Credit Lenders pursuant to Section 2.01(b).

"**Initial Revolving Credit Commitment**" means, as to each Initial Revolving Credit Lender, its obligation to (a) make Initial Revolving Credit Loans to the Borrower pursuant to Section 2.01(b) and (b) purchase participations in L/C Obligations, in an aggregate principal or face amount at any one time outstanding not to exceed the Dollar amount set forth opposite such Lender's name under the caption "Initial Revolving Credit Commitment" (i) on Schedule 2.01 or (ii) in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, and as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Initial Revolving Credit Commitments of all Initial Revolving Credit Lenders is $30,000,000 on the Closing Date.

"**Initial Revolving Credit Facility**" means, at any time, the aggregate amount of the Initial Revolving Credit Commitments at such time.

"**Initial Revolving Credit Lender**" means, at any time, any Lender that has an Initial Revolving Credit Commitment at such time.

"**Initial Revolving Credit Loan**" means a Loan made by an Initial Revolving Credit Lender pursuant to its Initial Revolving Credit Commitment. The aggregate principal amount of Initial Revolving Credit Loans borrowed on the Closing Date (excluding Letters of Credit issued on the date thereof) shall not exceed $2,500,000.

"**Initial Revolving Termination Date**" has the meaning specified in Section 2.10(b).

"**Initial Term Borrowing**" means a Borrowing consisting of simultaneous Initial Term Loans made by each of the Initial Term Lenders of such Class pursuant to Section 2.01(a), 2.16, 2.18 or 2.19.

"**Initial Term Commitment**" as to each Initial Term Lender, its obligation to make an Initial Term Loan to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount not to exceed the Dollar amount set forth opposite such Initial Term Lender's name on Schedule 2.01 under the caption "Initial Term Commitment" or in the Assignment and Assumption pursuant to which such Initial Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The initial aggregate amount of the Initial Term Lenders' Initial Term Commitments on the Closing Date is $215,000,000 as such commitment may be reduced or increased from time to time pursuant to (a) assignments by or to such Initial Term Lender pursuant to an Assignment and Assumption, (b) an Incremental Joinder, (c) a Refinancing Amendment or (d) an Extension Amendment.

"**Initial Term Facility**" means, (a) on or prior to the applicable funding date of such Initial Term Loans, the aggregate amount of the Initial Term Commitments and (b) thereafter, the aggregate principal amount of the Initial Term Loans.

"**Initial Term Lender**" means any Lender with an Initial Term Loan Commitment or an outstanding Initial Term Loan.

"**Initial Term Loan Maturity Date**" means June 18, 2025, or, as to any Initial Term Lender for which the Initial Term Loan Maturity Date is extended pursuant to Section 2.18, the date to which the Initial Term Loan Maturity Date is so extended or, in each case, if such day is not a Business Day, the next preceding Business Day.

"**Initial Term Loans**" means a term loan made by an Initial Term Lender pursuant to its Initial Term Commitment.

"**Intellectual Property Security Agreement**" means, collectively, the Intellectual Property Security Agreement, substantially in the form attached to the Security Agreement together with each other intellectual property security agreement executed and delivered pursuant to Section 6.13 or the Security Agreement.

"**Intercompany Note**" means a promissory note substantially in the form of Exhibit C.

"**Interest Payment Date**" means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date applicable to such Loan; *provided* that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date applicable to such Loan and (c) to the extent necessary to create a fungible Class of Term Loans, the date of the incurrence of the relevant Class of Incremental Term Loans.

"**Interest Period**" means as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date that is one month, two months, three months or six months thereafter, or if agreed by each Lender participating therein, twelve months or such other period (including any shorter period), as selected by the Borrower in its Loan Notice; *provided* that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(iii) no Interest Period shall extend beyond the Maturity Date applicable to such Loan; and

(iv) to the extent necessary to create a fungible Class of Term Loans, any Interest Period may end on the date of the incurrence of the relevant Class of Incremental Term Loans.

Notwithstanding the foregoing, the Borrower may select an initial Interest Period for the Term Loans ending on the date that is no more than 3 months after the Closing Date that is, subject to clause (i) of this definition of "Interest Period," the last Business Day of the first calendar quarter following the Closing Date.

"**Investment**" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or JV Entity interest in such other Person and any arrangement pursuant to which the investor incurs debt of the type referred to in clause (h) of the definition of "Indebtedness" set forth in this Section 1.01 in respect of such Person or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, but in each case, net of any return in respect thereof, including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts.

"**Investors**" means (a) the Sponsor, (b) certain other investors which own Qualified Equity Interests directly or indirectly in Holdings as of the Closing Date, but not including any portfolio company of the foregoing and (c) the Management Investors.

"**IP Rights**" has the meaning specified in Section 5.07.

"**IPO Entity**" has the meaning specified in the definition of the term "Qualifying IPO".

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

"**Issuer Documents**" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

"**Judgment Currency**" has the meaning specified in Section 11.26.

"**Junior Indebtedness**" means any Indebtedness that is contractually junior to the Liens on the Collateral securing the Obligations and/or contractually subordinated in right of payment to the Obligations.

"**JV Entity**" means any joint venture of the Borrower or any Restricted Subsidiary that is not a Subsidiary.

"**Latest Maturity Date**" means the later of the Latest Term Maturity Date and the Latest Revolving Termination Date.

"**Latest Term Maturity Date**" means, as at any date, the latest to occur of (a) the Initial Term Loan Maturity Date, (b) the latest maturity date in respect of any outstanding Extended Term Loans, (c) the latest maturity date in respect of any outstanding Incremental Term Loans and (d) the latest maturity date in respect of any outstanding Refinancing Term Loans.

" **Latest Revolving Termination Date**" means, as at any date, the latest to occur of (a) the Initial Revolver Maturity Date, (b) the latest termination date in respect of any outstanding Extended Revolving Credit Commitments, (c) the latest termination date in respect of any Incremental Revolving Credit Commitments and (d) the latest termination date in respect of any outstanding Refinancing Revolving Credit Commitments.

"**Laws**" means, collectively, all applicable international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"**L/C Advance**" means, with respect to each Initial Revolving Credit Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Pro Rata Share. All L/C Advances shall be denominated in Dollars.

"**L/C Borrowing**" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as an Initial Revolving Credit Borrowing. All L/C Borrowings shall be denominated in Dollars.

"**L/C Commitment**" means, as to any L/C Issuer, its commitment to issue Letters of Credit, and to amend, increase or extend Letters of Credit previously issued by it, pursuant to Section 2.04, in an aggregate Outstanding Amount of the L/C Obligations with respect to Letters of Credit issued by such L/C Issuer at any time outstanding not to exceed (a) in the case of any L/C Issuer party hereto on the Closing Date, the amount set forth opposite such L/C Issuer's name on Schedule 2.04 under the heading "L/C Commitments"; and (b) in the case of any Revolving Credit Lender that becomes an L/C Issuer hereunder thereafter, the amount which shall be set forth in the written agreement by which such Revolving Credit Lender shall become an L/C Issuer hereunder, in each case as such commitment may be changed from time to time pursuant to the terms hereof or with the agreement in writing of such L/C Issuer, the Borrower and the Administrative Agent. The aggregate L/C Commitments of all the L/C Issuers shall be less than or equal to the Letter of Credit Sublimit at all times.

"**L/C Credit Extension**" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

"**L/C Fee**" has the meaning specified in Section 2.04(i).

"**L/C Issuer**" means (i) Nomura (acting through one or more sub-agents or designees), (ii) [reserved] and/or (iii) any other Revolving Credit Lender (or Affiliate thereof) that agrees in writing with the Borrower and the Administrative Agent to act as an L/C Issuer with respect to any Revolving Credit Facility, in each case of clauses (i) , (ii) and (iii), in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder. Each L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by branches, Affiliates, sub-agents or designees of such L/C Issuer, in which case the term "L/C Issuer" shall include any such branch, Affiliate or designee with respect to Letters of Credit issued by such branch, Affiliate or designee; *provided* that any designees designated or identified to the Borrower after the Closing Date shall be reasonably acceptable to the Borrower. Notwithstanding anything to the contrary herein, Nomura shall not be required to issue any Letter of Credit other than standby Letters of Credit denominated in U.S. Dollars or Canadian dollars; provided that the aggregate of Letters of Credit issued in Canadian dollars shall not exceed $500,000.

"**L/C Obligations**" means, as at any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.16. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn."

"**LCT Election**" has the meaning specified in Section 1.15(a).

"**LCT Provisions**" means the provisions, qualifications and exceptions specified in Section 1.15.

"**LCT Test Date**" has the meaning specified in Section 1.15(a).

"**Lender**" has the meaning specified in the introductory paragraph to this Agreement and, as the context requires, includes each L/C Issuer.

"**Lending Office**" means, as to any Lender, the office, offices or account of such Lender described as such in such Lender's Administrative Questionnaire, or such other office, offices or account as a Lender may from time to time notify the Borrower and the Administrative Agent.

"**Lender Participation Notice**" has the meaning specified in Section 2.06(d)(iii).

"**Letter of Credit**" means any letter of credit issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

"**Letter of Credit Application**" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the relevant L/C Issuer.

" **Letter of Credit Expiration Date**" means the day that is five days prior to the Initial Revolver Maturity Date (or, if such day is not a Business Day, the next preceding Business Day).

"**Letter of Credit Report**" means a certificate substantially in the form of Exhibit K or any other form approved by the Administrative Agent.

"**Letter of Credit Sublimit**" means, at any time, an amount equal to the lesser of (a) $3,000,000 and (b) the Initial Revolving Credit Facility. The Letter of Credit Sublimit is part of, and not in addition to, the Initial Revolving Credit Facility.

"**Lien**" means any mortgage, pledge, hypothecation, assignment for security, deposit arrangement for security, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing but excluding operating leases).

"**Limited Condition Acquisition**" means any Permitted Acquisition or similar Investment, including by way of merger, amalgamation or consolidation, by one or more of the Borrower and its Restricted Subsidiaries of any assets, business or Person, the consummation of which is not conditioned on the availability of, or on obtaining, third party financing.

"**Limited Condition Transaction**" means (i) a Limited Condition Acquisition, (ii) any redemption, repurchase, prepayment, defeasance, satisfaction and discharge or repayment of Junior Indebtedness requiring irrevocable notice in advance of such redemption, repurchase, prepayment, defeasance, satisfaction and discharge or repayment and/or (iii) any Restricted Payment requiring the declaration thereof in advance thereof.

"**Loan**" means an extension of credit by a Lender to the Borrower under Article 2 in the form of a Term Loan or a Revolving Credit Loan.

"**Loan Documents**" means, collectively, (a) this Agreement, (b) the Collateral Documents, (c) the Notes, (d) each Incremental Joinder, (e) each Refinancing Amendment and (f) each Extension Amendment.

"**Loan Notice**" means a written notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02, which shall be substantially in the form of Exhibit D-1 or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

"**Loan Obligations**" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents include (a) the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

"**Loan Parties**" means, collectively, Holdings, the Borrower and the Subsidiary Guarantors.

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

"**LPP**" has the meaning specified in the introductory paragraph to this Agreement.

"**Management Investors**" means the officers, directors and members of management of the Target, any Subsidiary of the Target and any direct or indirect parent company of the Target as of the Closing Date.

"**Market Capitalization**" means an amount equal to (i) the total number of issued and outstanding shares of common Equity Interests of the IPO Entity on the date of the declaration of the applicable Restricted Payment multiplied by (ii) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

"**Material Adverse Effect**" means (a) on the Closing Date, a Closing Date Material Adverse Effect and (b) after the Closing Date, a circumstance or condition that would materially and adversely affect (i) the business, results of operations or financial condition of Holdings and its Restricted Subsidiaries, taken as a whole, (ii) the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents or (iii) the rights and remedies of the Administrative Agent (on behalf of itself and the Lenders) under the Loan Documents.

"**Material Companies**" means Holdings, the Borrower and all other Restricted Subsidiaries (other than other Restricted Subsidiaries that are Immaterial Subsidiaries).

"**Material Real Property**" means any real property located in the U.S. and owned in fee by any Loan Party with a fair market value (as determined in good faith by the Borrower) in excess of the greater of (x) $5,300,000 and (y) ten percent (10%) of Consolidated EBITDA as of the last day of the most recently ended Test Period, in each case as of the Closing Date (with respect to each real property owned on the Closing Date) or as of the date of acquisition of such real property or Additional Guarantor, as applicable (with respect to any such real property acquired after the Closing Date).

" **Maturity Date**" means (a) with respect to the Initial Term Loans, the Initial Term Loan Maturity Date, (b) with respect to the Initial Revolving Credit Commitments and the Initial Revolving Credit Loans, the Initial Revolver Maturity Date, (c) with respect to any Incremental Term Loans, Incremental Revolving Credit Commitments and Incremental Revolving Credit Loans, the final maturity date as specified in the applicable Incremental Joinder, (d) with respect to any Extended Term Loans or Extended Revolving Credit Commitments, the final maturity date as specified in the applicable Extension Amendment and (e) with respect to any Refinancing Term Loans or Refinancing Revolving Credit Commitments, the final maturity date as specified in the applicable Refinancing Amendment.

"**Maximum Rate**" has the meaning specified in Section 11.11.

"**Minimum Extension Condition**" has the meaning set forth in Section 2.18(b).

"**Moody's**" means Moody's Investors Service, Inc. and any successor thereto.

"**Mortgage**" has the meaning specified in Section 6.13(c).

"**Mortgage Notification Date**" has the meaning specified in Section 6.13(c).

"**Mortgaged Properties**" has the meaning specified in Section 6.07.

"**Multiemployer Plan**" means any employee benefit plan covered by Section 4001(a)(3) of ERISA, to which Holdings or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"**Net Cash Proceeds**" means:

(a) with respect to the Disposition of any asset by any Restricted Company or any Casualty Event, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such Disposition or Casualty Event (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received and, with respect to any Casualty Event, any insurance proceeds or condemnation awards in respect of such Casualty Event actually received by or paid to or for the account of such Restricted Company) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the asset subject to such Disposition or Casualty Event and that is repaid in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents and Indebtedness that is secured by Liens ranking junior to or *pari passu* with the Liens securing any Indebtedness under the Loan Documents), (B) the out-of-pocket expenses (including attorneys' fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer Taxes, deed or mortgage recording Taxes, other customary expenses and brokerage, consultant and other customary fees) actually incurred by such Restricted Company in connection with such Disposition or Casualty Event, (C) Taxes paid or reasonably estimated to be payable by such Restricted Company or any of the direct or indirect members thereof (including, without limitation, any amounts permitted to be distributed under Section 7.06(j)) and attributable to such Disposition (including, in respect of any proceeds received in connection with a Disposition or Casualty Event of any asset of any Non-U.S. Subsidiary, deductions in respect of withholding Taxes that are or would be payable in cash if such funds were repatriated to the United States), (D) payments required to be made to holders of minority interests in Restricted Subsidiaries as a result of such Disposition, and (E) any reserve for adjustment in respect of (1) the sale price of such asset or assets established in accordance with GAAP and (2) any liabilities associated with such asset or assets and retained by such Restricted Company after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction and it being understood that "**Net Cash Proceeds**" shall include any cash or Cash Equivalents (I) received upon the Disposition of any non-cash consideration received by such Restricted Company in any such Disposition and (II) upon the reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in clause (E) of the preceding sentence or, if such liabilities have not been satisfied in cash and such reserve not reversed within 365 days after such Disposition or Casualty Event, the amount of such reserve; *provided* that (x) no proceeds realized in a single transaction or series of related transactions shall constitute Net Cash Proceeds unless such proceeds shall exceed $3,000,000 and (y) no proceeds shall constitute Net Cash Proceeds under this clause (a) in any fiscal year until the aggregate amount of all such proceeds in such fiscal year shall exceed $5,000,000 (and thereafter only proceeds in excess of such amount shall constitute Net Cash Proceeds under this clause (a)); and

(b) with respect to the incurrence or issuance of any Indebtedness by any Restricted Company, the excess, if any, of (x) the aggregate amount of cash received in connection with such incurrence over (y) the Taxes, investment banking fees, underwriting discounts, commissions, costs and other out-of-pocket fees and expenses and other customary expenses, incurred by such Restricted Company (or, in the case of Taxes, any member thereof) in connection with such incurrence or issuance and, in the case of Indebtedness of any Non-U.S. Subsidiary, deductions in respect of withholding Taxes that are or would otherwise be payable in cash if such funds were repatriated to the United States.

"**Nomura**" means Nomura Corporate Funding Americas, LLC and its successors.

"**Non-Core Proceeds**" means the net proceeds of a Disposition pursuant to Section 7.05(p) calculated in accordance with the definition of Net Cash Proceeds (without giving effect to the proviso set forth therein).

"**Non-ECP Guarantor**" means each Guarantor other than a Qualified ECP Guarantor.

"**Non-Extension Notice Date**" has the meaning specified in Section 2.04(b)(iii).

"**Non-U.S. Subsidiary**" means any direct or indirect Restricted Subsidiary of Holdings that is not a U.S. Subsidiary.

"**Note**" means a Term Note or a Revolving Credit Note, as the context may require.

"**Obligations**" means all (x) Loan Obligations, (y) Secured Hedging Obligations and (z) Cash Management Obligations; provided that the "Obligations" shall exclude any Excluded Swap Obligations.

"**OFAC**" means the Office of Foreign Assets Control of the U.S. Treasury Department.

"**Offered Loans**" has the meaning specified in Section 2.06(d)(iii).

"**Organization Documents**" means, (a) with respect to any corporation, the charter or certificate or articles of incorporation and the bylaws; (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, JV Entity, trust or other form of business entity, the partnership, JV Entity or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity (or, in each case, equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction, in each case, if applicable or relevant).

"**Other Applicable Indebtedness**" has the meaning specified in Section 2.06(b)(i)(A)(2).

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

" **Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document or Letter of Credit, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.09) or sale of a participation.

"**Outstanding Amount**" means (a) with respect to the Term Loans and Revolving Credit Loans on any date, the principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans and Revolving Credit Loans (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Borrowings as a Revolving Credit Borrowing), as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the aggregate outstanding amount thereof on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing) or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

"**Overnight Rate**" means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent or the L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternate Currency, the rate of interest per annum at which overnight deposits in the applicable Alternate Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Nomura in the applicable offshore interbank market for such currency to major banks in such interbank market.

"**Participant**" has the meaning specified in Section 11.07(f).

"**Participant Register**" has the meaning specified in Section 11.07(g).

"**PBGC**" means the Pension Benefit Guaranty Corporation.

"**Pension Plan**" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by Holdings or any ERISA Affiliate or to which Holdings or any ERISA Affiliate contributes or has an obligation to contribute or has any liability.

"**Perfection Certificate**" means a certificate attached as Exhibit B to the Security Agreement that provides information relating to Uniform Commercial Code filings of each Loan Party.

"**Perfection Requirements**" means, the making of the appropriate notarizations, registrations, filings, endorsements, stampings and/or notifications or taking of other steps with respect to the Collateral as contemplated by (x) any legal opinion required to be delivered hereby or under the terms of a Loan Document, including the making of such filings and taking of such other actions required to be taken thereby, (y) the applicable Loan Documents or (z) pursuant to applicable Requirements of Law (including the filing of appropriate financing statements with the office of the Secretary of State of the state of organization of each Loan Party, the filing of appropriate assignments or notices with the U.S. Patent and Trademark Office and the U.S. Copyright Office, the proper recording or filing, as applicable, of Mortgages and fixture filings with respect to any Material Real Property and any other recordings, filings, registrations, notifications or other actions required to be taken in any other jurisdiction), in each case in favor of the Administrative Agent for the benefit of the Secured Parties and the delivery to the Administrative Agent (or its sub-agent or designee) of any stock certificates or promissory notes required to be delivered pursuant to the applicable Loan Documents.

"**Permitted Acquisition**" has the meaning specified in Section 7.02(j).

"**Permitted First Priority Refinancing Debt**" means any secured Indebtedness incurred by the Borrower in the form of one or more series of senior secured notes or loans; *provided* that (i) such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Obligations and is not secured by any property or assets of Holdings or any Subsidiary other than the Collateral, (ii) such Indebtedness satisfies the requirements of the definition of "Credit Agreement Refinancing Indebtedness" and (iii) the holders of such Indebtedness (or their Senior Representative) and the Administrative Agent shall be party to an Acceptable Intercreditor Agreement.

"**Permitted Holders**" means (a) the Investors, (b) any person with which one or more Investors form a "group" (within the meaning of Section 14(d) of the Act) so long as, in the case of this clause (b), the relevant Investors own more than 50% of the relevant voting stock owned by such group.

"**Permitted Junior Priority Refinancing Debt**" means secured Indebtedness incurred by the Borrower in the form of one or more series of junior lien secured notes or junior lien secured loans; *provided* that (i) such Indebtedness shall be secured by the Collateral on a junior priority basis to the Liens securing the Obligations and not be secured by any property or assets of Holdings or any Subsidiary other than the Collateral, (ii) such Indebtedness shall satisfy the requirements of the definition of "Credit Agreement Refinancing Indebtedness" and (iii) the holders of any such Indebtedness (or their Senior Representative) and Administrative Agent shall be party to an Acceptable Intercreditor Agreement.

"**Permitted Non-Recourse Factoring**" means one or more non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such non-recourse facilities, including Securitization Repurchase Obligations) receivables purchase facilities made available to the Borrower or any of its Restricted Subsidiaries on then-market terms (as reasonably determined by the Borrower).

"**Permitted Receivables Financing**" means a Permitted Non-Recourse Factoring or a Permitted Recourse Receivables Financing.

"**Permitted Recourse Receivables Financing**" means one or more receivables purchase facilities made available to the Borrower or any of its Restricted Subsidiaries on then-market terms (as reasonably determined by the Borrower) in an aggregate principal amount for all such receivables subject to such facilities not exceeding the greater of (x) $8,000,000 and (y) 15% of Consolidated EBITDA of Holdings for the most recently ended Test Period at any time outstanding *minus* the amount of any receivables subject to any then-outstanding Securitization Financing transactions.

"**Permitted Refinancing**" means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder or as otherwise permitted pursuant to Section 7.03, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(f) and/or Indebtedness of the type described in Section 7.03(f) assumed or incurred in reliance on another clause of Section 7.03, such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended, (c)(i) to the extent such Indebtedness being so modified, refinanced, refunded, renewed or extended is secured by a Lien on the Collateral, the Lien securing such Indebtedness as modified, refinanced, refunded, renewed or extended shall not be senior in priority to the Lien on the Collateral securing the Indebtedness being modified, refinanced, refunded, renewed or extended unless such Lien is otherwise permitted hereunder and an Acceptable Intercreditor Agreement is entered into and shall not be secured by any additional Collateral unless such additional Collateral substantially simultaneously secures the Obligations or is otherwise permitted under this Agreement, (ii) to the extent such Indebtedness being so modified, refinanced, refunded, renewed or extended is secured by a Lien on the Collateral that ranks junior to the Lien on the Collateral that secures the Secured Obligations, the Lien securing such Indebtedness as modified, refinanced, refunded, renewed or extended shall be junior in priority to the Lien on the Collateral securing the Secured Obligations Indebtedness being modified, refinanced, refunded, renewed or extended unless such Lien is otherwise permitted hereunder and an Acceptable Intercreditor Agreement is entered into and shall not be secured by any additional Collateral unless such additional Collateral substantially simultaneously secures the Obligations or is otherwise permitted under this Agreement, and (iii) to the extent such Indebtedness being so modified, refinanced, refunded, renewed or extended is unsecured, such Indebtedness as modified, refinanced, refunded, renewed or extended shall remain unsecured unless a Lien is otherwise permitted hereunder and an Acceptable Intercreditor Agreement is entered into and shall not be secured by any additional Collateral unless such additional Collateral substantially simultaneously secures the Obligations or is otherwise permitted under this Agreement, (d) to the extent such Indebtedness being so modified, refinanced, refunded, renewed or extended is guaranteed by a Guarantee, such Indebtedness as modified, refinanced, renewed or extended shall not have any additional guarantees unless such additional guarantees are substantially simultaneously provided in respect of the Loans and Commitments under this Agreement and (e) if such Indebtedness being modified, refinanced, refunded, renewed or extended is Indebtedness permitted pursuant to Section 7.03(c), (i) to the extent such Indebtedness being so modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Loan Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Loan Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being so modified, refinanced, refunded, renewed or extended, (ii) the terms and conditions (including, if applicable, as to collateral but excluding as to subordination, interest rate, redemptions and redemption premium) of any such modified, refinanced, refunded, renewed or extended Indebtedness, taken as a whole, are not materially less favorable to the Loan Parties or the Lenders than the terms and conditions of the Indebtedness being modified, refinanced, refunded, renewed or extended (other than in the case of terms applying to periods after the then Latest Maturity Date or otherwise added for the benefit of the Lenders hereunder); provided that a certificate of a Responsible Officer delivered to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement, shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees) and (iii) such modification, refinancing, refunding, renewal or extension is incurred by a Person who is the obligor of the Indebtedness being so modified, refinanced, refunded, renewed or extended.

"**Permitted Sale Leaseback**" means any Sale Leaseback consummated by Holdings or any of its Restricted Subsidiaries after the Closing Date; provided that any such Sale Leaseback not between (a) a Loan Party and another Loan Party or (b) a Restricted Subsidiary that is not a Loan Party and another Restricted Subsidiary that is not a Loan Party must be, in each case, consummated for fair value as determined at the time of consummation in good faith by (i) Holdings or such Restricted Subsidiary and (ii) in the case of any Sale Leaseback (or series of related Sales Leasebacks) the aggregate proceeds of which exceed the greater of (x) $11,000,000 and (y) 20.0% of Consolidated EBITDA of Holdings for the most recently ended Test Period, the board of managers or directors, as applicable, of Holdings or such Restricted Subsidiary (which such determination may take into account any retained interest or other Investment of the Borrower or such Restricted Subsidiary in connection with, and any other material economic terms of, such Sale Leaseback).

"**Permitted Tax Restructuring**" means any reorganizations and other activities related to tax planning and tax reorganization entered into prior to, on or after the Closing Date so long as such Permitted Tax Restructuring does not impair in any material respect the Guaranty or the security interests in favor of, and is not otherwise materially adverse to, in each case, the Lenders, taken as a whole, in their capacity as such (as determined by the Borrower in good faith in consultation with the Administrative Agent).

"**Permitted Unsecured Refinancing Debt**" means unsecured Indebtedness incurred by the Borrower in the form of one or more series of senior or subordinated unsecured notes or loans; *provided* that such Indebtedness satisfies the requirements of the definition of "Credit Agreement Refinancing Indebtedness".

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

"**Plan**" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA) maintained or sponsored by Holdings, other than a Pension Plan or a Multiemployer Plan.

"**Plan Assets**" means "plan assets" within the meaning of 29 C.F.R. §2510.3-101, as modified by Section 3(42) of ERISA

"**Platform**" has the meaning specified in Section 6.02.

"**Pledged Debt**" has the meaning specified in the Security Agreement.

"**Pledged Equity**" has the meaning specified in the Security Agreement.

"**Post-Acquisition Period**" means, with respect to any Permitted Acquisition or the conversion of any Unrestricted Subsidiary into a Restricted Subsidiary, the period beginning on the date such Permitted Acquisition or conversion is consummated and ending on the last day of the fourth full consecutive fiscal quarter immediately following the date on which such Permitted Acquisition or conversion is consummated.

"**Prepayment Asset Sale**" means any Disposition by a Restricted Company of any property or assets pursuant to Section 7.05(i), 7.05(k)(ii), 7.05(q), 7.05(r), 7.05(s), 7.05(u) or 7.05(z).

"**Private Side Information**" has the meaning specified in Section 6.02(d).

"**Pro Forma Adjustment**" means, for any Test Period that includes all or any part of a fiscal quarter included in any Post-Acquisition Period, with respect to the Acquired EBITDA of the applicable Acquired Entity or Business or Converted Restricted Subsidiary or the Consolidated EBITDA of Holdings, the pro forma increase or decrease in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, and without duplication of actual amounts realized in the applicable period, that is projected by the Borrower in good faith to result from cost savings initiatives attributable to such transaction and additional costs associated with the combination of the operations of such Acquired Entity or Business or Converted Restricted Subsidiary with the operations of Holdings and its Restricted Subsidiaries, to the extent such amounts (i) have been realized or (ii) will be implemented following such transaction and are reasonably identified, factually supportable and expected in good faith to be realized within the succeeding twenty-four (24) months and, in each case, including, but not limited to, (w) reduction in personnel expenses, (x) reduction of costs related to administrative functions, (y) reductions of costs related to leased or owned properties and (z) reductions from the consolidation of operations and streamlining of corporate overhead) taking into account, for purposes of determining such compliance, the historical financial statements of the Acquired Entity or Business or Converted Restricted Subsidiary and the consolidated financial statements of Holdings and its Restricted Subsidiaries, assuming such Permitted Acquisition or conversion, and all other Permitted Acquisitions or conversions that have been consummated during the period, and any Indebtedness or other liabilities repaid in connection therewith had been consummated and incurred or repaid at the beginning of such period (and assuming that such Indebtedness to be incurred bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the interest rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination); *provided* that, so long as such actions are initiated during such Post-Acquisition Period or such costs are incurred during such Post-Acquisition Period, as applicable, for purposes of projecting such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, it may be assumed that such cost savings will be realizable during the entirety of such Test Period, or such additional costs, as applicable, will be incurred during the entirety of such Test Period.

"**Pro Forma Basis**" and "**Pro Forma Effect**" means, for purposes of calculating compliance with the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio, the Total Net Leverage Ratio, Consolidated EBITDA, Consolidated Total Assets (in each case, including component definitions thereof) or the Financial Covenant, in each case, that (1) to the extent applicable, the Pro Forma Adjustment shall have been made (but without duplication of clause (b)(viii) of the definition of Consolidated EBITDA) and (2) in respect of a Specified Transaction, that such Specified Transaction shall be deemed to have occurred as of the first day of the applicable period of measurement (or, in the case of Consolidated Total Assets, as of the last day of such period of measurement) and that:

(a) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, (i) in the case of a Permitted Acquisition or Investment described in the definition of "Specified Transaction", shall be included and (ii) in the case of a Specified Disposition described in the definition of "Specified Transaction", shall be excluded,

(b) any retirement or repayment of Indebtedness (other than normal fluctuation in revolving Indebtedness incurred for working capital purposes) shall be deemed to have occurred as of the last day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made, and

(c) any Indebtedness incurred or assumed by any Restricted Company in connection with such Specified Transaction shall be deemed to have occurred as of the last day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made, and (x) if such Indebtedness has a floating or formula rate, such Indebtedness shall have an implied rate of interest for the applicable Test Period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness at the relevant date of determination (taking into account any interest hedging arrangements applicable to such Indebtedness), (y) interest on any obligation with respect to any capital lease shall be deemed to accrue at an interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such obligation in accordance with GAAP and (z) interest on any Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen by the Borrower;

*provided* that (x) without limiting (but without duplication of) the application of the Pro Forma Adjustment pursuant to clause (1) above, the foregoing pro forma adjustments may be applied to the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio, the Total Net Leverage Ratio, Consolidated EBITDA, Consolidated Total Assets (in each case, including component definitions thereof) or the Financial Covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and give effect to events (including cost savings, synergies and operating expense reductions) that are (as determined by the Borrower in good faith) (i) directly attributable to such transaction, (ii) expected to have a continuing impact on Holdings and its Restricted Subsidiaries and (iii) factually supportable (as determined by the Borrower in good faith), (y) when calculating the First Lien Net Leverage Ratio for purposes of (i) the definition of "Applicable Margin" and (ii) determining actual compliance (and not Pro Forma Compliance or compliance on a Pro Forma Basis) with Section 7.11, the events that occurred subsequent to the end of the applicable four quarter period shall not be given pro forma effect and (z) in connection with any Specified Transaction that is the incurrence of Indebtedness in respect of which compliance with any specified leverage ratio test is by the terms of this Agreement required to be calculated on a Pro Forma Basis, (1) the proceeds of such Indebtedness shall not be netted from Indebtedness in the calculation of the applicable leverage ratio test and (2) if such Indebtedness is a revolving facility, (other than in respect of actual compliance with the Financial Covenant) the incurrence or repayment of any indebtedness in respect of such revolving facility (including the Initial Revolving Credit Facility) included in such financial covenant ratio or incurrence test calculation immediately prior to or simultaneously with the incurrence of such indebtedness for which the pro forma calculation of such ratio or test is being made and/or any drawing under any revolving facilities used to finance working capital needs of Holdings and its Restricted Subsidiaries (as reasonably determined by the Borrower), shall be disregarded.

"**Pro Forma Financial Statements**" has the meaning specified in Section 5.05(b).

"**Pro Rata Share**" means, with respect to each Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments of such Lender (and, if applicable, in the case of Term Loans, the principal amount thereof) under the applicable Facility or Facilities at such time and the denominator of which is the amount of the Aggregate Commitments (and, if applicable, in the case of Term Loans, the principal amount thereof) under the applicable Facility or Facilities at such time; *provided* that in the case of Section 2.17 when a Defaulting Lender shall exist under the Initial Revolving Credit Facility, "**Pro Rata Share**" shall mean the percentage of the total Initial Revolving Credit Commitments (disregarding any Defaulting Lender's Initial Revolving Credit Commitment) represented by such Lender's Initial Revolving Credit Commitment.

"**Projections**" has the meaning specified in Section 5.13.

"**Proposed Discounted Prepayment Amount**" has the meaning specified in Section 2.06(d)(ii).

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

"**Public Company Costs**" means, as to any Person, costs associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and costs relating to compliance with the provisions of the Securities Act and the Exchange Act or any other comparable body of laws, rules or regulations, as companies with listed equity, directors' compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders, directors' and officers' insurance and other executive costs, legal and other professional fees, and listing fees, in each case to the extent arising by virtue of the listing of such Person's equity or issuance of public debt securities.

"**Public Lender**" has the meaning specified in Section 6.02.

"**Public Offer**" has the meaning specified in Section 1.15(a).

"**Public Side Information**" has the meaning specified in Section 6.02(d).

"**Public-Side**" has the meaning specified in Section 6.02(d).

"**Purchaser**" has the meaning specified in the introductory paragraph to this Agreement.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligations, each Loan Party that has assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under §1a(180(A)(v)(II) of the Commodity Exchange Act.

"**Qualified Equity Interests**" means Equity Interests other than Disqualified Equity Interests.

"**Qualified Securitization Financing**" means any Securitization Financing that meets the following conditions: (i) the Borrower shall have determined in good faith that such Securitization Financing is in the aggregate economically fair and reasonable to the Borrower and its Restricted Subsidiaries, (ii) all sales of Securitization Assets and related assets by the Borrower or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made for fair consideration (as determined in good faith by the Borrower) and (iii) the financing terms, covenants, termination events and other provisions thereof shall be fair and reasonable terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings.

"**Qualifying IPO**" means any transaction or series of transactions (other than a public offering pursuant to a registration statement on Form S-8) that results in the common Equity Interests of Holdings or any direct or indirect parent of Holdings (the "**IPO Entity**") being publicly traded on any United States national securities exchange or over the counter market.

"**Qualifying Lenders**" has the meaning specified in Section 2.06(d)(iv).

"**Qualifying Loans**" has the meaning specified in Section 2.06(d)(iv).

"**Rate Determination Date**" means two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Administrative Agent; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such other day as otherwise reasonably determined by the Administrative Agent).

"**Ratio Debt**" means any Indebtedness secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security, secured by the Collateral on a junior Lien basis to the Initial Term Loans in right of payment or with respect to security, or unsecured Indebtedness, in each case incurred or assumed by any Loan Party (other than Holdings) for any purpose (including in connection with Permitted Acquisitions or other permitted Investments); provided, that:

(a) the aggregate outstanding amount thereof shall not exceed (i)(x) the greater of $26,500,000 and 50% of Consolidated EBITDA of Holdings for the most recently ended Test Period *minus* (y) the aggregate principal amount of all Incremental Facilities and/or Incremental Equivalent Debt incurred or issued in reliance on amounts under the definition "Fixed Incremental Amount", plus (ii) an unlimited amount so long as, in the case of this clause (ii), after giving effect to such Indebtedness, (A) if such Indebtedness is secured by a Lien on the Collateral that is *pari passu* with the Lien securing the Obligations that are secured on a first lien basis, the First Lien Net Leverage Ratio does not exceed 3.25:1.00, (ii) if such Indebtedness is secured by a Lien on the Collateral that is junior to the Lien securing the Secured Obligations that are secured on a first lien basis, the Senior Secured Net Leverage Ratio does not exceed 3.75:1.00 or (iii) if such Indebtedness is unsecured, the Total Net Leverage Ratio does not exceed 4.50:1.00, in each case described in this clause (ii), calculated on a Pro Forma Basis, including the application of the proceeds thereof (without "netting" the cash proceeds of the applicable Indebtedness); *provided* that such Indebtedness incurred or assumed by any Restricted Subsidiary that is not a Loan Party shall not exceed the greater of (1) $5,000,000 and (2) 10.0% of Consolidated EBITDA of Holdings for the most recently ended Test Period;

(b) no Event of Default exists immediately prior to or after giving effect to such Indebtedness; *provided* that if the proceeds of such Indebtedness are intended to be applied to finance a Limited Condition Transaction, (i) at the option of the Borrower, the date of determination for compliance with this clause (b) shall be an LCT Test Date and (ii) no Specified Event of Default shall exist on such date;

(c) the Weighted Average Life to Maturity applicable to such Indebtedness (other than customary bridge loans; *provided*, that any Indebtedness which is exchanged for or otherwise replace such bridge loans shall be subject to the requirements of this clause (c)) is no shorter than the Weighted Average Life to Maturity of the then-existing Initial Term Loans (without giving effect to any prepayments thereof);

(d) the final maturity date with respect to such Indebtedness (other than customary bridge loans; provided, that any Indebtedness which is exchanged for or otherwise replace such bridge loans shall be subject to the requirements of this clause (d)) is no earlier than (x) in the case of any Indebtedness that is secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security, the stated Maturity Date applicable to the latest maturing Class of Term Loans on the date of incurrence of such Indebtedness and (y) in the case of any Indebtedness that is are secured by a Lien that is junior to the Lien securing the Initial Term Loans in right of payment or with respect to security or is unsecured, the date that is ninety-one (91) days following the stated Maturity Date applicable to the latest maturing Class of Term Loans on the date of incurrence of such Indebtedness;

(e) in the case of any such Indebtedness in the form of term loans secured by the Collateral on a pari passu basis with the Initial Term Loans in right of payment and with respect to security, the All- In-Rate applicable thereto will not be more than 0.50% per annum higher than the All-In-Rate in respect of the Initial Term Loans unless the Applicable Margin (and/or, as provided in the proviso below, the Base Rate floor or Eurocurrency Rate floor) with respect to the Initial Term Loans is adjusted to be equal to the All-In-Rate applicable to such Indebtedness, minus 0.50% per annum, provided that, unless otherwise agreed by the Borrower in its sole discretion, that any increase in All-In-Rate to any Initial Term Loan due to the application or imposition of a Base Rate floor or Eurocurrency Rate floor on any such Indebtedness shall be effected solely through an increase in (or implementation of, as applicable) any Base Rate floor or Eurocurrency Rate floor applicable to such Initial Term Loan;

(f) with regard to any such Indebtedness incurred by a Loan Party, if such Indebtedness is (i) secured, such Indebtedness shall (x) not be secured by any assets that are not Collateral (*provided* that, in the case of any Indebtedness that is funded into Escrow pursuant to customary escrow arrangements, such Indebtedness may be secured by the applicable funds and related assets held in Escrow (and the proceeds thereof) until the time of the release from Escrow of such funds (and may not be secured by any other assets prior to such release)) and (y) be subject to an Acceptable Intercreditor Agreement (which may be effective (or entered into) only immediately after such release from Escrow referred to in clause (x)), and
(ii) guaranteed, shall not be guaranteed by any Person that is not a Loan Party;

(g) any such Indebtedness secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security may share on a pro rata basis or a less than pro rata basis (but not a greater than pro rata basis) in any mandatory or voluntary prepayments with the then outstanding Term Loans and any such Indebtedness secured by a Lien that is junior to the Initial Term Loans in right of payment or with respect to security or are unsecured may not share in any mandatory or voluntary prepayments with the then outstanding Term Loans; and

(h) except as otherwise specified above (including with respect to margin, pricing, maturity and/or fees), the other terms of any such Indebtedness, shall be on terms and pursuant to documentation to be determined between the Borrower and the lenders providing such Indebtedness; *provided*, that to the extent such terms and documentation are more favorable to the lenders providing such Indebtedness than the terms of this Agreement are to the Lenders (except to the extent permitted by above, such terms shall be reasonably satisfactory to the Administrative Agent (except for covenants or other provisions applicable only to the periods after the latest maturity date of all of the existing Facilities) (it being understood that if any financial maintenance covenant is added for the benefit of any such Indebtedness, such financial maintenance covenant (except to the extent only applicable after the maturity date of such Indebtedness) may also be added for the benefit of all of the Facilities; it being understood and agreed that no consent of any Lender shall be required in connection with any amendment adding such financial maintenance covenant and the Administrative Agent hereby agrees to acknowledge such amendment as promptly as possible, and in any case, within three (3) Business Days of written request by the Borrower; it being acknowledged and agreed by each Lender that the Administrative Agent, in its capacity as such shall have no liability with respect to such acknowledgment and each Lender hereby irrevocably waives to the fullest extent permitted by Law any claims with respect to such acknowledgment.

"**Receivables Assets**" means (a) any accounts receivable owed to the Borrower or a Restricted Subsidiary subject to a Permitted Receivables Financing and the proceeds thereof and (b) all security interests securing such accounts receivable, all contracts and con-tract rights, guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in connection with a Permitted Receivables Financing and which are sold, conveyed, assigned or otherwise transferred or pledged by the Borrower to a commercial bank or Affiliate thereof in connection with a Permitted Receivables Financing.

"**Recipient**" means (a) the Administrative Agent, (b) any Lender and (c) any L/C Issuer, as applicable.

"**Refinanced Debt**" has the meaning set forth in Section 2.19(a).

"**Refinancing**" has the meaning assigned to such term in the recitals hereto.

"**Refinancing Amendment**" means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) to the extent required by Section 2.19, the Administrative Agent, (c) each Additional Refinancing Lender and Lender that agrees to provide any portion of the Refinancing Indebtedness being incurred pursuant thereto and (d) to the extent relating to the Initial Revolving Credit Commitments and the L/C Issuer, in accordance with Section 2.19, and delivered to the Administrative Agent.

"**Refinancing Indebtedness**" has the meaning specified in Section 2.19(a).

"**Refinancing Revolving Credit Commitments**" means Revolving Credit Commitments established pursuant to a Refinancing Amendment.

"**Refinancing Term Loans**" means Term Loans that result from a Refinancing Amendment.

"**Register**" has the meaning specified in Section 11.07(e).

"**Rejecting Lender**" has the meaning specified in Section 2.06(b)(ix).

"**Reportable Event**" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived or a safe-harbor is available.

"**Repricing Event**" shall mean (a) the refinancing or repricing by the Borrower of all or any portion of the Initial Term Loans with the proceeds of, or any conversion of the Initial Term Loans into, any new or replacement tranche of third-party term loans and (b) any amendment to the Initial Term Loans, in each case of the foregoing clauses (a) and (b), the primary purpose of which is to have or result in an Effective Yield as of the date of such refinancing, repricing or amendment that is (and not by virtue of any fluctuation in any "base" rate) less than the Effective Yield applicable to the Initial Term Loans as of the date of such refinancing, repricing or amendment, but excluding, in any such case, any refinancing, repricing or amendment of the Initial Term Loans in connection with (i) any Qualifying IPO, (ii) a Transformative Acquisition or (iii) a "Change of Control" transaction.

"**Request for Credit Extension**" means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Credit Loans, a Loan Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

"**Required Lenders**" means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations being deemed "held" by such Lender for purposes of this definition), (b) aggregate unused Term Commitments, if any, and (c) aggregate unused Revolving Credit Commitments, if any; *provided* that the unused Term Commitment, unused Revolving Credit Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"**Required Revolving Credit Lenders**" means, as of any date of determination, Initial Revolving Credit Lenders having more than 50% of the sum of the (a) Outstanding Amount of all Initial Revolving Credit Loans and all L/C Obligations (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations being deemed "held" by such Lender for purposes of this definition) and (b) aggregate unused Initial Revolving Credit Commitments, if any; *provided* that the unused Initial Revolving Credit Commitment of, and the portion of the Outstanding Amounts held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders.

"**Responsible Officer**" means the chief executive officer, controller, president, any executive vice president, chief financial officer, treasurer or assistant treasurer, other similar officer, legal representative or signatory of a Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the Secretary or any assistant secretary of a Loan Party, and, solely for purposes of notices given pursuant to Article 2, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"**Restricted Companies**" means Holdings and its Restricted Subsidiaries, and "**Restricted Company**" means any of the foregoing.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property) on account of any Equity Interest of Holdings, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to Holdings' stockholders, partners or members (or the equivalent Persons thereof); it being agreed that the amount expended in any Restricted Payment, if other than in cash, will be deemed to be the fair market value of the relevant non-cash assets, as determined in good faith by the board of directors of the Borrower and evidenced by a board resolution.

"**Restricted Prepayment**" has the meaning specified in Section 7.08.

"**Restricted Subsidiary**" means any Subsidiary of Holdings other than an Unrestricted Subsidiary; it being agreed that, unless otherwise specified, "Restricted Subsidiary" shall mean any Restricted Subsidiary of Holdings.

"**Revaluation Date**" means (a) with respect to any Revolving Credit Loan denominated in an Alternate Currency, each of the following: (i) each date of a Borrowing of such Revolving Credit Loan, (ii) each date of a continuation of such Revolving Credit Loan pursuant to the terms of this Agreement and (iii) the date of any voluntary reduction of a Revolving Credit Commitment pursuant to Section 2.08(c); (b) with respect to any Letter of Credit denominated in an Alternate Currency, each of the following: (i) each date of issuance of such a Letter of Credit and (ii) each date of an amendment, extension or renewal of such a Letter of Credit that would have the effect of increasing the face amount thereof; (c) each date of any payment under any Letter of Credit and (d) such additional dates as the Administrative Agent (acting at the request of the Required Revolving Credit Lenders) shall require, at any time when (i) an Event of Default has occurred and is continuing or (ii) to the extent that, and for so long as, the aggregate Revolving Outstandings (for such purpose, using the Dollar Equivalent in effect for the most recent Revaluation Date) exceeds 80% of the total outstanding Revolving Credit Commitments.

" **Revolving Credit Borrowing**" means a borrowing consisting of simultaneous Revolving Credit Loans of the same Class and Type and in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Revolving Credit Lenders of such Class.

"**Revolving Credit Commitment**" means, as to each Revolving Credit Lender, its Initial Revolving Credit Commitment and Additional Revolving Credit Commitments.

"**Revolving Credit Facility**" means, at any time, the aggregate amount of the Initial Revolving Credit Commitments and Additional Revolving Credit Commitments at such time.

"**Revolving Credit Lender**" means, at any time, any Initial Revolving Credit Lender and any Additional Revolving Credit Lender.

"**Revolving Credit Loans**" means Initial Revolving Credit Loans and Additional Revolving Credit Loans.

"**Revolving Credit Note**" means a promissory note of the Borrower payable to any Revolving Credit Lender or its registered permitted assigns, in substantially the form of Exhibit E-1, evidencing the aggregate indebtedness of the Borrower owed to such Revolving Credit Lender resulting from the Revolving Credit Loans made by such Revolving Credit Lender.

"**Revolving Outstandings**" means, with respect to any Revolving Credit Lender at any time, the sum of the aggregate Outstanding Amount of such Lender's Revolving Credit Loans plus its Pro Rata Share, determined for this purpose solely among the Commitments under the Revolving Credit Facility, of the Outstanding Amount of the L/C Obligations.

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

" **Sale Leaseback**" means any transaction or series of related transactions pursuant to which the Holdings or any of its Restricted Subsidiaries (a) sells, transfers or otherwise disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed.

" **Same Day Funds**" means, with respect to disbursements and payments in Dollars, immediately available funds.

"**Sanctions**" has the meaning specified in Section 5.08(a).

"**SEC**" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Secured Hedging Obligations**" means all obligations of any Loan Party in respect of any Hedge Agreement.

"**Secured Obligations**" has the meaning specified in the Security Agreement.

"**Secured Parties**" means, collectively, the Administrative Agent, the Lenders, the Hedge Banks, the holders of Cash Management Obligations and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.02.

"**Securitization Asset**" means (a) any accounts receivable, mortgage receivables, loan receivables, receivables or loans relating to the financing of insurance premiums, royalty, patent or other revenue streams and other rights to payment or related assets and the proceeds thereof and (b) all collateral securing such receivable or asset, all contracts and contract rights, guarantees or other obligations in respect of such receivable or asset, lockbox accounts and records with respect to such account or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted) together with accounts or assets in connection with a securitization, factoring or receivable sale transaction.

"**Securitization Fees**" means distributions or payments made directly or by means of discounts with respect to any Securitization Asset or participation interest therein issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid in connection with, any Qualified Securitization Financing and/or Permitted Receivables Financing.

"**Securitization Financing**" means any of one or more securitization transactions, as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, pursuant to which the Borrower or any of the Restricted Subsidiaries sells, transfers, pledges or otherwise conveys any Securitization Assets (whether now existing or arising in the future) to a Securitization Subsidiary or any other Person on a non-recourse basis (other than Securitization Repurchase Obligations) for the purpose of obtaining financing) in an aggregate principal amount for all such receivables subject to such facilities not exceeding the greater of (x) $8,000,000 and (y) 15% of Consolidated EBITDA of Holdings for the most recently ended Test Period at any time outstanding *minus* the amount of all receivables subject to any then-outstanding Permitted Recourse Receivables Financing transactions.

"**Securitization Repurchase Obligation**" means any obligation of a seller of Securitization Assets or Receivables Assets in a Qualified Securitization Financing and/or Permitted Receivables Financing to repurchase or otherwise make payments with respect to Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"**Securitization Subsidiary**" means any Subsidiary of the Borrower in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings and other activities reasonably related thereto or another Person formed for this purpose.

"**Security Agreement**" means that certain Security Agreement, dated as of the Closing Date, among the Loan Parties and the Administrative Agent, substantially in the form of Exhibit F.

"**Security Agreement Supplement**" has the meaning specified in the Security Agreement.

"**Senior Secured Net Leverage Ratio**" means, as of any date of determination, the ratio of (a) Consolidated Senior Secured Debt on such date to (b) Consolidated EBITDA as of the last day of the most recently ended Test Period, in each case, of the Borrower and its Restricted Subsidiaries on a consolidated basis.

"**Similar Business**" means (a) any businesses, services or activities engaged in by Holdings and its Subsidiaries on the Closing Date and (b) any businesses, services and activities engaged in by Holdings and its Subsidiaries that are related, complementary, incidental, ancillary or similar to any of the foregoing or are extensions or developments of any thereof.

"**Sold Entity or Business**" has the meaning specified in the definition of the term "Consolidated EBITDA."

"**Solvent**" and "**Solvency**" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"**SPC**" has the meaning specified in Section 11.07(i).

"**Special Notice Currency**" means at any time an Alternate Currency, other than the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

"**Specified Acquisition Agreement Representations**" means the representations and warranties made by, or with respect to, the Target and its subsidiaries in the Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that Purchaser (or Purchaser's Affiliates) has the right to terminate Purchaser's (or such Affiliate's) obligations under the Acquisition Agreement, or to decline to consummate the Acquisition (in each case, in accordance with the terms thereof), as a result of a breach of such representations and warranties.

"**Specified Disposition**" means any sale, transfer or other disposition, or series of related sales, transfers or other dispositions (other than (x) in the ordinary course of business or (y) among Holdings and its Restricted Subsidiaries), that involves assets comprising all or substantially all of an operating unit of a business or common Equity Interests of any Person, in each case owned by any Restricted Company.

"**Specified Event of Default**" means an Event of Default resulting from Section 8.01(a) and Section 8.01(f) (with respect to the Borrower).

"**Specified Financial Statements**" means, the audited consolidated financial statements of the Target and its consolidated subsidiaries for the fiscal year ending December 31, 2017 and December 31, 2016 and the unaudited interim consolidated financial statements for the Target and its consolidated subsidiaries for the fiscal quarters ending March 31, 2018, June 30, 2018 and September 30, 2018.

"**Specified Representations**" means the representations and warranties of the Loan Parties set forth in Sections 5.01(a) (solely as it relates to the Loan Parties), 5.01(b)(ii), 5.02(a) (in each case of the foregoing, as it relates to the entering into, guaranteeing under and performance of the applicable Loan Documents and the incurrence of the extensions of credit thereunder and the granting of Liens in the Collateral), 5.02(b) (related to the entering into, guaranteeing under and performance of the applicable Loan Documents and the incurrence of the extensions of credit thereunder), 5.02(c)(i) (limited to the execution delivery and performance by the Loan Parties of the Loan Documents to which it is a party), 5.04, 5.08 (as it relates to OFAC, FCPA, the USA Patriot Act and all other applicable anti-terrorism laws and with respect to OFAC and FCPA limited to the use of proceeds of the Loans on Closing Date or as of the applicable Incremental Facility Closing Date), 5.12, 5.14 and 5.15 (subject to the last paragraph of Section 4.01).

"**Specified Responsible Officer**" means the chief executive officer, president, chief operating officer, chief financial officer, treasurer, chief accounting officer or general counsel of Holdings.

"**Specified Transaction**" means, any Investment, Restricted Payment, Restricted Prepayment, operating improvement, restructuring, cost savings initiative, any similar initiative and/or specified transaction, designation of an Unrestricted Subsidiary or incurrence of Indebtedness in respect of which compliance with the financial covenants set forth in Section 7.11 or a specified level of the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio, the Total Net Leverage Ratio and/or other financial ratio or metric, is by the terms of this Agreement required to be calculated on a Pro Forma Basis, or any Specified Disposition; *provided* that, at the Borrower's election, any such Specified Transaction (other than (x) a Restricted Payment or (y) a Disposition pursuant to Section 7.05(q)) having an aggregate value of less than $5,000,000 shall not be calculated on a "Pro Forma Basis" or after giving "Pro Forma Effect" thereto.

"**Sponsor Affiliated Lender**" means the Sponsor and any Affiliate of the Sponsor (including Affiliated Debt Funds, Holdings, the Borrower and their respective Subsidiaries).

" **Sponsor Management Agreement**" means, collectively, each of the management agreements be-tween certain of the management companies associated with the Sponsor or its advisors, the Borrower, certain of its Subsidiaries and/or certain of its direct or indirect parents.

"**Sponsor Termination Fees**" means the one-time payment under the Sponsor Management Agreement of a termination fee to the Sponsor and their respective Affiliates in the event of either a Change of Control or the completion of a Qualifying IPO.

"**Sponsor**" means Pamplona Capital Management LLP (together with its respective Affiliates and funds managed or advised by it or its Affiliates or any of their respective controlled Affiliates).

"**Spot Rate**" means, for a currency, the rate determined by the Administrative Agent or the L/C Issuer, as applicable, to be the rate as published on the applicable Bloomberg screen page at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternate Currency.

"**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Eurocurrency Rate, for eurocurrency funding (currently referred to as "**Eurocurrency Liabilities**" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurocurrency Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation.

The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

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

"**Subsidiary Guarantor**" means (a) on the Closing Date, each Subsidiary listed on Part C of Schedule 1.01A and (b) thereafter, each other Subsidiary that is or becomes a party to Article 10 pursuant to Section 6.13 and 10.09, in each case, until such time as the respective Subsidiary is released from its obligations under Article 10 in accordance with the terms and provisions hereof, but in each case of clauses (a) and (b), excluding the Borrower.

"**Successor Borrower**" has the meaning specified in Section 7.04(a).

"**Survey**" means a survey of any Material Real Property subject to a Mortgage (and all improvements thereon) which is (a) (i) prepared by a surveyor or engineer licensed to perform surveys in the jurisdiction where such Material Real Property is located, (ii) dated (or redated) as of a date reasonably acceptable to the Administrative Agent; *provided* that if the title company shall provide survey coverage, such date shall be deemed acceptable, (iii) certified by the surveyor (in a manner reasonably acceptable to the Administrative Agent) to the Administrative Agent and the title company, (iv) complying with the detail requirements of the American Land Title Association reasonably required by the Administrative Agent and customary in similar transactions, and (v) sufficient for the title company to provide survey coverage in any Title Policy required herein (together with any affidavits of "no-change" as may be required), (b) otherwise reasonably acceptable to the Administrative Agent and/or (c) a survey existing as of the later of the Closing Date and the date of the acquisition of the applicable Material Real Property together with an "affidavit of no change" satisfactory to the title company is delivered to the Administrative Agent and the title company.

"**Swap Contract**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward contracts, futures contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, repurchase agreements, reverse repurchase agreements, sell buy backs and buy sell back agreements, and securities lending and borrowing agreements or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement or related schedules, including any such obligations or liabilities arising therefrom.

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

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

"**Target**" has the meaning specified in the recitals hereto.

"**Target Person**" has the meaning specified in Section 7.02(dd).

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term Borrowing**" means a Borrowing consisting of simultaneous Term Loans of the same Class and Type and in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Term Lenders of such Class.

"**Term Commitment**" as to each Term Lender, its Initial Term Commitment and Additional Term Commitments.

"**Term Facility**" means, collectively, the Initial Term Facility and each Additional Term Facility.

"**Term Lenders**" means, at any time, any Initial Term Lender or Additional Term Lender.

"**Term Loans**" means the Initial Term Loans and Additional Term Loans.

"**Term Note**" means a promissory note of the Borrower payable to any Term Lender or its registered permitted assigns, in substantially the form of Exhibit E-2, evidencing the aggregate indebtedness of the Borrower owed to such Term Lender resulting from the Term Loans made by such Term Lender.

"**Termination Date**" has the meaning specified in Article 6.

"**Test Period**" means, as of any date, the period of four consecutive fiscal quarters then most recently ended for which financial statements under Section 6.01(a) or 6.01(b), as applicable, have been delivered (or are required to have been delivered); it being understood and agreed that prior to the first delivery of financial statements pursuant to Section 6.01(b), "Test Period" means the period of four consecutive fiscal quarters in respect to which the financial statements of Holdings and its Subsidiaries are available.

"**Threshold Amount**" means $12,500,000.

"**Title Policy**" means a policy of title insurance (or marked-up title insurance commitment having the effect of a policy of title insurance) insuring the Lien of a Mortgage as a valid mortgage Lien (subject only to Liens permitted under this Agreement (other than Section 7.01(g)(ii)) and other Liens reasonably acceptable to the Administrative Agent) on the mortgaged property and fixtures described therein in the amount equal to no more than the fair market value of such mortgaged property and fixtures, issued by a title company reasonably acceptable to the Administrative Agent which shall (a) to the extent necessary, include such reinsurance arrangements (with provisions for direct access, if necessary) as shall be reasonably acceptable to the Administrative Agent; (b) contain a "tie-in" or "cluster" endorsement, if available under applicable law (i.e., policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount); (c) have been supplemented by such endorsements as shall be reasonably requested by the Administrative Agent (*provided* that in lieu of a zoning endorsement, a zoning opinion, report or other letter in form and substance reasonably satisfactory to the Administrative Agent may be provided); and (d) affirmatively insure against loss arising out of or contain no exceptions to title other than Liens permitted hereunder.

"**Total Assets**" means at any time, the total assets appearing on the most recently prepared consolidated balance sheet of Holdings and its Restricted Subsidiaries as of the end of the most recent fiscal quarter of Holdings for which such balance sheet is available, prepared in accordance with GAAP.

"**Total Net Leverage Ratio**" means, as of any date of determination, the ratio of (a) Consolidated Total Debt on such date to (b) Consolidated EBITDA as of the last day of the most recently ended Test Period, in each case, of the Borrower and its Restricted Subsidiaries on a consolidated basis.

"**Total Outstandings**" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"**Total Revolving Outstandings**" means the aggregate Outstanding Amount of all Revolving Credit Loans and all L/C Obligations.

"**Transactions**" means, collectively (a) the Acquisition and the other transactions contemplated by the Acquisition Agreement, (b) the Refinancing, (c) the funding of the Loans and the execution and delivery of the Loan Documents, (d) the making of the equity investment by the Investors, (e) any other transactions required in connection with, the foregoing clauses and (f) the payment of costs and expenses related to the foregoing clauses.

"**Transformative Acquisition**" means any acquisition or Investment by the Borrower or any Restricted Subsidiary that either (a) is not permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or Investment or (b) if permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or Investment, would not provide the Borrower and its Restricted Subsidiaries with adequate flexibility under this Agreement for the continuation and/or expansion of their combined operations following such consummation, as determined by the Borrower acting in good faith.

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

"**USA Patriot Act**" has the meaning specified in Section 11.20

"**U.S. Person**" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"**U.S. Subsidiary**" means any Restricted Subsidiary of the Borrower that is organized under the laws of the United States, any state thereof or the District of Columbia.

"**U.S. Tax Compliance Certificate**" has the meaning specified in Section 3.01(e)(ii)(B)(3).

"**Uniform Commercial Code**" means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

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

"**Unreimbursed Amount**" has the meaning specified in Section 2.04(c)(i).

"**Unrestricted Cash Amount**" means, as to any Person on any date of determination, the amount of (a) unrestricted cash and Cash Equivalents of such Person whether or not held in an account pledged to the Administrative Agent and (b) cash and Cash Equivalents of such Person restricted in favor of the Facilities (which may also include cash and Cash Equivalents securing other Indebtedness secured by a Lien on the Collateral on a *pari passu* or junior basis to the Liens securing the Secured Obligations), in each case as determined in accordance with GAAP; it being understood and agreed that proceeds subject to Escrow shall not be included in the Unrestricted Cash Amount.

"**Unrestricted Subsidiary**" means (a) each Subsidiary of Holdings listed on Schedule 1.01B and (b) any Subsidiary of Holdings designated by a Responsible Officer of the Borrower as an Unrestricted Subsidiary pursuant to Section 6.15 subsequent to the Closing Date (and continuing until such time that such designation may be thereafter revoked by the Borrower).

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

"**Working Capital**" means, at any date, the excess of current assets of Holdings and its Restricted Subsidiaries on such date (excluding cash and Cash Equivalents) over current liabilities of Holdings and its Restricted Subsidiaries on such date (excluding current liabilities in respect to Indebtedness), all determined on a consolidated basis in accordance with GAAP.

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

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

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(c) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(d) The term "including" is by way of example and not limitation.

(e) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(f) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03. *Accounting Terms.* (a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio, the Total Net Leverage Ratio, any other financial ratios, Consolidated EBITDA, Consolidated Total Assets and other financial calculations pursuant to Section 7.11) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, as in effect from time to time, applied on a basis consistent (except for changes approved by Holdings' independent public accountants) with the most recent audited consolidated financial statements of the Borrower delivered to the Lenders pursuant to Section 6.01 or, prior to such delivery, the Specified Financial Statements for the fiscal quarter ended September 30, 2018.

(b) If at any time any change in GAAP would affect the computation of any financial ratio set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that, until so amended, (i) such ratio shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders a written reconciliation in form reasonably satisfactory to the Administrative Agent, between calculations of such ratio made before and after giving effect to such change in GAAP.

(c) Notwithstanding anything to the contrary contained herein, financial ratios and other financial calculations pursuant to this Agreement (including the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio, the Total Net Leverage Ratio, any other financial ratios, Consolidated EBITDA, Consolidated Total Assets and other financial calculations pursuant to Section 7.11) shall, following any Specified Transaction, be calculated on a Pro Forma Basis until the completion of four full fiscal quarters following such Specified Transaction.

Section 1.04. *Rounding.* Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05. *References to Agreements and Laws.* Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06. *Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.07. *Timing of Payment or Performance*. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be; *provided* that, with respect to any payment of interest on or principal of Eurocurrency Rate Loans, if such extension would cause any such payment to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

Section 1.08. *Certain Calculations and Tests*.

(a) [Reserved].

(b) For purposes of determining the permissibility of any action, change, transaction or event that requires a calculation of any financial ratio or test (including, without limitation, the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio, the Total Net Leverage Ratio, any other financial ratios, Consolidated EBITDA, Consolidated Total Assets and other financial calculations pursuant to Section 7.11), such financial ratio or test shall be calculated on a pro forma basis at the time such action is taken (subject to Section 1.15), such change is made, such transaction is consummated or such event occurs, as the case may be, and no Default or Event of Default shall be deemed to have occurred solely as a result of a change in such financial ratio or test occurring after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be.

(c) Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including, without limitation, Section 7.11 hereof, any First Lien Net Leverage Ratio test, any Senior Secured Net Leverage Ratio test and/or any Total Net Leverage Ratio test) (any such amounts, the "**Fixed Amounts**") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement within the same covenant (including for purposes of Section 7.03, any Incremental Facility and/or Incremental Equivalent Debt incurred in reliance on the Incremental Cap and any Ratio Debt incurred in reliance on clause (a)(i) of the definition thereof) that requires compliance with a financial ratio or test (including, without limitation, Section 7.11 hereof, any First Lien Net Leverage Ratio test, any Senior Secured Net Leverage Ratio test and/or any Total Net Leverage Ratio test) (any such amounts, the "**Incurrence-Based Amounts**"), it is understood and agreed that the Fixed Amounts shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence-Based Amounts.

Section 1.09. *Exchange Rates; Currencies Generally*.

(a) For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, Lien, Restricted Payment, Restricted Prepayment, Investment or an affiliate transaction, the U.S. dollar-equivalent principal amount of Indebtedness, or amount of Lien, Restricted Payment, Restricted Prepayment, Investment or affiliate transaction, in each case, denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness incurred or made in the case of any Lien, Restricted Payment, Restricted Prepayment, Investment or affiliate transaction; provided that if any such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding anything to the contrary in this Agreement, the maximum amount of any Indebtedness, Liens, Restricted Payments, Restricted Prepayments, Investments or affiliate transactions that the Restricted Companies may incur in compliance with this Agreement shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

(b) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Alternate Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the L/C Issuer, as applicable.

(c) Wherever in this Agreement in connection with an Initial Revolving Credit Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Eurocurrency Rate Loan or Letter of Credit is denominated in an Alternate Currency, such amount shall be the relevant Alternate Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternate Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the L/C Issuer, as the case may be.

(d) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurocurrency Rate" or with respect to any comparable or successor rate thereto.

Section 1.10. *Cashless Rollovers*. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, to the extent that any Lender extends the maturity date of, or replaces, renews or refinances, any of its then-existing Loans with Additional Loans, Refinancing Term Loans, Loans in connection with any Refinancing Revolving Credit Facility, Extended Term Loans, Extended Revolving Credit Loans or loans incurred under a new credit facility, in each case, to the extent such extension, replacement, renewal or refinancing is effected with such Lender's consent by means of a "cashless roll" by such Lender, such extension, replacement, renewal or refinancing shall be deemed to comply with any requirement hereunder or any other Loan Document that such payment be made "in Dollars" or the relevant Alternate Currency, "in immediately available funds", "in cash" or any other similar requirement.

Section 1.11. [reserved]

Section 1.12. *Additional Alternate Currencies*.

(a) The Borrower may from time to time request that Revolving Credit Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternate Currency"; *provided* that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Revolving Credit Loans, such request shall be subject to the approval of the Administrative Agent and each of the Revolving Credit Lenders; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the applicable L/C Issuer.

(b) Any such request shall be made in writing to the Administrative Agent not later than 11:00 a.m., ten (10) Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the relevant L/C Issuer in its reasonable discretion). In the case of any such request pertaining to Revolving Credit Loans, the Administrative Agent shall promptly notify each Revolving Credit Lender of the applicable Class thereof, and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the relevant L/C Issuer thereof. Each such Revolving Credit Lender (in the case of any such request pertaining to Revolving Credit Loans) and the relevant L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., five (5) Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Revolving Credit Loans or the issuance of Letters of Credit, in such requested currency.

(c) Any failure by a Revolving Credit Lender or the relevant L/C Issuer to respond to such request within the time period specified in the preceding paragraph (b) shall be deemed to be a refusal by such Revolving Credit Lender or L/C Issuer, as the case may be, to permit Revolving Credit Loans to be made or Letters of Credit, as applicable, to be issued in such requested currency. If the Administrative Agent and all the Revolving Credit Lenders that would be obligated to make Credit Extensions denominated in such requested currency consent to making Revolving Credit Loans in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternate Currency hereunder for purposes of any Borrowings of Revolving Credit Loans; and if the Administrative Agent and the relevant L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternate Currency hereunder for purposes of any Letter of Credit. If the Administrative Agent shall fail to obtain the requisite consent to any request for an additional currency under this Section 1.12, the Administrative Agent shall promptly so notify the Borrower.

Section 1.13. *Purchaser Discharge and LPP Assumption*. Immediately upon the consummation of the Acquisition, (x) the Purchaser shall immediately, automatically and without any further action by the Purchaser or any other Person be forever released and discharged from all of its obligations, liabilities and duties incurred hereunder, or under any other Loan Document, as the "Borrower" and (y) LPP shall immediately, automatically and without any further action by LPP or any other Person assume all rights, liabilities and obligations of Purchaser as the "Borrower".

Section 1.14. *[Reserved]*.

Section 1.15. *Limited Condition Transactions*.

(a) In connection with any action being taken in connection with a Limited Condition Transaction, for purposes of (i) determining compliance with any provision of this Agreement which requires the calculation of the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio, the Total Net Leverage Ratio and/or any other financial ratio; or (ii) testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of Consolidated Total Assets or Consolidated EBITDA, if any), in each case, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"), the date of determination of whether any such transaction is permitted hereunder shall be deemed to be the date the definitive agreement for such Limited Condition Transaction is entered into (or, in respect of any transaction described in clauses (b) or (c) of the definition of a Limited Condition Transaction, delivery of irrevocable notice or similar event) (such date, the "**LCT Test Date**"), and not at the time of consummation of such Limited Condition Transaction and if, after giving pro forma effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they had occurred at the beginning of the most recent test period ending prior to the LCT Test Date, the Borrower could have taken such action on the relevant LCT Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with.

(b) For the avoidance of doubt, if the Borrower has made an LCT Election and any of the ratios or baskets for which compliance was determined or tested as of the LCT Test Date are exceeded as a result of fluctuations in any such ratio or basket, including due to fluctuations in Consolidated Total Assets or Consolidated EBITDA of Holdings or the Person subject to such Limited Condition Transaction, at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the relevant transaction or action is permitted to be consummated or taken; provided that if such ratios or baskets improve as a result of such fluctuations, such improved ratios and/or baskets may be utilized. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio or basket availability with respect to the incurrence of Indebtedness or Liens, or the making of Restricted Payments, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of Holdings or the Borrower, the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness, or the designation of an Unrestricted Subsidiary on or following the relevant LCT Test Date and prior to the earlier of (x) the date on which such Limited Condition Transaction is consummated or the (y) definitive agreement for such Limited Condition Transaction is terminated or expires (or, if applicable, the irrevocable notice is terminated or expires) without consummation of such Limited Condition Transaction, any such ratio or basket shall be tested by calculating the availability under such ratio or basket on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith have been consummated (including any incurrence of Indebtedness and any associated Lien and the use of proceeds thereof).

(c) In connection with any action being taken in connection with a Limited Condition Transaction, for purposes of determining compliance with any provision of this Agreement which requires that no Default, Event of Default or Specified Event of Default, as applicable, has occurred, is continuing or would result from any such action, as applicable, such condition shall, at the option of the Borrower, be deemed satisfied, so long as no Default, Event of Default or Specified Event of Default, as applicable, exists on the LTC Test Date. For the avoidance of doubt, if the Borrower has exercised its option under this Section 1.15, and any Default, Event of Default or Specified Event of Default occurs following the LTC Test Date and prior to the consummation of such Limited Condition Transaction, any such Default, Event of Default or specified Event of Default shall be deemed to not have occurred or be continuing for purposes of determining whether any action being taken in connection with such Limited Condition Transaction is permitted hereunder.

Section 1.16. *Letter of Credit Amounts*. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE 2
THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01. *The Initial Term Borrowings*. (a) *The Initial Term Borrowings*. Subject to the terms and conditions set forth herein, each Initial Term Lender has severally agreed to make, on the Closing Date, a single loan in Dollars in an aggregate principal amount equal to its Initial Term Commitment. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Initial Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(b) *The Initial Revolving Credit Borrowings*. Subject to the terms and conditions set forth herein, each Initial Revolving Credit Lender severally agrees to make loans to the Borrower in Dollars or an Alternate Currency from time to time, on any Business Day until the Initial Revolver Maturity Date, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Initial Revolving Credit Commitment; *provided* that after giving effect to any Initial Revolving Credit Borrowing, (x) the Revolving Outstandings of any Lender under the Initial Revolving Credit Facility shall not exceed such Lender's Initial Revolving Credit Commitment, and (y) the Total Revolving Outstandings with respect to the Initial Revolving Credit Facility shall not exceed the aggregate Initial Revolving Credit Commitments (in each case, taking the Dollar Equivalent of all amounts in an Alternate Currency). Within the foregoing limits and subject to the terms, conditions and limitations set forth herein, (x) Revolving Credit Loans denominated in Dollars may consist of Base Rate Loans, Eurocurrency Rate Loans, or a combination thereof, and may be borrowed, paid, repaid and reborrowed and (y) Revolving Credit Loans denominated in an Alternate Currency shall consist of Eurocurrency Rate Loans, and may be borrowed, paid, repaid and reborrowed. All Initial Revolving Credit Loans will be made by all Initial Revolving Credit Lenders in accordance with their Pro Rata Share of the Initial Revolving Credit Facility until the Initial Revolver Maturity Date.

Section 2.02. *Borrowings, Conversions and Continuations of Loans*. (a) Each Term Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, in the form of a written Loan Notice, appropriately signed by a Responsible Officer of the Borrower. Each such Loan Notice must be received by the Administrative Agent not later than (i) 12:00 p.m. three Business Days prior to the requested date of any Borrowing of Eurocurrency Rate Revolving Credit Loans, continuation of Eurocurrency Rate Revolving Credit Loans or any conversion of Base Rate Revolving Credit Loans to Eurocurrency Rate Revolving Credit Loans denominated in Dollars, (ii) 12:00 p.m. three Business Days prior to the requested date of any Borrowing of Eurocurrency Rate Term Loans, continuation of Eurocurrency Rate Term Loans or any conversion of Base Rate Term Loans to Eurocurrency Rate Term Loans denominated in Dollars (*provided* that, if such Borrowing is an initial Credit Extension to be made on the Closing Date, notice must be received by the Administrative Agent not later than, in the case of Initial Term Loans, 1:00 p.m. one Business Day prior to the Closing Date), (iii) 12:00 p.m. four Business Days (or five Business Days in the case of a Special Notice Currency) prior to the requested date of any Borrowing of Eurocurrency Rate Loans, continuation of Eurocurrency Rate Loans or any conversion of Base Rate Loans to Eurocurrency Rate Loans denominated in an Alternate Currency, and (iv) 11:00 a.m. on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of the Dollar Equivalent of $1,000,000 or a whole multiple of $1,000,000 in excess thereof (or the Dollar Equivalent thereof in the case of any Borrowing denominated in any other Alternate Currency). Except as provided in Section 2.04(c)(i) and Section 2.05(c)(i), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of a Dollar Equivalent of $500,000 or a whole multiple of $100,000 in excess thereof (or the Dollar Equivalent thereof in the case of any Borrowing denominated in any other Alternate Currency). Each Loan Notice shall specify (i) whether the Borrower is requesting a Term Borrowing, a Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued (in Dollars or in an Alternate Currency), (iv) the Type of Loans to be borrowed or which existing Term Loans or Revolving Credit Loans are to be converted, (v) whether such Borrowing will be made in Dollars or an Alternate Currency, (vi) if applicable, the duration of the Interest Period with respect thereto and (vii) the Borrower's wire instructions. If the Borrower fails to specify a Type of Loan in a Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Term Loans or Revolving Credit Loans shall be made as, or converted to, a Eurocurrency Rate Loan with an Interest Period of one month (subject to the definition of Interest Period). Any such automatic conversion to Eurocurrency Rate Loans with an Interest Period of one month shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding the foregoing each Revolving Credit Loan denominated in an Alternate Currency shall be a Eurocurrency Rate Loans.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Pro Rata Share of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Eurocurrency Rate Loans with an Interest Period of one month or continuation described in Section 2.02(a). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than 2:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon receipt of all funds, and satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds, in each case in accordance with instructions provided to the Administrative Agent by the Borrower; *provided* that if, on the date the Loan Notice with respect to such Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowings, and second, to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan unless the Borrower pays the amount due, if any, under Section 3.07 in connection therewith. During the existence of an Event of Default, the Administrative Agent or the Required Lenders may require that no Loans may be converted to or continued as Eurocurrency Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error.

(e) After giving effect to all Term Borrowings, all Revolving Credit Borrowings, all conversions of Term Loans or Revolving Credit Loans from one Type to the other, and all continuations of Term Loans or Revolving Credit Loans as the same Type, there shall not be more than 12 Interest Periods in effect with respect to Loans.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

Section 2.03. *[Reserved]*.

Section 2.04. *Letters of Credit*.

(a) The Letter of Credit Commitment. (i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the other Initial Revolving Credit Lenders set forth in this Section 2.04, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or an Alternate Currency for the account of the Borrower and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.04(b), and (2) to honor drafts under the Letters of Credit; and (B) the Initial Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower; *provided* that no L/C Issuer shall be obligated to issue any commercial Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit if as of the date of such L/C Credit Extension or after giving effect thereto, (w) the Total Revolving Outstandings with respect to the Initial Revolving Credit Facility would exceed the aggregate Initial Revolving Credit Commitments, (x) the Revolving Outstandings of any Lender under the Initial Revolving Credit Facility would exceed such Lender's Initial Revolving Credit Commitment, (y) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit or (z) the Outstanding Amount of the L/C Obligations with respect to Letters of Credit issued by such L/C Issuer would exceed such L/C Issuer's L/C Commitment (in each case, taking the Dollar Equivalent of all amounts in an Alternate Currency). Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) An L/C Issuer shall be under no obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which, in each case, such L/C Issuer in good faith deems material to it;

(B) subject to Section 2.04(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless all Initial Revolving Credit Lenders (other than any Initial Revolving Credit Lender that is a Defaulting Lender) have approved such expiry date;

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all Initial Revolving Credit Lenders (other than any Initial Revolving Credit Lender that is a Defaulting Lender) have approved such expiry date; or

(D) the issuance of such Letter of Credit would violate any Laws or one or more policies of such L/C Issuer.

(iii) An L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) *Procedures for Issuance and Amendment of Letters of Credit; Auto-Renewal Letters of Credit*. (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Application or other agreement submitted by the Borrower to, or entered into by the Borrower with the applicable L/C Issuer relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Such Letter of Credit Application must be received by the relevant L/C Issuer and the Administrative Agent not later than 1:00 p.m. at least five Business Days prior to the proposed issuance date or date of amendment, as the case may be, or such later date and time as the relevant L/C Issuer may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the relevant L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer: (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the relevant L/C Issuer may reasonably request. No Letter of Credit, Letter of Credit Application or other document entered into by the Borrower with any L/C Issuer relating to any Letter of Credit shall contain any representations or warranties, covenants or events of default not set forth in this Agreement (and to the extent inconsistent herewith shall be rendered null and void (or reformed automatically without further action by any Person to conform to the terms of this Agreement), and if any Letter of Credit Application includes representations and warranties, covenants and/or events of default that do not contain the materiality qualifiers, exceptions or thresholds that are applicable to the analogous provisions of this Agreement or other Loan Documents, or are otherwise more restrictive, the relevant qualifiers, exceptions and thresholds contained herein shall be incorporated therein or, to the extent more restrictive, shall be deemed for purposes of such Letter of Credit Application to be the same as the analogous provisions herein.

(ii) Promptly after receipt of any Letter of Credit Application, the relevant L/C Issuer will confirm with the Administrative Agent in writing that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the relevant L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by the relevant L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof (such confirmation to be promptly provided by the Administrative Agent), then, subject to the terms and conditions hereof, the relevant L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Initial Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the relevant L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the relevant L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic renewal provisions (each, an "**Auto-Extension Letter of Credit**"); *provided* that any such Auto-Extension Letter of Credit must permit the relevant L/C Issuer to prevent any such renewal at least once in each twelve month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-Extension Notice Date**") in each such twelve month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the relevant L/C Issuer, the Borrower shall not be required to make a specific request to such L/C Issuer for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the relevant L/C Issuer to permit the renewal of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; *provided* that the relevant L/C Issuer shall not permit any such renewal if (A) such L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of Section 2.04(a)(ii) or otherwise), or (B) to the extent the face amount of the applicable Letter of Credit is increasing, it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Nonrenewal Notice Date from the Administrative Agent, any Initial Revolving Credit Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the relevant L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) *Drawings and Reimbursements; Funding of Participations*. (i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant L/C Issuer shall notify the Borrower (through the Administrative Agent) and the Administrative Agent thereof. Not later than 3:00 p.m. on the date of any payment by the relevant L/C Issuer under a Letter of Credit (each such date, an "**Honor Date**"), the Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in Dollars or the applicable Alternate Currency; *provided* that if notice of such drawing is not provided to the Borrower prior to 12:00 noon on the Honor Date, then the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in Dollars on the next succeeding Business Day and such extension of time shall be reflected in computing fees in respect of any such Letter of Credit. If the Borrower fails to so reimburse the relevant L/C Issuer by such time, the Administrative Agent shall promptly notify each Initial Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (the "**Unreimbursed Amount**"), and the amount of such Initial Revolving Credit Lender's Pro Rata Share thereof. In such event, the Borrower shall be deemed to have requested an Initial Revolving Credit Borrowing of (x) in the case of a Letter of Credit denominated in Dollars, a Base Rate Loan denominated in Dollars in an equivalent amount and (y) in the case of a Letter of Credit denominated in an Alternate Currency, a Eurocurrency Rate Loan denominated in such Alternate Currency to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02(a) for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Initial Revolving Credit Commitments and the conditions set forth in Section 4.02.

(ii) Each Initial Revolving Credit Lender (including the Lender acting as the relevant L/C Issuer) shall upon any notice pursuant to Section 2.04(c)(i) make funds available to the Administrative Agent for the account of the relevant L/C Issuer at the Administrative Agent's Office in an amount equal to its Pro Rata Share of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent (if such notice is provided to the Initial Revolving Credit Lenders prior to 11:00 a.m. on such date, and otherwise, by no later than two hours after receipt of such notice), whereupon, subject to the provisions of Section 2.04(c)(ii), each Initial Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the relevant L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by an Initial Revolving Credit Borrowing of Base Rate Loans, the Borrower shall be deemed to have incurred from the relevant L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Initial Revolving Credit Lender's payment to the Administrative Agent for the account of the relevant L/C Issuer pursuant to Section 2.04(c)(i) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.04.

(iv) Until each Initial Revolving Credit Lender funds its Initial Revolving Credit Loan or L/C Advance pursuant to this Section 2.04(c) to reimburse the relevant L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of such L/C Issuer.

(v) Each Initial Revolving Credit Lender's obligation to make Initial Revolving Credit Loans or L/C Advances to reimburse the relevant L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.04(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against such L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Initial Revolving Credit Lender's obligation to make Initial Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Loan Notice or the occurrence of a Default). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the relevant L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Initial Revolving Credit Lender fails to make available to the Administrative Agent for the account of the relevant L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect. If such Lender pays such amount (with interest as aforesaid), the amount so paid shall constitute such Lender's Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the relevant L/C Issuer submitted to any Initial Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.04(c)(v) shall be conclusive absent manifest error.

(d) *Repayment of Participations*. (i) If, at any time after the relevant L/C Issuer has made a payment under any Letter of Credit and has received from any Initial Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.04(c), the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share thereof in Dollars or Alternate Currency and in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of relevant L/C Issuer pursuant to Section 2.04(c)(i) is required to be returned under any of the circumstances described in Section 11.06 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Initial Revolving Credit Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Pro Rata Share thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

(e) *Obligations Absolute*. The obligation of the Borrower to reimburse any L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document, or any term or provision therein;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the relevant L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the relevant L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not comply with the terms of such Letter of Credit; or any payment made by the relevant L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any exchange, release or nonperfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guaranty or any other guarantee, for all or any of the Obligations of the Borrower in respect of such Letter of Credit; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder;

Neither the Administrative Agent, the Lenders nor the L/C Issuer, nor any of their Agent-Related Persons, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the relevant L/C Issuer; *provided* that the foregoing shall not excuse any L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages) suffered by the Borrower that are caused by such L/C Issuer's gross negligence or willful misconduct (as finally determined by a court of competent jurisdiction). The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly notify the relevant L/C Issuer.

(f) *Role of L/C Issuer*. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the relevant L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of any L/C Issuer, any Agent-Related Person nor any of the respective correspondents, participants or assignees of such L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided* that this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at Law or under this Agreement or any other agreement. None of any L/C Issuer, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of such L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.04(e); *provided* that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against any L/C Issuer, and any L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to special, indirect, consequential or punitive damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit (as finally determined by a court of competent jurisdiction). In furtherance and not in limitation of the foregoing, the relevant L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the relevant L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) *Cash Collateral*. Upon the request of the Administrative Agent or the relevant L/C Issuer, (i) if the relevant L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, any Letter of Credit may for any reason remain outstanding and partially or wholly undrawn, the Borrower shall, within three Business Days, Cash Collateralize the then Outstanding Amount of all L/C Obligations (in an amount equal to 103% of such Outstanding Amount determined as of the date of such L/C Borrowing or the Letter of Credit Expiration Date, as the case may be) or, in the case of clause (ii), provide a back-to-back letter of credit in a face amount at least equal to 103% of the then undrawn amount of such Letter of Credit from an issuer and in form and substance reasonably satisfactory to the relevant L/C Issuer. For purposes hereof, "**Cash Collateralize**" means to pledge and deposit with or deliver to the Administrative Agent, or its designee, for the benefit of the relevant L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances ("**Cash Collateral**") pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the relevant L/C Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. Cash Collateral shall be maintained in a Cash Collateral Account. If at any time the Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than rights or claims of the Administrative Agent arising by operation of law or that the total amount of such funds is less than 103% of the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional 103% of funds to be deposited and held in the Cash Collateral Account, an amount equal to the excess of (A) such aggregate Outstanding Amount over (B) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Law, to reimburse the relevant L/C Issuer. To the extent the amount of any Cash Collateral exceeds 103% of the aggregate Outstanding Amount of all L/C Obligations and so long as no Event of Default has occurred and is continuing, the excess shall be refunded to the Borrower.

(h) *Applicability of ISP98 and UCP*. Unless otherwise expressly agreed by the relevant L/C Issuer and the Borrower when a Letter of Credit is issued, (i) the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit and on an exception basis only, shall apply to certain standby Letters of Credit as may be required by local law or statute.

(i) *Letter of Credit Fees*. The Borrower shall pay to the Administrative Agent for the account of each Initial Revolving Credit Lender in accordance with its Pro Rata Share a Letter of Credit fee (each an "**L/C Fee**") for each Letter of Credit issued for the account of the Borrower equal to the Applicable Margin times the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit). Such letter of credit fees shall be computed on a quarterly basis in arrears. Such letter of credit fees shall be due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Margin during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect.

(j) *Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer*. The Borrower shall pay directly to each L/C Issuer for its own account, in Dollars, a fronting fee with respect to each Letter of Credit issued by such L/C Issuer for the account of the Borrower in an amount equal to 0.125% per annum of the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit). Such fronting fees shall be computed on a quarterly basis in arrears. Such fronting fees shall be due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. In addition, the Borrower shall pay directly to each L/C Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable within five Business Days of invoice and are nonrefundable.

(k) *Conflict with Letter of Credit Application*. In the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(l) *Defaulting Lenders*. This Section 2.04 shall be subject to the applicable provisions of Section 2.17 in the event any Initial Revolving Credit Lender becomes a Defaulting Lender.

(m) *Provisions Related to Extended Revolving Credit Commitments*. If the maturity date in respect of any tranche of Initial Revolving Credit Commitments occurs prior to the expiration of any Letter of Credit, then (i) if one or more other tranches of Revolving Credit Commitments in respect of which the maturity date shall not have occurred are then in effect and which the Revolving Credit Lenders thereunder have agreed to participate in the L/C Obligations, (x) the outstanding Initial Revolving Credit Loans shall be repaid pursuant to Section 2.09 on such maturity date to the extent and in an amount sufficient to permit the reallocation of the Outstanding Amount of L/C Obligations relating to the outstanding Letters of Credit contemplated by clause (y) below and (y) such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Credit Lenders to purchase participations therein and to make payments in respect thereof pursuant to Section 2.04(c)) under (and ratably participated in by the applicable Revolving Credit Lenders pursuant to) the Revolving Credit Commitments in respect of such non-terminating tranches up to an aggregate amount not to exceed the aggregate principal amount of the Revolving Credit Commitments in respect of such nonterminating tranches at such time (it being understood that (1) the participations therein of Initial Revolving Credit Lenders under the maturing tranche shall be correspondingly released and (2) no partial face amount of any Letter of Credit may be so reallocated) and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), but without limiting the obligations with respect thereto, the Borrower shall provide a backstop letter of credit or Cash Collateral with respect to any such Letter of Credit in a manner reasonably satisfactory to the applicable L/C Issuer. If, for any reason, such backstop letter of credit or Cash Collateral is not provided, or the reallocation does not occur, the Initial Revolving Credit Lenders under the maturing tranche shall continue to be responsible for their participating interests in the Letters of Credit; *provided* that, notwithstanding anything to the contrary contained herein, upon any subsequent repayment of the Initial Revolving Credit Loans, the reallocation set forth in clause (i) shall automatically and concurrently occur to the extent of such repayment (it being understood that no partial face amount of any Letter of Credit may be so reallocated). Except to the extent of reallocations of participations pursuant to clause (i) of this Section 2.04(m), the occurrence of a maturity date with respect to the Initial Revolving Credit Commitments shall have no effect upon (and shall not diminish) the percentage participations of the Initial Revolving Credit Lenders in any Letter of Credit issued before such maturity date. Commencing with the maturity date of the Initial Revolving Credit Commitments, the Letter of Credit Sublimit under any tranche of Revolving Credit Commitments that has not so then matured shall be as agreed by the Borrower with such Revolving Credit Lenders; *provided* that in no event shall such sublimit be less than the sum of (x) the Outstanding Amount of L/C Obligations with respect to the Revolving Credit Lenders under such extended tranche immediately prior to such maturity date and (y) the face amount of the Letters of Credit reallocated to such tranche of Revolving Credit Commitments pursuant to clause (i) of this Section 2.04(m) (assuming Initial Revolving Credit Loans are repaid in accordance with clause (i)(x)).

(n) *L/C Issuer Reports to the Administrative Agent.* Unless otherwise agreed by the Administrative Agent, each L/C Issuer shall, in addition to its notification obligations set forth elsewhere in this Section 2.04, provide the Administrative Agent a Letter of Credit Report, as follows: (i) reasonably prior to the time that such L/C Issuer issues, amends, renews, increases or extends a Letter of Credit, the date of such issuance, amendment, renewal, increase or extension and the stated amount of the Letters of Credit issued by such L/C Issuer after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed); (ii) on each Business Day on which such L/C Issuer makes a payment pursuant to a Letter of Credit, the date and amount of such payment; (iii) on any Business Day on which the Borrower fails to reimburse a payment made pursuant to a Letter of Credit required to be reimbursed to such L/C Issuer on such day, the date of such failure and the amount of such payment; (iv) on any Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such L/C Issuer; and (v) for so long as any Letter of Credit issued by such L/C Issuer is outstanding, such L/C Issuer shall deliver to the Administrative Agent (A) on the last Business Day of each calendar month, (B) at all other times a Letter of Credit Report is required to be delivered pursuant to this Agreement, and (C) on each date that (1) a L/C Credit Extension occurs, or (2) there is any expiration, cancellation and/or disbursement, in each case, with respect to any such Letter of Credit, a Letter of Credit Report appropriately completed with the information for every outstanding Letter of Credit issued by such L/C Issuer.

Section 2.05. *[Reserved]*.

Section 2.06. *Prepayments*. (a) *Optional*. (i) The Borrower may, upon written notice from the Borrower to the Administrative Agent, at any time or from time to time, voluntarily prepay the Term Loans of any Class or Class and/or Revolving Credit Loans of any Class or Class in whole or in part without premium or penalty; *provided* that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurocurrency Rate Revolving Credit Loans denominated in Dollars, (2) three Business Days prior to any date of prepayment of Eurocurrency Rate Term Loans, denominated in Dollars, (3) four Business Days (or five Business Days in the case of a Special Notice Currency) prior to any date of prepayment of Eurocurrency Rate Loans denominated in an Alternate Currency and (4) one Business Day prior to the date of prepayment of Base Rate Loans; (B) any prepayment of Eurocurrency Rate Loans shall be in a minimum principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof; (C) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof (or, the same numerical number with respect to the applicable Alternate Currency in the case of any prepayment of Loans denominated in an Alternate Currency) or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.07. Each prepayment of the Loans pursuant to this Section 2.06(a) shall be applied among the Facilities, Classes and/or Class in such amounts as the Borrower may direct in its sole discretion and in the absence of such direction, any such prepayment shall be applied in direct order of maturity. Each prepayment in respect of a particular Facility shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares.

(ii) [*Reserved*].

(iii) [*Reserved*].

(iv) Notwithstanding anything to the contrary contained in this Agreement, any notice of prepayment under Section 2.06(a)(i) or 2.06(a)(iii) may be conditioned upon the effectiveness of other transactions, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(v) [*Reserved*].

(vi) In the event that, on or prior to the date that is 12 months after the Closing Date, the Borrower (x) prepays, repays, refinances, substitutes or replaces any Initial Term Loans in connection with a Repricing Event (including, for the avoidance of doubt, any prepayment made pursuant to Section 2.06(b)(ii) that constitutes a Repricing Event) or (y) effects any amendment, modification or waiver of, or consent under, this Agreement resulting in a Repricing Event, the Borrower shall pay to the Administrative Agent for the ratable account of each of the applicable Lenders, (I) in the case of clause (x), a premium of 1.00% of the aggregate principal amount of the Initial Term Loans so prepaid, repaid, refinanced, substituted or replaced and (II) in the case of clause (y), a fee equal to 1.00% of the aggregate principal amount of the Initial Term Loans that are the subject of such Repricing Event outstanding immediately prior to such amendment. Such amounts shall be due and payable on the date of effectiveness of such Repricing Event; *provided*, however, that for the avoidance of doubt, in the case of the exercise by the Borrower of its rights under Section 11.01(f) in connection with a Repricing Event effected through an amendment, the prepayment premium described in the immediately preceding clause (I) shall be payable to any Lender replaced or repaid pursuant to Section 11.01(f) (and not any Person who replaces such Lender) in respect of the Initial Term Loans assigned pursuant to Section 11.01(f) immediately prior to such Repricing Event.

(b) *Mandatory*.

(i) (A) If (1) any Prepayment Asset Sale occurs or (2) any Casualty Event occurs, which in the aggregate results in the realization or receipt by any Restricted Company of Net Cash Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is five Business Days after the date of the realization or receipt of such Net Cash Proceeds an aggregate principal amount of Initial Term Loans in an amount equal to 100% of all Net Cash Proceeds received (the "**Applicable Asset Sale Proceeds**"); *provided* that (x) no such prepayment shall be required pursuant to this Section 2.06(b)(i)(A) if, on or prior to such date, the Borrower shall have given written notice to the Administrative Agent of its intention to reinvest all or a portion of such Net Cash Proceeds in accordance with Section 2.06(b)(i)(B) and (y) if at the time that any such prepayment would be required, the Borrower is required to offer to repurchase any Indebtedness outstanding at such time that is secured by a Lien on the Collateral ranking pari passu with the Lien securing the Initial Term Loans pursuant to the terms of the documentation governing such Indebtedness with the Net Cash Proceeds of such Disposition or Casualty Event (such Indebtedness required to be offered to be so repurchased, "**Other Applicable Indebtedness**"), then the Borrower, at its election, may apply the Applicable Asset Sale Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness at such time) and the remaining Net Cash Proceeds so received to the prepayment of such Other Applicable Indebtedness; *provided, further*, that (x) the portion of the Applicable Asset Sale Proceeds (but not the other Net Cash Proceeds received) allocated to the Other Applicable Indebtedness shall not exceed the amount of Applicable Asset Sale Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Cash Proceeds shall be allocated to the Initial Term Loans in accordance with the terms hereof to the prepayment of the Initial Term Loans and the amount of prepayment of the Initial Term Loans that would have otherwise been required pursuant to this Section 2.05(b)(i) shall be reduced accordingly and (y) to the extent the holders of Other Applicable Indebtedness decline to have such indebtedness repurchased or prepaid, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof;

(B) With respect to any Net Cash Proceeds realized or received with respect to any Disposition or any Casualty Event required to be applied in accordance with Section 2.06(b)(i)(A), at the option of the Borrower, the Borrower may reinvest all or any portion of such Net Cash Proceeds in the acquisition, improvement or maintenance of assets useful in the operations of the Restricted Companies and/or to fund Permitted Acquisitions or permitted Investments within (x) 12 months following receipt of such Net Cash Proceeds or (y) if the Borrower enters into a contract to reinvest such Net Cash Proceeds within such 12 month period following receipt thereof, 18 months following receipt of such Net Cash Proceeds; *provided* that if any Net Cash Proceeds are no longer intended to be so reinvested at any time after delivery of a notice of reinvestment election or are not so reinvested during such 12 month period or 18 month period, as applicable, an amount equal to any such Net Cash Proceeds shall within ten Business Days be applied to the prepayment of the Initial Term Loans as set forth in this Section 2.06.

(ii) If any Restricted Company incurs or issues any Indebtedness not expressly permitted to be incurred or issued pursuant to Section 7.03 (other than Refinancing Indebtedness which shall be treated in accordance with Section 2.19), the Borrower shall cause to be prepaid an aggregate principal amount of Initial Term Loans in an amount equal to 100% of all Net Cash Proceeds received therefrom on or prior to the date which is five Business Days after the receipt of such Net Cash Proceeds.

(iii) Within fifteen (15) Business Days after financial statements have been or are required to be delivered pursuant to Section 6.01(a) and the related Compliance Certificate has been or is required to be delivered pursuant to Section 6.02(a) for the relevant Excess Cash Flow Period, the Borrower shall cause to be prepaid an aggregate principal amount of the Initial Term Loans and any other Term Loans then subject to ratable prepayment requirements in accordance with Section 2.06(b)(iv) in an amount equal to the Excess Cash Flow Percentage of Excess Cash Flow, if any, for the Excess Cash Flow Period covered by such financial statements minus the sum of (1) the amount of any voluntary prepayments of the Term Loans and any other prepayments of Incremental Equivalent Debt and/or other Indebtedness secured by Liens on the Collateral on a pari passu or senior basis with the Liens on the Collateral securing the Initial Term Loans during the Excess Cash Flow Period covered by such financial statements and after the end of such Excess Cash Flow Period and prior to the fifteenth Business Day after the financial statements are required to be delivered pursuant to Section 6.01(a) (including in connection with debt buybacks made by the Borrower in an amount equal to the discounted amount actually paid in respect thereof pursuant to Section 2.06(d), Section 10.07 and/or otherwise, and/or the application of yank-a-bank provisions that result in a reduction of such Loans), (2) solely to the extent the Revolving Credit Commitments (or revolving commitments, as applicable) are reduced in connection therewith (and solely to the extent of the amount of such reduction), the amount of any prepayments of the Revolving Credit Loans and/or other revolving indebtedness secured by Liens on the Collateral on a pari passu or senior basis to the Liens on the Collateral securing the Initial Term Loans during the Excess Cash Flow Period covered by such financial statements and after the end of such Excess Cash Flow Period and prior to the fifteenth Business Day after the financial statements are required to be delivered pursuant to Section 6.01(a), except, in the case of each of clause (1) and (2), to the extent such prepayments were financed with the proceeds of long-term Indebtedness (other than revolving debt) and (3) the aggregate amount of Revolving Credit Loans borrowed to fund additional upfront fees or OID required by the terms of the "market flex" provisions of the Arranger Fee Letter (the amount of Excess Cash Flow required to be prepaid hereunder, the "**Applicable ECF Proceeds**"); *provided* that, (x) if at the time that any such prepayment would be required, the Borrower is required to offer to repurchase any Other Applicable Indebtedness, then the Borrower, at its election, may apply the Applicable ECF Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness at such time) and the remaining Excess Cash Flow so received to the prepayment of such Other Applicable Indebtedness and (y) such Applicable ECF Proceeds (calculated without giving effect to clause (x) above) shall only be required to be prepaid under this Section 2.06(b)(iii) if (and only to the extent) in excess of the Excess Cash Flow Threshold.

(iv) Except as otherwise provided in any Incremental Joinder, Refinancing Amendment or Extension Amendment, in each case with respect to the Class or Classes of Term Loans covered thereby, each prepayment of Term Loans pursuant to this Section 2.06(b) shall be applied in a manner as directed by the Borrower among any Class or Classes of Term Loans, and without any such direction, ratably to each Class of the Term Loans (based on the amount of outstanding principal) and in direct order of maturities to the principal repayment installments of the Term Loans that are due after the date of such prepayment; *provided* that, the Borrower may not direct any mandatory prepayments under one Class or Class of Term Loans to a later maturing Class or Classes of Term Loans. Each such prepayment shall be paid to the Term Lenders in accordance with their respective Pro Rata Shares.

(v) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Initial Term Loans required to be made pursuant to this Section 2.06(b) by 2:00 pm at least (A) in the case of the prepayment of Initial Term Loans which are Base Rate Loans, three Business Day and (B) in the case of prepayments of Initial Term Loans which are Eurocurrency Rate Loans, three Business Days, in each case prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment.

(vi) In the event that on any Revaluation Date (after giving effect to the determination of the Total Revolving Outstandings with respect to the applicable Revolving Credit Facility) the Total Revolving Outstandings with respect to such Revolving Credit Facility exceeds an amount equal to 105% of the total Revolving Credit Commitments under such Revolving Credit Facility, the Borrower shall, within two Business Days of receipt of notice from the Administrative Agent, prepay the Revolving Credit Loans and/or reduce L/C Obligations (in each case, taking the Dollar Equivalent of any amounts in an Alternate Currency), in an aggregate amount sufficient to reduce such Total Revolving Outstandings as of the date of such payment to an amount not to exceed 100% of the total Revolving Credit Commitment then in effect with respect to such Revolving Credit Facility by taking any of the following actions as it shall determine at its sole discretion: (I) prepayment of Revolving Credit Loans in accordance with Section 2.06, (II) with respect to such excess L/C Obligations, deposit of Cash in a Cash Collateral Account or "backstopping" or replacement of such Letters of Credit, in each case, in an amount equal to 103% of such excess L/C Obligations (minus the amount then on deposit in the Cash Collateral Account).

(vii) [*Reserved*].

(viii) Notwithstanding any other provisions of Section 2.06(b), to the extent any or all of the Net Cash Proceeds of any Disposition of property or assets by a Non-U.S. Subsidiary (a "**Foreign Asset Sale**"), the Net Cash Proceeds of any Casualty Event received by a Non-U.S. Subsidiary (a "**Foreign Recovery Event**"), or Excess Cash Flow attributable to Non-U.S. Subsidiaries are prohibited or delayed by any applicable Law (including, without limitation, capital maintenance, financial assistance, corporate benefit or other restrictions (including as to lack of distributable reserves) on up streaming of cash intragroup and the fiduciary and statutory duties of the management of the relevant members of the relevant Non-U.S. Subsidiary giving rise to any risk of personal liability, including any civil or criminal liability) from being repatriated to or passed on to or used for the benefit of the Borrower, the portion of such Net Cash Proceeds or Excess Cash Flow so affected will not be required to be applied to prepay the Initial Term Loans at the times provided in Section 2.06(b) but may be retained by the applicable Non-U.S. Subsidiary so long, but only so long, as the applicable Law will not permit repatriation or the passing on to or otherwise using for the benefit of the Borrower (the Borrower hereby agreeing to use (or cause the applicable Non-U.S. Subsidiary to use) all commercially reasonable efforts to promptly overcome or eliminate any such restrictions on repatriation, passing on or other use for the benefit of the Borrower and/or use the other cash sources of the Borrower and the Restricted Subsidiaries to make the relevant prepayment) and once such repatriation of any of such affected Net Cash Proceeds or Excess Cash Flow is permitted under the applicable Law, such repatriation will be promptly effected and such repatriated Net Cash Proceeds or Excess Cash Flow will be applied promptly (and in any event not later than two Business Days after such repatriation) (net of additional Taxes payable or reserved against as a result thereof) to the prepayment of the Initial Term Loans pursuant to Section 2.06(b). In addition, notwithstanding any other provision of Section 2.06(b), no prepayment relating to (i) any Net Cash Proceeds of any Foreign Asset Sale, (ii) Net Cash Proceeds of any Foreign Recovery Event or (iii) Excess Cash Flow attributable to Non-U.S. Subsidiaries shall be required to be made by Borrower and the Restricted Subsidiaries to the extent there could reasonably be expected to be material adverse tax consequences (taking into account any applicable foreign tax credit or other similar tax benefit actually received in connection with such prepayment) to Holdings (or such other direct or indirect parent entity of Holdings) or its subsidiaries as reasonably determined by the Borrower in consultation with the Administrative Agent; provided that, once such material adverse tax consequences no longer exist, Borrower and the Restricted Subsidiaries shall make the relevant payment otherwise required by this Section 2.06(b).

(ix) Notwithstanding the foregoing, each Term Lender shall have the right to reject its applicable percentage of any mandatory prepayment of the Term Loans pursuant to Section 2.06(b)(i) and (ii) (each such Lender, a "**Rejecting Lender**") by providing written notice of such to the Administrative Agent no later than 2:00 p.m. one Business Day prior to the date of such mandatory prepayment (if any Term Lender fails to provide such notice, they shall be deemed to have accepted their applicable percentage of such mandatory repayment), in which case the amounts so rejected may be retained by the Borrower (the aggregate amount of such proceeds so rejected as of any date of determination, the "**Declined Proceeds**").

(c) *Funding Losses, Etc.* All prepayments under this Section 2.06 shall be made together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date other than the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.07. Notwithstanding any of the other provisions of Section 2.06(b), so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under Section 2.06(b), other than on the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit the amount of any such prepayment otherwise required to be made thereunder into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with Section 2.06(b). Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with Section 2.06(b).

(d) *Discounted Voluntary Prepayments*.

(i) Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, the Borrower shall have the right at any time and from time to time to prepay one or more Classes of Term Loans to the Lenders at a discount to the par value of such Loans and on a non pro rata basis (each, a "**Discounted Voluntary Prepayment**") pursuant to the procedures described in this Section 2.06(d), provided that (A) no proceeds from Revolving Credit Loans shall be used to consummate any such Discounted Voluntary Prepayment, (B) any Discounted Voluntary Prepayment shall be offered to all Term Lenders of such Class on a pro rata basis, (C) after giving effect to the Discounted Voluntary Prepayment, the aggregate Outstanding Amount of all Term Loans that are held by Sponsor Affiliated Lenders (other than Affiliated Debt Funds) shall not exceed 25.0% of the aggregate Outstanding Amount of the Term Loans then outstanding and (D) the Borrower shall deliver to the Administrative Agent, together with each Discounted Prepayment Option Notice, a certificate of a Responsible Officer of the Borrower (1) stating that no Specified Event of Default has occurred and is continuing or would result from the Discounted Voluntary Prepayment, (2) stating that each of the conditions to such Discounted Voluntary Prepayment contained in this Section 2.06(d) has been satisfied and (3) specifying the aggregate principal amount of Term Loans of any Class offered to be prepaid pursuant to such Discounted Voluntary Prepayment.

(ii) To the extent the Borrower seeks to make a Discounted Voluntary Prepayment, the Borrower will provide written notice to the Administrative Agent substantially in the form of Exhibit I-1 hereto (each, a "**Discounted Prepayment Option Notice**") that the Borrower desires to prepay Term Loans of one or more specified Classes in an aggregate principal amount specified therein by the Borrower (each, a "**Proposed Discounted Prepayment Amount**"), in each case at a discount to the par value of such Loans as specified below. The Proposed Discounted Prepayment Amount of any Loans shall not be less than $2,500,000 (or, the same numerical number with respect to the applicable Alternate Currency in the case any Loans denominated in an Alternate Currency). The Discounted Prepayment Option Notice shall further specify with respect to the proposed Discounted Voluntary Prepayment (A) the Proposed Discounted Prepayment Amount for Loans to be prepaid, (B) a discount range (which may be a single percentage) selected by the Borrower with respect to such proposed Discounted Voluntary Prepayment equal to a percentage of par of the principal amount of the Loans to be prepaid (the "**Discount Range**"), and (C) the date by which Lenders are required to indicate their election to participate in such proposed Discounted Voluntary Prepayment, which shall be at least three (3) Business Days from and including the date of the Discounted Prepayment Option Notice (the "**Acceptance Date**").

(iii) Upon receipt of a Discounted Prepayment Option Notice, the Administrative Agent shall promptly notify each applicable Lender thereof. On or prior to the Acceptance Date, each such Lender may specify by written notice substantially in the form of Exhibit I-2 hereto (each, a "**Lender Participation Notice**") to the Administrative Agent (A) a maximum discount to par (the "**Acceptable Discount**") within the Discount Range (for example, a Lender specifying a discount to par of 20% would accept a purchase price of 80% of the par value of the Loans to be prepaid) and (B) a maximum principal amount (subject to rounding requirements specified by the Administrative Agent) of the Term Loans to be prepaid held by such Lender with respect to which such Lender is willing to permit a Discounted Voluntary Prepayment at the Acceptable Discount ("**Offered Loans**"). Based on the Acceptable Discounts and principal amounts of the Term Loans to be prepaid specified by the Lenders in the applicable Lender Participation Notice, the Administrative Agent, in consultation with the Borrower, shall determine the applicable discount for such Term Loans to be prepaid (the "**Applicable Discount**"), which Applicable Discount shall be (A) the percentage specified by the Borrower if the Borrower has selected a single percentage pursuant to Section 2.06(d)(ii)) for the Discounted Voluntary Prepayment or (B) otherwise, the highest Acceptable Discount at which the Borrower can pay the Proposed Discounted Prepayment Amount in full (determined by adding the Outstanding Amount of Offered Loans commencing with the Offered Loans with the highest Acceptable Discount); provided, however, that in the event that such Proposed Discounted Prepayment Amount cannot be repaid in full at any Acceptable Discount, the Applicable Discount shall be the lowest Acceptable Discount specified by the Lenders that is within the Discount Range. The Applicable Discount shall be applicable for all Lenders who have offered to participate in the Discounted Voluntary Prepayment and have Qualifying Loans. Any Lender with outstanding Term Loans to be prepaid whose Lender Participation Notice is not received by the Administrative Agent by the Acceptance Date shall be deemed to have declined to accept a Discounted Voluntary Prepayment of any of its Loans at any discount to their par value within the Applicable Discount.

(iv) The Borrower shall make a Discounted Voluntary Prepayment by prepaying those Term Loans to be prepaid (or the respective portions thereof) offered by the Lenders ("**Qualifying Lenders**") that specify an Acceptable Discount that is equal to or greater than the Applicable Discount ("**Qualifying Loans**") at the Applicable Discount, provided that if the aggregate proceeds required to prepay all Qualifying Loans (disregarding any interest payable at such time) would exceed the amount of aggregate proceeds required to prepay the Proposed Discounted Prepayment Amount, such amounts in each case calculated by applying the Applicable Discount, the Borrower shall prepay such Qualifying Loans ratably among the Qualifying Lenders based on their respective principal amounts of such Qualifying Loans (subject to rounding requirements specified by the Administrative Agent). If the aggregate proceeds required to prepay all Qualifying Loans (disregarding any interest payable at such time) would be less than the amount of aggregate proceeds required to prepay the Proposed Discounted Prepayment Amount, such amounts in each case calculated by applying the Applicable Discount, the Borrower shall prepay all Qualifying Loans.

(v) Each Discounted Voluntary Prepayment shall be made within five (5) Business Days of the Acceptance Date (or such later date as the Administrative Agent shall reasonably agree, given the time required to calculate the Applicable Discount and determine the amount and holders of Qualifying Loans), without premium or penalty (but subject to Section 3.04), upon irrevocable written notice substantially in the form of Exhibit I-3 hereto (each a "**Discounted Voluntary Prepayment Notice**"), delivered to the Administrative Agent no later than 1:00 p.m., New York City time, three (3) Business Days prior to the date of such Discounted Voluntary Prepayment, which notice shall specify the date and amount of the Discounted Voluntary Prepayment and the Applicable Discount determined by the Administrative Agent. Upon receipt of any Discounted Voluntary Prepayment Notice, the Administrative Agent shall promptly notify each relevant Lender thereof. If any Discounted Voluntary Prepayment Notice is given, the amount specified in such notice shall be due and payable to the applicable Lenders, subject to the Applicable Discount on the applicable Loans, on the date specified therein together with accrued interest (on the par principal amount) to but not including such date on the amount prepaid. The par principal amount of each Discounted Voluntary Prepayment of a Term Loan shall be applied ratably to reduce the remaining installments of such Class of Term Loans (as applicable).

(vi) To the extent not expressly provided for herein, each Discounted Voluntary Prepayment shall be consummated pursuant to procedures (including as to timing, rounding, minimum amounts, Type and Interest Periods and calculation of Applicable Discount in accordance with Section 2.06(d)(ii) above) established by the Administrative Agent and the Borrower, each acting reasonably.

(vii) Prior to the delivery of a Discounted Voluntary Prepayment Notice, (A) upon written notice to the Administrative Agent, the Borrower may withdraw or modify its offer to make a Discounted Voluntary Prepayment pursuant to any Discounted Prepayment Option Notice and (B) no Lender may withdraw its offer to participate in a Discounted Voluntary Prepayment pursuant to any Lender Participation Notice unless the terms of such proposed Discounted Voluntary Prepayment have been modified by the Borrower after the date of such Lender Participation Notice.

(viii) Nothing in this Section 2.06(d) shall require the Borrower to undertake any Discounted Voluntary Prepayment.

(ix) Notwithstanding anything herein to the contrary, the Administrative Agent shall be under no obligation to act as manager for any Discounted Voluntary Prepayment.

Section 2.07. *Termination or Reduction of Commitments*. (a) *Optional*. The Borrower may, upon written notice to the Administrative Agent, terminate the aggregate Revolving Credit Commitments, or from time to time permanently reduce the Aggregate Revolving Credit Commitments of any Class; *provided* that (i) any such notice shall be received by the Administrative Agent three Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount (A) of $500,000 or any whole multiple of $100,000 in excess thereof or (B) equal to the Aggregate Revolving Credit Commitments, at such time, (iii) if, after giving effect to any reduction of the Aggregate Revolving Credit Commitments or the Letter of Credit Sublimit exceeds the amount of the Aggregate Revolving Credit Commitments, such sublimit shall be automatically reduced by the amount of such excess and (iv) the Borrower may not reduce Revolving Credit Commitments under one Class prior to any reduction under an earlier maturing Class of Revolving Credit Commitments. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of reduction or termination of the Aggregate Revolving Credit Commitments if such reduction or termination would have resulted from a refinancing of all or any part of the Facilities, which refinancing shall not be consummated or otherwise shall be delayed.

(b) *Mandatory*. The Initial Term Commitment of each Initial Term Lender shall be automatically and permanently reduced to $0 on the Closing Date upon the making of the Initial Term Loans in accordance with Section 2.01. The Revolving Credit Commitments shall be automatically and permanently reduced to $0 on the Initial Revolver Maturity Date applicable to such Class.

(c) *Application of Commitment Reductions; Payment of Fees*. The Administrative Agent will promptly notify the Lenders of any termination or reduction of unused portions of the Letter of Credit Sublimit or the unused Commitments of any Class or Class under this Section 2.07. Upon any reduction of unused Commitments of any Class or Class, the Commitment of each Lender of such Class or Class shall be reduced by such Lender's Pro Rata Share of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.09). All Commitment Fees accrued until the effective date of any termination of the Revolving Credit Commitments shall be paid on the effective date of such termination.

Section 2.08. *Repayment of Loans*.

(a) *[*Reserved*]*.

(b) *Initial Term Loans*. The Borrower shall repay to the Administrative Agent for the ratable account of the Initial Term Lenders: (A) on or prior to the last Business Day of each March, June, September and December that occurs prior to the Initial Term Loan Maturity Date, an aggregate amount equal to the Applicable Amortization Percentage of the initial aggregate principal amount of all Initial Term Loans made on the Closing Date, with the first such payment to be made on the last Business Day of the first full calendar quarter ending after the Closing Date and (B) on the Initial Term Loan Maturity Date, an aggregate amount equal to the aggregate principal amount of all Initial Term Loans outstanding on such date.

(c) *Revolving Credit Loans*. The Borrower shall repay to the Administrative Agent for the ratable account of the applicable Revolving Credit Lenders of any Class on the Maturity Date applicable to such Class of the aggregate principal amount of all of its Revolving Credit Loans of such Class outstanding on such date.

Section 2.09. *Interest*.

(a) Subject to the provisions of Section 2.09(b), (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Loan Notice plus the Applicable Margin and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin.

(b) While any Specified Event of Default exists, the Borrower shall pay interest on all overdue Obligations hereunder (regarding which all applicable grace periods set forth in Section 8.01 have expired) at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

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

Section 2.10. *Fees*. In addition to certain fees described in Section 2.04(i) and 2.04(j):

(a) [*Reserved*].

(b) *Commitment Fee for Initial Revolving Credit Commitments*. The Borrower shall pay to the Administrative Agent a commitment fee (the "**Commitment Fee**") for the account of each Initial Revolving Credit Lender (other than any Defaulting Lender) in accordance with its Pro Rata Share of the Initial Revolving Credit Facility, in Dollars equal to the Applicable Margin times the actual daily amount by which the aggregate Initial Revolving Credit Commitments exceed the sum of (A) the Outstanding Amount of Initial Revolving Credit Loans, and (B) the Outstanding Amount of L/C Obligations. The Commitment Fee shall accrue at all times from the Closing Date until the date on which the aggregate Initial Revolving Credit Commitments have terminated, the Outstanding Amounts on all Initial Revolving Credit Loans have been paid and the Outstanding Amounts on all L/C Obligations have been paid or Cash Collateralized (the "**Initial Revolving Termination Date**"), including at any time during which one or more of the conditions in Article 4 is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Initial Revolving Termination Date. The Commitment Fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Margin during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect.

(c) *Other Fees*. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified.

Section 2.11. *Computation of Interest and Fees*. All computations of interest for Base Rate Loans when the Base Rate is determined by the "**prime rate**" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.13(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.12. *Evidence of Indebtedness*. Upon the request of any Lender to the Borrower, the Borrower shall execute and deliver to such Lender a Note payable to such Lender and its registered assigns, which shall evidence such Lender's Loans to the Borrower. Each Lender may attach schedules to a Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

Section 2.13. *Payments Generally*. (a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. (or, in the case of Section 2.06(a)(iii), 3:00 p.m.) on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. (or, in the case of Section 2.06(a)(iii), 3:00 p.m.) may, in the discretion of the Administrative Agent, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in immediately available funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in immediately available funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the Overnight Rate; and

(ii) if any Lender failed to make such payment with respect to any Borrowing, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the Overnight Rate. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.13(b) shall be conclusive, absent manifest error.

(c) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article 4 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

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

(f) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the sum of (i) the Outstanding Amount of all Loans outstanding at such time and (ii) the Outstanding Amount of all L/C Obligations outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

(g) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(c), 2.04(d), 2.05(c) or 9.07 (or if the Borrower shall have paid any amount or posted any cash collateral in respect of such Lender's Pro Rata Share of L/C Obligations pursuant to Section 2.17(c)(ii)), then notwithstanding any contrary provision hereof, with respect to any amounts thereafter received by the Administrative Agent for the account of such Lender, the Administrative Agent (i) shall apply such amounts (A) first, for the benefit of the Administrative Agent or the L/C Issuer to satisfy such Lender's obligations to it under such Section until all such unsatisfied obligations are fully paid, and (B) second, unless an Event of Default has occurred and is continuing, to reimburse the Borrower for any cash collateral posted by the Borrower until the Borrower is fully reimbursed, and (ii) thereafter, may, in its sole discretion, hold any such remaining amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender under any such Section; *provided* any amounts held pursuant to clause (ii) hereof shall be released to such Lender upon the earlier of (x) the date on which any of the actions described in Section 8.02(a), 8.02(b) or 8.02(c) or the proviso to Section 8.02 shall have been taken or occurred and (y) the Initial Revolver Maturity Date.

Section 2.14. *Sharing of Payments*. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Loans made by it, or the participations in L/C Obligations held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C Obligations held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 11.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff, but subject to Section 11.10) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.14 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.14 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.15. *[Reserved]*.

Section 2.16. *Increase in Commitments*.

(a) Upon written notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may request: additional Term Commitments and/or additional Revolving Credit Commitments (each, an "**Incremental Facility**") denominated in any currency agreed to by the lenders providing such Incremental Facility pursuant to any Incremental Joinder; *provided* that after giving effect to any such addition, the aggregate amount of all additional Term Commitments and additional Revolving Credit Commitments that have been added pursuant to this Section 2.16(a) shall not exceed the Incremental Cap. Each such addition under this Section 2.16(a) shall be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof.

(b) Any loans made in respect of any such additional Term Commitments (the "**Incremental Term Loans**") may be made, at the option of the Borrower, either by (i) increasing the Initial Term Loans with the same terms (including pricing) as the existing Initial Term Loans or (ii) creating a new tranche of terms loans (an "**Incremental Term Loan Class**"); *provided* that any Incremental Term Loan Class (A)(x) in the case of any Incremental Term Loans that are secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security, shall not mature prior to the stated Maturity Date applicable to the latest maturing Class of Term Loans on the date of incurrence of such Incremental Term Loans and (y) in the case of any Incremental Term Loans that are secured by a Lien that is junior to the Initial Term Loans in right of payment or with respect to security or that are unsecured, shall not mature prior to the date that is ninety-one (91) days following the stated Maturity Date applicable to the latest maturing Class of Term Loans on the date of incurrence of such Incremental Term Loans, (B) the Weighted Average Life to Maturity of any Incremental Term Loan Class shall be no less than the Weighted Average Life to Maturity of such latest maturing Class of Term Loans, (C) any Incremental Term Loans secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security may share on a pro rata basis or a less than pro rata basis (but not a greater than pro rata basis) in any mandatory or voluntary prepayments with the then outstanding Term Loans and (D) any Incremental Term Loans that are secured by a Lien that is junior to the Initial Term Loans in right of payment or with respect to security or that are unsecured may not share in any mandatory or voluntary prepayments with the then outstanding Term Loans.

(c) Any such additional Revolving Credit Commitments may be made by (x) establishing one or more additional Classes of revolving credit commitments (an "**Incremental Revolving Facility**"); provided the (i) final maturity date of any such Incremental Revolving Facility shall be no earlier than the final maturity date of the Initial Revolving Credit Facility, (ii) such Incremental Revolving Facility shall require no scheduled amortization or mandatory commitment reduction prior to the final maturity date of the Initial Revolving Credit Facility and (iii) any Incremental Revolving Facility may participate on a pro rata basis or a less than pro rata basis (but not a greater than pro basis) in any reduction or termination as compared to earlier maturing Revolving Credit Commitments or (y) increasing any Class of Revolving Credit Commitments (the "**Incremental Revolving Credit Commitments**") with the same terms as such existing Class of Revolving Credit Commitments (it being understood that, if required to consummate an Incremental Revolving Facility, the pricing, interest rate margins, rate floors and undrawn fees on the Revolving Facility being increased may be increased for all Revolving Lenders of the Revolving Credit Facility being increased, but additional upfront or similar fees may be payable to the Lenders participating in the Incremental Revolving Credit Commitments without any requirement to pay such amounts to any existing Revolving Lenders).

(d) The Borrower may invite any Lender or any additional Eligible Assignees to become Term Lenders or Revolving Credit Lenders, as applicable, pursuant to a commitment increase and joinder agreement in form and substance reasonably satisfactory to the Administrative Agent (each, an "**Incremental Joinder**"). No Lender will be obligated to provide all or any portion of any Incremental Facility and the determination to provide such commitment shall be within the sole and absolute discretion of such Lender. Any failure by a Lender to respond to any such invitation shall not be deemed an acceptance or agreement to provide such Incremental Facility.

(e) If any Term Commitments or Revolving Credit Commitments are added in accordance with this Section 2.16, the Administrative Agent and the Borrower shall determine the effective date (the "**Incremental Effective Date**") and the final allocations of such additional Commitments. The Administrative Agent shall promptly notify the Borrower and the lenders providing such Incremental Facility of the final allocation thereof and the Incremental Effective Date. As a condition precedent to such addition, before and after giving effect to such increase, (i) (A) the representations and warranties contained in Article 5 and the other Loan Documents shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as so qualified) on and as of the Incremental Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall have been true and correct in all material respects as of such earlier date, and (B) no Event of Default shall exist after giving effect to such addition; *provided* that notwithstanding anything to the contrary in this Section 2.16 or in any other provisions of any Loan Document, if the proceeds of any Incremental Facility are intended to be applied to finance a Limited Condition Transaction, at the option of the Borrower, (1) the conditions to the Incremental Effective Date shall be subject to the LCT Provisions, (2) the only representations and warranties that will be required to be true and correct in all material respects as of the applicable Incremental Effective Date shall be the Specified Representations and (3) no Specified Event of Default shall exist on the Incremental Effective Date).

(f) On each Incremental Effective Date, (i) each Lender or Eligible Assignee which is providing an Incremental Term Loan Class (A) shall become a "Term Lender" for all purposes of this Agreement and the other Loan Documents, and (B) shall make an Incremental Term Loan to the Borrower in a principal amount equal to such additional Term Commitment, and such Incremental Term Loan shall be deemed a "Term Loan" for all purposes of this Agreement and the other Loan Documents and (ii) each Lender or Eligible Assignee which is providing an Incremental Revolving Credit Commitment shall become a "Revolving Credit Lender" for all purposes of this Agreement and the other Loan Documents, with a Revolving Credit Commitment of the applicable Class.

(g) The interest rate applicable to any Incremental Term Loans will be determined by the Borrower and the lenders providing such Incremental Term Loans; *provided* that in the case of any such Incremental Term Loans secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security, the All-In-Rate applicable thereto will not be more than 0.50% per annum higher than the All-In-Rate in respect of the Initial Term Loans unless the Applicable Margin (and/or, as provided in the proviso below, the Base Rate floor or Eurocurrency Rate floor) with respect to the Initial Term Loans is adjusted to be equal to the All-In-Rate applicable to such Indebtedness, minus 0.50% per annum, *provided* that, unless otherwise agreed by the Borrower in its sole discretion, that any increase in All-In-Rate to any Initial Term Loan due to the application or imposition of an Base Rate floor or Eurocurrency Rate floor on any such Indebtedness shall be effected solely through an increase in (or implementation of, as applicable) any Base Rate floor or Eurocurrency Rate floor applicable to such Initial Term Loan.

(h) Any Incremental Facility may be secured only by the Collateral (*provided* that, in the case of any Incremental Facility that is funded into Escrow pursuant to customary escrow arrangements, such Incremental Facility may be secured by the applicable funds and related assets held in Escrow (and the proceeds thereof) until the time of the release from Escrow of such funds (and may not be secured by any other assets prior to such release)) and rank pari passu or junior with respect to security with the Facilities (and if secured, subject to an Acceptable Intercreditor Agreement (which may be effective (or entered into) only immediately after such release from Escrow referred to herein)) or may be unsecured, and will not be guaranteed by an entity which is not (or does not become) a Loan Party.

(i) Except as otherwise specified above (including with respect to margin, pricing, maturity and/or fees), the other terms of any Incremental Facility, shall be on terms and pursuant to documentation to be determined between the Borrower and the lenders providing such Incremental Facility than the terms of this Agreement are to the Lenders; *provided*, that to the extent such terms and documentation are more favorable to the lenders providing such Incremental Facility (except to the extent permitted by clauses (b), (c) and (g) above), such terms shall be reasonably satisfactory to the Administrative Agent (except for covenants or other provisions applicable only to the periods after the latest maturity date of all of the existing Facilities) (it being understood that if any financial maintenance covenant is added for the benefit of (A) any Incremental Term Loan Class, such financial maintenance covenant (except to the extent only applicable after the maturity date of the Initial Term Facility) may also be added for the benefit of all of the Facilities or (B) any Incremental Revolving Credit Commitments, such financial maintenance covenant (except to the extent only applicable after the maturity date of the Initial Revolving Credit Facility) may also added for the benefit of the Initial Revolving Credit Facility; it being understood and agreed that in each such case of clauses (A) and (B), no consent of any Lender shall be required in connection with any amendment adding such financial maintenance covenant and the Administrative Agent hereby agrees to acknowledge such amendment as promptly as possible, and in any case, within three (3) Business Days of written request by the Borrower; it being acknowledged and agreed by each Lender that the Administrative Agent, in its capacity as such shall have no liability with respect to such acknowledgment and each Lender hereby irrevocably waives to the fullest extent permitted by Law any claims with respect to such acknowledgment.

(j) The proceeds of any Incremental Facility may be used by the Borrower and its Subsidiaries for working capital and other general corporate purposes, including the financing of permitted acquisitions and other Investments and any other use not prohibited by this Agreement.

Section 2.17. *Defaulting Lenders*. Notwithstanding any provision of this Agreement to the contrary, if any Revolving Credit Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) The Commitment Fee shall cease to accrue on the unused portion of the Revolving Credit Commitments of such Defaulting Lender under Section 2.10(b);

(b) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 8 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.10 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer hereunder; third, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.04(g) fourth, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.04(g) sixth, to the payment of any amounts owing to the Lenders or the L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.17(c)(i). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(b) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) if any L/C Obligations exist at the time any Revolving Credit Lender becomes a Defaulting Lender then:

(i) all or any part of the L/C Obligations of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders that are Revolving Credit Lenders in accordance with their respective Pro Rata Shares of the L/C Obligations but only to the extent (A) no Event of Default has occurred and is continuing at such time and (B) the sum of all non-Defaulting Lenders' Revolving Outstandings plus such Defaulting Lender's Pro Rata Share of all L/C Obligations does not exceed the total of all non-Defaulting Lenders' Revolving Credit Commitments;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within three Business Days following notice by the Administrative Agent cash collateralize for the benefit of the L/C Issuer only the Borrower's obligations corresponding to such Defaulting Lender's Pro Rata Share of all L/C Obligations (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.04(g) for so long as such Defaulting Lender's Pro Rata Share of all L/C Obligations is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's Pro Rata Share of all L/C Obligations pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.04(i) with respect to such Defaulting Lender's Pro Rata Share of all L/C Obligations during the period such Defaulting Lender's Pro Rata Share of all L/C Obligations is cash collateralized;

(iv) if such Defaulting Lender's Pro Rata Share of all L/C Obligations is reallocated to the non-Defaulting Lenders pursuant to clause (i) above, then the fees payable to the non-Defaulting Lenders pursuant to Sections 2.04(i) and 2.10(b) shall be adjusted in accordance with such non-Defaulting Lenders' Pro Rata Shares; and

(v) if all or any portion of such Defaulting Lender's Pro Rata Share of all L/C Obligations is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the L/C Issuer or any other Lender hereunder, all facility fees and commitment fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Revolving Credit Commitment that was utilized by such L/C Obligations) and letter of credit fees payable under Section 2.04(i) with respect to such Defaulting Lender's Pro Rata Share of all L/C Obligations shall be payable to the L/C Issuer until and to the extent that such Defaulting Lender's Pro Rata Share of all L/C Obligations is reallocated and/or cash collateralized; and

(d) so long as any Revolving Credit Lender is a Defaulting Lender, the L/C Issuer shall not be required to issue, amend or increase any Letter of Credit, unless they are satisfied (in their reasonable judgment) that the related exposure and the Defaulting Lender's then outstanding Pro Rata Share of all L/C Obligations will be 100% covered by the Revolving Credit Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.17(b), and participating interests in any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.17(c)(i) (and such Defaulting Lender shall not participate therein).

(e) In the event that each of the Administrative Agent, the Borrower and the L/C Issuers agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Revolving Credit Lenders' Pro Rata Shares of the L/C Obligations shall be readjusted to reflect the inclusion of such Lender's Revolving Credit Commitment and on such date such Lender shall purchase at par such of the Revolving Credit Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Revolving Credit Loans in accordance with its Pro Rata Share, and such Lender shall cease to be a Defaulting Lender.

Section 2.18. *Extension of Maturity Date*.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one (1) or more offers (each, an "**Extension Offer**") made from time to time by the Borrower to all Lenders holding Term Loans with a like maturity date or Revolving Credit Commitments with a like maturity date, in each case on a pro rata basis (based on the aggregate outstanding principal amount of the respective Term Loans or Revolving Credit Commitments with a like maturity date, as the case may be) and on the same terms to each such Lender, the Borrower is hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in such Extension Offers to extend the maturity date of all or a portion of each such Lender's Term Loans and/or all of such Lender's Revolving Credit Commitments and otherwise modify the terms of such Term Loans and/or Revolving Credit Commitments pursuant to the terms of the relevant Extension Offer (including by changing the interest rate or fees payable in respect of such Term Loans and/or Revolving Credit Commitments (and related outstandings) and/or modifying the amortization schedule in respect of such Term Loans) (each, an "**Extension**", and any Extended Term Loans shall constitute a separate Class of Term Loans from the Class of Term Loans from which they were converted and any Extended Revolving Credit Commitments shall constitute a separate Class of Revolving Credit Commitments from the Class of Revolving Credit Commitments from which they were converted), so long as the following terms are satisfied:

(i) [reserved];

(ii) except as to interest rates, fees and final maturity (which shall be determined by the Borrower and set forth in the relevant Extension Offer), the Revolving Credit Commitment of any Lender that agrees to an extension with respect to such Revolving Credit Commitment extended pursuant to an Extension (an "**Extended Revolving Credit Commitment**"; and the Loans thereunder, "**Extended Revolving Credit Loans**"), and the related outstandings, shall be a Revolving Credit Commitment (or related outstandings, as the case may be) with the same terms (or terms not materially less favorable to existing Lenders, taken as a whole) as the original Revolving Credit Commitments (and related outstandings); *provided* that, (x) subject to the provisions of Section 2.04(m) and Section 2.05(h) to the extent dealing with Letters of Credit which mature or expire after a maturity date when a Class of Revolving Credit Commitments is extended such that there exists an Extended Revolving Credit Commitments with a longer maturity date with respect to such original Class, all Letters of Credit of the original Class shall be participated in on a pro rata basis by all Lenders with Extended Revolving Credit Commitments with respect to such Class in accordance with their Pro Rata Share (and except as provided in Section 2.04(m) and Section 2.05(h), without giving effect to changes thereto on an earlier maturity date with respect to Letters of Credit theretofore incurred or issued), (y) all borrowings and repayments (except for (A) payments of interest and fees at different rates on Extended Revolving Credit Commitments (and related outstandings), (B) repayments required upon the maturity date of the non-extending Revolving Credit Commitments and (C) repayments made in connection with a permanent repayment and reduction or termination of commitments of any Class of Revolving Credit Commitments) of Extended Revolving Loans after the applicable Extension date shall be made on a pro rata basis with the original Class of Revolving Credit Commitments as to which such Extended Revolving Credit Commitments relate and (z) at no time shall there be Revolving Credit Commitments hereunder that have more than three different maturity dates;

(iii) except as to interest rates, fees, amortization, final maturity date, premium, required prepayment dates and participation in prepayments (which shall, subject to immediately succeeding clauses (iv), (v) and (vi), be determined by the Borrower and set forth in the relevant Extension Offer), the other terms of the Term Loans of any Lender that agrees to an extension with respect to such Term Loans extended pursuant to any Extension (any such Extended Term Loans, "**Extended Term Loans**") shall, if not substantially consistent with the terms of the applicable Term Loan Class prior to such Extension, be reasonably satisfactory to the Administrative Agent (except for covenants or other provisions applicable only to the periods after the latest maturity date of all of the existing Facilities; it being understood that, to the extent any financial maintenance covenant is added for the benefit of (A) any Class of Extended Term Loans, such financial maintenance covenant (except to the extent only applicable after the maturity date of the Initial Term Facility) may also be added for the benefit of all of the Facilities or (B) any Extended Revolving Credit Commitments, such financial maintenance covenant (except to the extent only applicable after the maturity date of the Initial Revolving Credit Facility) may also added for the benefit of the Initial Revolving Credit Facility; it being understood and agreed that in each such case of clauses (A) and (B), no consent of any Lender shall be required in connection with any amendment adding such financial maintenance covenant and the Administrative Agent hereby agrees to acknowledge such amendment as promptly as possible, and in any case, within three (3) Business Days of written request by the Borrower; it being acknowledged and agreed by each Lender that the Administrative Agent, in its capacity as such shall have no liability with respect to such acknowledgment and each Lender hereby irrevocably waives to the fullest extent permitted by Law any claims with respect to such acknowledgment;

(iv) the Weighted Average Life to Maturity of any Extended Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans extended thereby;

(v) any Extended Term Loans (A) secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security may share on a pro rata basis or a less than pro rata basis (but not a greater than pro rata basis) in any mandatory or voluntary prepayments with the then outstanding Term Loans and (B) that are secured by a Lien that is junior to the Initial Term Loans in right of payment or with respect to security or that are unsecured may not share in any mandatory or voluntary prepayments with the then outstanding Term Loans;

(vi) if the aggregate principal amount of the Class of Term Loans (calculated on the face amount thereof) or Revolving Credit Commitments, as the case may be, in respect of which Term Lenders or Revolving Credit Lenders, as the case may be, shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans or Revolving Credit Commitments of such Class, as the case may be, offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans or Revolving Credit Commitments of such Class, as the case may be, of such Term Lenders or Revolving Credit Lenders, as the case may be, shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Term Lenders or Revolving Credit Lenders, as the case may be, have accepted such Extension Offer,

(vii) all documentation in respect of such Extension (including the Extension Amendment) shall be consistent with the foregoing; and

(viii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower and no Lender shall be obligated to extend its Term Loans or Revolving Credit Commitments unless it so agrees.

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.18, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments or commitment reductions for purposes of Sections 2.06, 2.07 or 2.08, (ii) the amortization schedules (in so far as such schedule affects payments due to Lenders participating in the relevant Facility) set forth in Section 2.08 shall be adjusted to give effect to the Extension of the relevant Facility and (iii) except as set forth in clause (a)(vii) above, no Extension Offer is required to be in any minimum amount or any minimum increment; *provided* that the Borrower may at its election specify as a condition (a "**Minimum Extension Condition**") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower's sole discretion and which may be waived by the Borrower) of Term Loans or Revolving Credit Commitments (as applicable) of any or all applicable Class to be tendered. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.18 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans and/or Extended Revolving Credit Commitments on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including Sections 2.06, 2.07 or 2.08) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.18.

(c) No consent of any Lender or the Administrative Agent shall be required to effectuate any Extension, other than (A) the consent of each Lender agreeing to such Extension with respect to one or more of its Term Loans and/or Revolving Credit Commitments (or a portion thereof) and (B) with respect to any Extension of the Revolving Credit Commitments (or a portion thereof), the consent of the L/C Issuer applicable to such Revolving Credit Commitment (if such L/C Issuer is being requested to issue letters of credit with respect to the Class of Extended Revolving Credit Commitments), which consent shall not be unreasonably withheld or delayed. All Extended Term Loans and Extended Revolving Credit Commitments and all obligations in respect thereof shall be Obligations under this Agreement and the other Loan Documents; *provided* that if such Indebtedness is secured by a Lien on the Collateral that is junior to the Lien securing the Secured Obligations, it shall be subject to an Acceptable Intercreditor Agreement. The Lenders hereby irrevocably authorize and direct the Administrative Agent to acknowledge amendments to this Agreement and the other Loan Documents, which is entered into among the Borrower and the Lenders providing such Extension, as may be necessary in order to establish new Classes or sub-Classes in respect of Revolving Credit Commitments or Term Loans so extended and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Classes or sub-Classes, in each case on terms consistent with this Section 2.18, which amendment shall be effective to amend this Agreement notwithstanding the provisions of Section 11.01, and the Administrative Agent hereby agrees to (and is directed by each Lender to) acknowledge such amendment as promptly as possible, and in any case, within three (3) Business Days of written request by the Borrower; it being acknowledged and agreed by each Lender that the Administrative Agent, in its capacity as such shall have no liability with respect to such acknowledgment and each Lender hereby irrevocably waives to the fullest extent permitted by Law any claims with respect to such acknowledgment. In addition, if so provided in such amendment and with the consent of the L/C Issuer, participants in Letters of Credit expiring on or after the latest maturity date (but in no event later than the date that is five Business Days prior to the Initial Revolver Maturity Date) in respect of the Revolving Credit Commitments shall be re-allocated from Lenders holding non-Extended Revolving Credit Commitments to Lenders holding Extended Revolving Credit Commitments in accordance with the terms of such amendment; *provided*, however, that such participation interests shall, upon receipt thereof by the relevant Lenders holding Revolving Credit Commitments, be deemed to be participation interests in respect of such Revolving Credit Commitments and the terms of such participation interests shall be adjusted accordingly.

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least three Business Days' (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.18; provided that, failure to give such notice shall in no way affect the effectiveness of any amendment entered into to effectuate such Extension in accordance with this Section 2.18 The Loan Parties hereby expressly consent to any such Extension and agree and acknowledge that any security granted or to be granted shall also cover and apply to such Extension.

Section 2.19. *Refinancing Amendments*.

(a) The Borrower may, by written notice to the Administrative Agent from time to time, request Indebtedness in exchange for, or to extend, renew, replace or refinance, in whole or in part, existing Term Loans or existing Revolving Credit Loans (or unused Revolving Credit Commitments), or any then existing Credit Agreement Refinancing Indebtedness (solely for purposes of this Section 2.19, "**Refinanced Debt**") in the form of (i) Refinancing Term Loans in respect of all or any portion of any Class of Term Loans then outstanding under this Agreement or (ii) Refinancing Revolving Credit Commitments in respect of all or any portion of any Revolving Credit Loans (and the unused Revolving Credit Commitments with respect to such Revolving Credit Loans) then outstanding under this Agreement, in each case pursuant to a Refinancing Amendment (such Indebtedness, "**Refinancing Indebtedness**"). Each written notice to the Administrative Agent requesting a Refinancing Amendment shall set forth (i) the amount of the Refinancing Term Loans or Refinancing Revolving Credit Commitments being requested (which shall be in minimum increments of $1,000,000 and a minimum amount of $5,000,000) and (ii) the date on which such Refinancing Term Loans or Refinancing Revolving Credit Commitments are requested to become effective (which shall not be less than three Business Days (or such shorter period as the Administrative Agent may reasonably agree) after the date of such notice); provided that, failure to give such notice shall in no way affect the effectiveness of any amendment entered into to effectuate such Refinancing Indebtedness in accordance with this Section 2.18. The Borrower may seek Refinancing Indebtedness from existing Lenders (each of which shall be entitled to agree or decline to participate in its sole discretion) or any Person that is an Eligible Assignee (each such Person that is not an existing Lender and that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with this Section 2.19, an "**Additional Refinancing Lender**").

(b) Notwithstanding the foregoing, the effectiveness of any Refinancing Amendment shall be subject to (i) on the date of effectiveness thereof, no Event of Default shall have occurred and be continuing or shall be caused thereby, (ii) the terms of the applicable Refinancing Indebtedness shall comply with Section 2.19(c), (iii) before and after giving effect to the incurrence of any Refinancing Indebtedness, each of the conditions set forth in Section 4.02 shall be satisfied and (iv) except as otherwise specified in the applicable Refinancing Amendment, the Administrative Agent shall have received legal opinions, board resolutions and other closing certificates reasonably requested by the Administrative Agent and consistent with those delivered on the Closing Date under Section 4.01.

(c) Except as otherwise specified below (including with respect to margin, pricing, maturity and/or fees), the other terms and conditions of any Refinancing Indebtedness (excluding pricing, interest rate margins, rate floors, discounts, fees, premiums and prepayment or redemption terms and provisions which shall be determined by the Borrower and the lenders thereunder) shall be on terms and pursuant to documentation to be determined by the Borrower and the lenders providing such Refinancing Indebtedness; *provided* that, to the extent not consistent with the terms of the applicable Facility being refinancing, such Refinancing Indebtedness shall either (A) reflect market terms and conditions (taken as a whole) at the time of incurrence, issuance or effectiveness thereof (as determined by the Borrower in good faith) or (B) not be materially more restrictive to Holdings and its Restricted Subsidiaries (when taken as a whole) than the terms and conditions of this Agreement (when taken as a whole) (except, in each case of clauses (A) and (B) above, for covenants and other provisions applicable only to periods after the latest maturity date of any Facility remaining outstanding after giving effect to the incurrence or issuance of such Refinancing Indebtedness (it being understood that, to the extent any more restrictive financial maintenance covenant is added for the benefit of (x) any Refinancing Term Loans, such financial maintenance covenant shall also be added for the benefit of each Facility remaining outstanding after the incurrence of such Refinancing Term Loans and (y) any Refinancing Revolving Credit Commitments, such financial maintenance covenant shall also be added for the benefit of the Initial Revolving Credit Facility to the extent it remains outstanding after the incurrence of such Refinancing Revolving Facility; it being understood and agreed that in each case, no consent of any Lender shall be required in connection with adding such financial maintenance covenant; *provided* that (i) such Refinancing Indebtedness consisting of Refinancing Term Loans shall have (A) a maturity date no earlier than (x) in the case of any such Refinancing Term Loans that are secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security, the stated Maturity Date applicable to the latest maturing Class of Term Loans on the date of incurrence of such Refinancing Term Loans and (y) in the case of any such Refinancing Term Loans that are secured by a Lien that is junior to the Initial Term Loans in right of payment or with respect to security or that are unsecured, the date that is ninety-one (91) days following the stated Maturity Date applicable to the latest maturing Class of Term Loans on the date of incurrence of such Refinancing Term Loans and (B) a Weighted Average Life to Maturity equal to or greater than that of the Refinanced Debt, (ii) there shall be no scheduled amortization of such Refinancing Indebtedness consisting of Refinancing Revolving Credit Commitments and the scheduled termination date of such Refinancing Revolving Credit Commitments shall not be earlier than the scheduled termination date of the Refinanced Debt, (iii) such Refinancing Indebtedness will rank pari passu or junior in right of payment and of security with the applicable Refinanced Debt (and, if applicable, be subject to an Acceptable Intercreditor Agreement) or be unsecured (and shall not be secured by any assets that are not Collateral), (iv) such Refinancing Indebtedness shall be guaranteed by the Guaranty and shall not be guaranteed by any person that is not a Guarantor, (v) the interest rate margin, rate floors, fees, original issue discount and premiums applicable to such Refinancing Indebtedness shall be determined by the Borrower and the lenders providing such Refinancing Indebtedness, (vi) such Refinancing Indebtedness (including, if such Indebtedness includes any Refinancing Revolving Credit Commitments, the unused portion of such Refinancing Revolving Credit Commitments) shall not have a greater principal amount than the principal amount of the Refinanced Debt plus accrued interest, fees and premiums (if any) thereon and reasonable fees and expenses associated with the refinancing, and the aggregate unused Refinancing Revolving Credit Commitments shall not exceed the unused Revolving Credit Commitments being replaced, (vii) such Refinanced Debt shall be repaid, defeased or satisfied and discharged on a dollar-for-dollar basis, and all accrued interest, fees and premiums (if any) in connection therewith shall be paid, substantially concurrently with the incurrence of such Refinancing Indebtedness in accordance with the provisions of Section 2.13; *provided*, *further*, that to the extent that such Refinancing Indebtedness consists of Refinancing Revolving Credit Commitments, the Revolving Credit Commitments being refinanced by such Refinancing Indebtedness shall be terminated, and all accrued fees in connection therewith shall be paid, on the date such Refinancing Indebtedness is issued, incurred or obtained and (viii) any such Refinancing Term Loans that are secured by the Collateral on a *pari passu* basis with the Initial Term Loans in right of payment and with respect to security may share on a pro rata basis or a less than pro rata basis (but not a greater than pro rata basis) in any mandatory or voluntary prepayments with the then outstanding Term Loans and any such Refinancing Term Loans secured by a Lien that is junior to the Initial Term Loans in right of payment or with respect to security or that are unsecured may not share in any mandatory or voluntary prepayments with the then outstanding Term Loans.

(d) In connection with any Refinancing Indebtedness pursuant to this Section 2.19, the Borrower and each applicable Lender or Additional Refinancing Lender shall execute and deliver to the Administrative Agent a Refinancing Amendment as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.19, including any amendments necessary to establish the Refinancing Term Loans and Refinancing Revolving Credit Commitments as new Classes, Class or sub-Class of Term Loans or Revolving Credit Commitments and such other technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection therewith, in each case on terms not inconsistent with this Section 2.19. The Administrative Agent hereby agrees to (and is directed by each Lender to) acknowledge such amendment as promptly as possible, and in any case, within three (3) Business Days of written request by the Borrower; it being acknowledged and agreed by each Lender that the Administrative Agent, in its capacity as such shall have no liability with respect to such acknowledgment and each Lender hereby irrevocably waives to the fullest extent permitted by Law any claims with respect to such acknowledgment. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment; provided that, failure to give such notice shall in no way affect the effectiveness of any amendment entered into to effectuate such Extension in accordance with this Section 2.18. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent reasonably necessary to reflect the existence and terms of the Refinancing Indebtedness incurred pursuant thereto.

## ARTICLE 3
## TAXES, INCREASED COSTS AND ILLEGALITY

Section 3.01. *Taxes*. (a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Borrower under any Loan Document or any Letters of Credit shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent or the Borrower) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or the Borrower, then the Administrative Agent or the Borrower shall be entitled to make such deduction or withholding.

(ii) If the Borrower or the Administrative Agent shall be required by applicable Laws to withhold or deduct any Taxes (including United States Federal backup withholding) from any payment, then (A) the Borrower or the Administrative Agent shall withhold or make such deductions as are determined by it to be required, (B) the Borrower or the Administrative Agent, as applicable, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including withholdings or deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) *Payment of Other Taxes by the Borrower*. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) *Tax Indemnifications*.

(i) The Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor accompanied by the certificate described below in this clause (c)(i), for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, the Administrative Agent (x) against any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting or expanding any obligation of the Borrower to do so), (y) against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.07 relating to the maintenance of a Participant Register and (z) against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (c)(ii).

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

(e) *Status of Lenders; Tax Documentation*.

(i) Any Recipient that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law or the taxing authorities of a jurisdiction pursuant to such applicable Law reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Recipient, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Recipient is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D)) shall not be required if in the Recipient's reasonable judgment such completion, execution or submission would subject such Recipient to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Recipient.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Recipient that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Recipient becomes a Recipient under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), copies of executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Recipient under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

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

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

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit J-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**") and (y) copies of executed originals of an applicable IRS Form W-8BEN or IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, copies of executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, an applicable IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-2 or Exhibit J-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Recipient under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), copies of executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) such Recipient 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 Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "**FATCA**" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Recipient agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall promptly update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) *Treatment of Certain Refunds*. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Borrower pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(g) *Survival*. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

Section 3.02. *Illegality*. If any Lender determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans in Dollars or to convert Base Rate Loans to Eurocurrency Rate Loans, shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurocurrency Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.03. *Inability to Determine Rates*. If in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof, (a) (i) the Administrative Agent reasonably determines that deposits (whether in Dollars or an Alternate Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Loan, or (ii) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan (whether denominated in Dollars or an Alternate Currency) or in connection with an existing or proposed Base Rate Loan, or (b) the Administrative Agent or the Required Lenders determine that for any reason the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended, (to the extent of the affected Eurocurrency Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans in the affected currency or currencies (to the extent of the affected Eurocurrency Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Notwithstanding the foregoing, if the Administrative Agent has made the determination that either (i) the circumstances set forth above have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth above have not arisen, but the supervisor for the administrator of the components of the Eurodollar Rate or a governmental authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Eurodollar Rate shall no longer be used for determining interest rates for loans (in the case of either such clause (i) or (ii), an "**Alternative Interest Rate Election Event**"), the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Eurodollar Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for leveraged syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable or reasonably required in connection therewith as agreed between the Administrative Agent and the Borrower. Notwithstanding anything to the contrary in this Agreement (including without limitation Section 11.01), such amendment shall become effective without any further action or consent of any other party to this Agreement or any other Person (other than the Administrative Agent and the Borrower) so long as, with respect to the Lenders, the Administrative Agent shall not have received, within five (5) Business Days after the date that notice of such alternate rate of interest and related modifications is provided to the Lenders, a written notice from the Required Lenders stating that they object to such amendment (which amendment shall not be effective prior to the end of such five (5) Business Day notice period). To the extent an alternate rate of interest is adopted as contemplated hereby, the approved rate shall be applied in a manner consistent with prevailing market convention; provided, that, to the extent such prevailing market convention is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and the Borrower. Notwithstanding anything contained herein to the contrary, if such alternate rate of interest as determined in this paragraph is determined to be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

Section 3.04. *Increased Costs*. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, special deposit compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(b) subject any Lender or L/C Issuer to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(c) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurocurrency Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, or such L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or L/C Issuer, the Borrower will pay to such Lender or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered; *provided further* that no Lender or L/C Issuer shall make a demand for payment hereunder unless such Lender or such L/C Issuer is also making demand for reimbursement of the relevant amounts from similarly situated borrowers under comparable syndicated credit facilities.

Section 3.05. *Capital Requirements*. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law other than due to Taxes (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered; *provided* that no Lender shall make a demand for payment hereunder unless such Lender is also making demand for reimbursement of the relevant amounts from similarly situated borrowers under comparable syndicated credit facilities.

Section 3.06. *Reserves on Eurocurrency Rate Loans.*

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

(b) If any Lender is required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority or other Governmental Authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, the Borrower shall pay such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan. Any Lender requesting payment from the Borrower under Section 3.06(a) or (b) shall give the Borrower at least fifteen days' prior notice (with a copy to the Administrative Agent). If a Lender fails to give notice fifteen days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen days from receipt of such notice.

Section 3.07. *Funding Losses*. Upon demand of any Lender (with a copy to the Administrative Agent), the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any actual loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.09(a) or Section 11.01; including any actual loss or expense arising from the liquidation or reemployment of funds obtained by such Lender to maintain such Loan, or from fees payable to terminate the deposits from which such funds were obtained.

Section 3.08. *Matters Applicable to All Requests for Compensation*.

(a) Any Agent or any Lender claiming compensation under this Article 3 shall deliver a certificate to the Borrower contemporaneously with the demand for payment setting forth in reasonable detail a calculation of the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods. The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof. For the avoidance of doubt, any additional amounts required to be paid pursuant to Section 3.01 are not subject to the limitations set forth in this Section 3.08(a).

(b) Except as provided in the following sentence, failure or delay on the part of any Lender to demand compensation pursuant to the provisions of this Article 3 shall not constitute a waiver of such Lender's right to demand such compensation. With respect to any Lender's claim for compensation under any of Sections 3.02 through 3.07, the Borrower shall not be required to compensate such Lender for any amount incurred more than 180 days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such increased cost or reduction is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation from the Borrower under any of Sections 3.04 through 3.06, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another Eurocurrency Rate Loans, or to convert Base Rate Loans into Eurocurrency Rate Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.08(c) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue from one Interest Period to another any Eurocurrency Rate Loan (or to convert Base Rate Loans into Eurocurrency Rate Loans) shall be suspended pursuant to Section 3.08(b) hereof, such Lender's Eurocurrency Rate Loans shall be automatically converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for such Eurocurrency Rate Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Sections 3.02 through 3.06 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurocurrency Rate Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's Eurocurrency Rate Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurocurrency Rate Loans shall be made or continued instead as Base Rate Loans, and all Base Rate Loans of such Lender that would otherwise be converted into Eurocurrency Rate Loans shall remain as Base Rate Loans.

(d) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in any of Sections 3.02 through 3.06 that gave rise to the conversion of such Lender's Eurocurrency Rate Loans pursuant to this Section 3.08 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurocurrency Rate Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurocurrency Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurocurrency Rate Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments.

(e) (i) If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Recipient or any Governmental Authority for the account of any Recipient pursuant to Section 3.01, then such Recipient shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Recipient, such designation or assignment (A) would eliminate amounts payable pursuant to Section 3.01 in the future and (B) would not subject such Recipient to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Recipient. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Recipient in connection with any such designation or assignment.

(ii) Each Lender agrees that if any Lender (A) requests compensation under any of Sections 3.04 through 3.06, or (B) notifies the Borrower that it has determined that it is unlawful for its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate and/or the provisions of Section 3.03 apply, then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another Lending Office for any Loan or Letter of Credit affected by such event; *provided* that in each case, such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage, and *provided further* that nothing in this Section 3.08(e) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Sections 3.02 or 3.04 through 3.06.

Section 3.09. *Replacement of Lenders Under Certain Circumstances*.

(a) If at any time:

(i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 or Sections 3.04 through 3.06, as a result of any condition described in such Sections or any Lender ceases to make Eurocurrency Rate Loans as a result of any condition described in Section 3.02, Section 3.03 or Sections 3.04 through 3.06 and, in each case, such Lender has declined or is unable to designate a different Lending Office to eliminate such costs in accordance with Section 3.08(e), or

(ii) any Lender becomes a Defaulting Lender, then the Borrower may, on three Business Days' prior written notice to the Administrative Agent and such Lender, and at its sole expense and effort, either:

(A) replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign 100% of its relevant Commitments and the principal of its relevant outstanding Loans at par plus any accrued and unpaid interest pursuant to Section 11.07(d) (with the assignment fee to be paid by the Borrower unless waived by the Administrative Agent in such instance) all of its relevant rights other than its existing rights to payments under Section 3.01 or Section 3.04 and obligations under this Agreement to one or more Eligible Assignees; *provided* that in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; *provided further* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; or

(B) terminate the Commitment of such Lender and repay all obligations of the Borrower owing to such Lender relating to the Loans and participations in L/C Obligations held by such Lender as of such termination date; provided, however, that in the case of a Defaulting Lender only, the Borrower shall have the right to take such action as it may elect (including no action) under the immediately preceding clauses (A) and/or (B) independently and at different times with respect to any one or more Class or Classes of Loans (and the related Commitments) of such Defaulting Lender, without being obligated to take the same action with respect to all Classes of Loans and related Commitments of such Defaulting Lender.

(b) Any Lender being replaced pursuant to Section 3.09(a) above shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's applicable Commitment and outstanding Loans and related participations in L/C Obligations, and (ii) deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent.

(c) Pursuant to an Assignment and Assumption arising by operation of Section 3.09(b), (i) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitment and outstanding Loans and participations in L/C Obligations, (ii) all obligations of the Borrower owing to the assigning Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with the execution of such Assignment and Assumption and (iii) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Note or Notes executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to be a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. In the event the assignee Lender has not executed the Assignment and Assumption within one (1) Business Day following request, the Administrative Agent is hereby authorized to execute such Assignment and Assumption on behalf of such Lender.

(d) Notwithstanding anything to the contrary, (i) any Lender that acts as L/C Issuer may not be replaced by operation of this Section 3.09 at any time that it has any Letter of Credit outstanding unless arrangements reasonably satisfactory to such L/C Issuer (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer reasonably satisfactory to such L/C Issuer or the depositing of cash collateral into a Cash Collateral Account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to such outstanding Letter of Credit and (ii) any Lender that acts as Administrative Agent may not be replaced by operation of this Section 3.09 except in accordance with the terms of Section 9.09.

(e) The Borrower shall also be entitled to replace a Dissenting Lender in accordance with Section 11.01(f).

Section 3.10. *Survival*. All of the Borrower's obligations under this Article 3 shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

## ARTICLE 4

## CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01. *Conditions of Initial Credit Extension*. The obligation of each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's (or its counsel's) receipt of the following, each properly executed by a Responsible Officer of the signing Loan Party (as applicable), each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement, the Security Agreement and each Intellectual Property Security Agreement (or written evidence satisfactory to the Administrative Agent (which may include a facsimile or other electronic transmission) that such party has signed a counterpart);

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note to the extent such Lender requests such Note at least two Business Days prior to the Closing Date;

(iii) a certificate dated the Closing Date and executed by a Responsible Officer of each of the Loan Parties, certifying (A)(x) that attached thereto is a true and complete copy of the articles or certificate of incorporation or other comparable organizational documents of such Loan Party, certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and complete copy of the bylaws, operating or comparable governing document of such Loan Party, if applicable, and (y) that such documents or agreements have not been amended (except as otherwise attached to such certificate and certified therein as being the only amendments thereto as of such date) and (B) (x) that attached thereto is a true and complete copy of resolutions or written consents of its shareholders or board of directors or other relevant governing body, as the case may be, authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect without amendment, modification or rescission, and (y) as to the incumbency and genuineness of the signature of the officers, directors, managers or other authorized signatories of each Loan Party, executing this Agreement and the other Loan Documents to which it is a party.

(iv) the Administrative Agent shall have received a certificate as of a recent date of the good standing (or equivalent) of each of the Loan Parties under the laws of its jurisdiction of organization from the relevant authority of its jurisdiction of organization (solely to the extent such concept is applicable for the relevant jurisdiction);

(v) the legal opinion of Goodwin Procter LLP, acting as New York counsel for the Borrower and each other Loan Party, addressed to the Administrative Agent and each Lender and reasonably satisfactory to the Administrative Agent;

(vi) a certificate signed by a Responsible Officer of the Borrower, dated as of the Closing Date, as to the matters set forth in Section 4.01(c), (g), (h) and (i);

(vii) a Loan Notice or Letter of Credit Application, as applicable, relating to the initial Credit Extension;

(viii) a certificate from the chief financial officer, chief accounting officer or other Responsible Officer of the Borrower attesting to the Solvency of the Borrower and its Restricted Subsidiaries on a consolidated basis after giving effect to the Transactions on the Closing Date, substantially in the form of Exhibit L hereto;

(ix) subject to the last paragraph of this Section 4.01, each document (including any UCC (or similar) financing statement) required by the applicable Collateral Documents to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral required to be delivered on the Closing Date, prior and superior in right to any other Person (other than with respect to Liens permitted under this Agreement), shall be in proper form for filing, registration or recordation;

(x) certificates representing any certificated Pledged Equity referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt endorsed in blank;

(xi) a completed Perfection Certificate, dated the Closing Date and executed by a Responsible Officer of the Loan Parties; and

(xii) Intellectual Property Security Agreements, if any, duly executed by each Loan Party required to execute such Intellectual Property Security Agreement pursuant to the Security Agreement, in proper form for filing with the United States Patent and Trademark Office or the United States Copyright Office, as applicable;

(b) all fees and expenses required to be paid by (or on behalf of) the Borrower to the Administrative Agent, the Arrangers and the Lenders on or before the Closing Date (including fees pursuant to the Fee Letters) shall have been paid in full in cash (which amounts may be offset against the loan proceeds funded on the Closing Date) (and in the case of expenses, to the extent invoiced at least three (3) Business Days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower)).

(c) since November 7, 2018, there shall not have occurred and be continuing any Closing Date Material Adverse Effect.

(d) No later than three Business Days prior to the Closing Date, the Administrative Agent shall have received the applicable IRS Form W-8 or IRS Form W-9 (or other applicable tax form) and all documentation and other information reasonably requested by the Administrative Agent (on behalf of any Lender) in writing at least ten (10) days in advance of the Closing Date, which documentation or other information is reasonably determined by the Administrative Agent or applicable lender to be required by United States regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act (including, for the avoidance of doubt, a Beneficial Ownership Certification).

(e) The Arranger shall have received the Specified Financial Statements and the Pro Forma Financial Statements.

(f) The Refinancing shall have been consummated, or shall be consummated substantially simultaneously with the borrowing of the Initial Term Loans.

(g) The Equity Contribution shall have been made, or will be made substantially simultaneously with the borrowing of the Initial Term Loans.

(h) The Acquisition shall have been consummated, or substantially simultaneously with the borrowings of the initial Credit Extension hereunder, shall be consummated, in all material respects in accordance with the terms of the Acquisition Agreement, after giving effect to any modifications, amendments, consents or waivers, other than those modifications, amendments, consents or waivers by the Borrower that are materially adverse to the interests of the Lenders.

(i) The Specified Acquisition Agreement Representations and the Specified Representations shall be true and correct in all material respects as of the Closing Date (except in the case of any such representation that (a) is made as of a specified date, such representations and warranties shall be true and correct in all material respects as of such specified date and (b) is by its terms qualified by materiality or Material Adverse Effect, such representation shall be true and correct in all respects).

Without limiting the generality of the provisions of Section 9.03(b), for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Notwithstanding anything to the contrary contained herein, none of the making of any representation under Article 5 (except as expressly set forth in Section 4.01(i)) or the accuracy of any such representation or any supplement thereto (except as expressly set forth in Section 4.01(i)) shall constitute a condition precedent to the availability and/or initial funding of the Facilities on the Closing Date, and the only conditions (express or implied) to the availability of the Facilities on the Closing Date are those expressly set forth in this Section 4.01, and such conditions shall be subject in all respects to the provisions of this Section 4.01, including the paragraph below.

Notwithstanding the foregoing, to the extent any Guaranty or Collateral (including the creation or perfection of any security interest) is not or cannot be provided on the Closing Date (other than, (i) the Guaranties executed by the Loan Parties, (ii) a Lien on Collateral of the Loan Parties that may be perfected solely by the filing of a financing statement under the UCC and (iii) a pledge of the Equity Interests of the Loan Parties (other than Holdings) with respect to which a Lien may be perfected on the Closing Date by the delivery of a stock or equivalent certificate (or entry in a stock register or equivalent)) after the Borrower's or Holdings' use of commercially reasonable efforts to do so without undue burden or expense, then the provision of any such Guaranty or Lien search and the provision and/or perfection of such Collateral (and, in the case of any such Guaranty or Collateral, any legal opinion or other deliverables with respect thereto required under Sections 4.01(a)(v)) shall not constitute a condition precedent to the availability and initial funding of the Loans on the Closing Date but instead shall be required to be delivered and/or perfected within (X) in the case of certificated equity interests, ten (10) business days after the Closing Date and (Y) in the case of other Collateral, ninety (90) days after the Closing Date (or, in each case, such longer period as may be agreed by the Administrative Agent in its reasonable discretion) pursuant to arrangements to be mutually agreed by the Borrower and the Administrative Agent acting reasonably.

Section 4.02. *Conditions to All Credit Extensions*. The obligation of each Lender to honor any Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans and/or any Credit Extension governed by Sections 2.16, but only with respect to the applicable Commitments) is, in each case, as qualified by the LCT Provisions, if applicable, subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in Article 5 or any other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as so qualified) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(b) No Default or Event of Default shall exist, or would result from such Credit Extension or from the application of the proceeds therefrom.

(c) The Administrative Agent and, if applicable, the relevant L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans and/or any Credit Extension governed by Sections 2.16) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Section 4.02(a) and 4.02(b) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE 5
## REPRESENTATIONS AND WARRANTIES

On the dates and solely to the extent required pursuant to Sections 4.01 or 4.02 hereof, as applicable, each of Holdings and each other Loan Party party hereto hereby represents and warrants to the Administrative Agent and the Lenders that:

Section 5.01. *Existence, Qualification and Power; Compliance with Laws*. Each Restricted Company (a) is a Person, validly existing and (where applicable) in good standing under the Laws of the jurisdiction of its organization, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and (where applicable) in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws (including, without limitation, Environmental Laws), orders, writs and injunctions, and (e) has all requisite governmental permits, licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clauses (a) (other than with respect to Holdings and the Borrower), (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02. *Authorization; No Contravention*. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and, as of the Closing Date, the consummation of the Transactions, are (a) within such Loan Party's corporate or other powers, (b) have been duly authorized by all necessary corporate, shareholder or other organizational action, and (c) do not and will not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under, (A) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree, of or with any Governmental Authority or any arbitral award to which such Person or its property is subject, or (iii) violate, in any material respect, any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (ii) to the extent that such conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.

Section 5.03. *Governmental Authorization; Other Consents*. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required to be made or obtained by any Loan Party in connection with (a) the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) the Perfection Requirements, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force, (iii) those approvals, consents, exemptions, authorizations, actions, notices or filings described in the Security Agreement and (iv) those approvals, consents, exemptions, authorizations, actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

Section 5.04. *Binding Effect*. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is a party thereto, enforceable against such Loan Party in accordance with its terms.

Section 5.05. *Financial Statements; No Material Adverse Effect.*

(a) The Specified Financial Statements fairly present in all material respects the financial condition of the Target and its Subsidiaries as of the date thereof and their results of operations and cash flows for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein (and, with respect to unaudited financial statements, the absence of footnotes and subject to such adjustments as would be made in connection with the audit of financial statements for the relevant period).

(b) The unaudited pro forma consolidated balance sheet and related pro forma unaudited consolidated statement of operations of the Target and its consolidated subsidiaries as and for the twelve-month period ending on September 30, 2018 (the "**Pro Forma Financial Statements**"), have been prepared in good faith based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of operations).

(c) Since the Closing Date, there has been no change, effect, event or, occurrence that has had or would reasonably be expected to have a Material Adverse Effect.

Section 5.06. *Litigation and Environmental Matters*.

(a) Except as disclosed in Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of Holdings or the Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings or any of its Restricted Subsidiaries or against any of their properties or revenues that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(b) Other than as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) none of Holdings nor any of its Subsidiaries is subject to, or has received notice of any claim with respect to, any Environmental Liability and (ii) Holdings and its Subsidiaries have been and are in compliance with all Environmental Laws and have obtained, maintained and complied with all permits, licenses or other approvals required under any Environmental Law.

Section 5.07. *Ownership of Property; Liens*. Each of the Restricted Companies has good record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens, except (i) for minor defects in title that do not materially interfere with its ability to conduct its business (ii) Liens permitted by Section 7.01 and (iii) except where the failure to have such title or the existence of such Lien could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of the Restricted Companies own, or to the knowledge of the Borrower, possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses, database rights and design rights and other intellectual property rights (collectively, " **IP Rights**") that are reasonably necessary for the operation of its business, without conflict with the rights of any other Person. To the knowledge of Holdings, the conduct of the business of each Restricted Company does not infringe upon any IP Rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of Holdings, threatened.

Section 5.08. *Anti-Corruption Laws and Sanctions*.

(a) None of Holdings or any of its Subsidiaries nor, to the knowledge of Holdings or any of the other Loan Parties, directors, officers, employees, agents or Affiliates of Holdings or any of the Loan Parties, is a Person that is, or is owned or controlled by Persons that are (i) the subject or target of any economic, financial or trade sanctions administered or enforced by the U.S. government (including OFAC and the U.S. State Department), the United Nations Security Council, the European Union, the United Kingdom (including the Office of Financial Sanctions Implementation of Her Majesty's Treasury) or any relevant national or supra-national governmental authority with jurisdiction over any Loan Party (collectively, "**Sanctions**") or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions (including, without limitation, Crimea, Cuba, Iran, North Korea and Syria). 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 any activities or business of or with any Person, or in any country or territory that, at the time of such funding, is, or whose government is, the subject of Sanctions, or in any other manner that would constitute or give rise to a violation of Sanctions by any party hereto.

(b) None of Holdings or any of its Subsidiaries nor, to the knowledge of Holdings or any of the other Loan Parties, directors, officers employees, agents or Affiliates of Holdings or any of the other Loan Parties, has taken any action, directly or indirectly, that would constitute or give rise to a material violation by such persons of the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "**FCPA**") or any other applicable anti-corruption law; and Holdings and its Subsidiaries have instituted and maintain policies and procedures designed to promote and achieve continued compliance therewith. The Borrower will not, directly or indirectly, use any part of the proceeds of the Loans for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity in violation of the FCPA or any other applicable anti-corruption law. Holdings and its Subsidiaries are in compliance, in all material respects, with the USA Patriot Act and all other applicable anti-money laundering and counter-terrorist financing laws and regulations.

Section 5.09. *Taxes*. Holdings and its Subsidiaries have filed all U.S. Federal income and other material tax returns and reports required to be filed, and have paid or made provision for payment of all Taxes, assessments and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those (a) that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP, or (b) with respect to which the failure to make such filing or payment could not reasonably be expected to have a Material Adverse Effect.

Section 5.10. *ERISA Compliance*.

(a) Each Plan and Pension Plan is in compliance in all material respects with the applicable provisions of ERISA and the Code except to the extent that non-compliance could not reasonably be expected to have a Material Adverse Effect. In the preceding five years, each Loan Party and, to the knowledge of Holdings, each ERISA Affiliate have made all required contributions to each Pension Plan subject to Section 412 of the Code, and in the preceding five years, no application for a waiver of the minimum funding standard or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan or Pension Plan, except to the extent a failure to make such contributions or application, as the case may be, could not reasonably be expected to have a Material Adverse Effect.

(b) There are no pending or, to the knowledge of any Specified Responsible Officer of Holdings or the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan or Pension Plan that would reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan or Pension Plan that has resulted or would reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur and (ii) neither Holdings nor to the knowledge of Holdings, any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA, except, with respect to each of the foregoing clauses of this Section 5.10(c), as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(d) As of the Closing Date, no Loan Party is and no Loan Party will become (i) an "employee benefit plan" as defined in, and subject to Title I of ERISA, (ii) a "plan" as defined in, and subject to Section 4975 of the Code; (iii) an entity deemed to hold Plan Assets of any such plans; or (iv) a "governmental plan" within the meaning of Section 3(32) of ERISA.

Section 5.11. *Subsidiaries; Equity Interests*. (a) As of the Closing Date, the Equity Interests of each Restricted Subsidiary that are owned directly or indirectly by Holdings are owned free and clear of all Liens except for any Lien permitted under Section 7.01 and (b) as of the Closing Date, Schedule 5.11 sets forth the name and jurisdiction of organization of each Subsidiary (other than Immaterial Subsidiaries) and (i) sets forth the ownership interest of Holdings and any other Subsidiary in each such Subsidiary, including the percentage of such ownership.

Section 5.12. *Margin Regulations; Investment Company Act*.

(a) No proceeds of any Borrowings or drawings under any Letter of Credit will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock in violation of Regulation U, T or X issued by the FRB. Neither Holdings nor any of its Restricted Subsidiaries is engaged or will engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System.

(b) Neither Holdings nor any of its Restricted Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 5.13. *Disclosure*. As of the Closing Date (a) all written information and written data other than (i) customary financial estimates, forecasts and other projections delivered to the any Agent or any Lender by any Loan Party (such financial estimates, forecasts and projections, the "**Projections**") and (ii) Information that has been or will be made available to any Agent or any Lender by the Borrower in connection with the Transactions did not or will not when furnished, taken as a whole, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (after giving effect to all supplements and updates thereto from time to time) and (b) the Projections contained in the Information have been or will be prepared in good faith based upon assumptions that are believed to be reasonable by such Loan Party at the time such Projections are so furnished based on information provided by any such Loan Party or its representatives; it being understood that the Projections are (i) as to future events and are not to be viewed as facts, the Projections are subject to significant uncertainties and contingencies, that no assurance can be given that any particular Projections will be realized and that actual results during the period or periods covered by any such Projections may differ significantly from the projected results and such differences may be material and (ii) not a guarantee of performance. For the avoidance of doubt, no representation is made with respect to information of a general economic or general industry nature and to the extent the representations made in this Section 5.13 relate to the Target and its Subsidiaries, such representations are made to the best of the knowledge of each Loan Party.

Section 5.14. *Solvency*. On the Closing Date, after giving effect to the Transactions, the Borrower and its Subsidiaries are, on a consolidated basis, Solvent.

Section 5.15. *Perfection, Etc.* All filings and other actions necessary to perfect and protect the Liens in the Collateral, created under and in the manner contemplated by the Collateral Documents (including any Perfection Requirements set forth herein or therein) have been duly made or taken or otherwise provided for and are in full force and effect, and the Collateral Documents create in favor of the Administrative Agent for the benefit of the Secured Parties a valid and, together with such filings and other actions, perfected first priority Lien in the Collateral, securing the payment of the Secured Obligations, subject to Liens permitted by Section 7.01. The Loan Parties are the legal and beneficial owners of the Collateral free and clear of any Lien, except for the Liens created or permitted under the Loan Documents.

Section 5.16. *Use of Proceeds*. The Borrower will use the proceeds of the Loans and will request the issuance of Letters of Credit only for the purposes specified in Section 6.11 of this Agreement. The proceeds of the Loans and Letters of Credit will not be used in violation of FCPA or applicable Sanctions.

Section 5.17. *Labor Disputes*. As of the Closing Date, except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes, lockouts or slowdowns against any Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower or any of its Restricted Subsidiaries, threatened and (b) the hours worked by and payments made to employees of any Borrower and its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters.

## ARTICLE 6
## AFFIRMATIVE COVENANTS

From the Closing Date to the date all Commitments hereunder have expired or terminated, all Loans or other Loan Obligations which are accrued and payable have been paid and satisfied, any Letter of Credit shall have been terminated or otherwise have been provided for in full in a manner reasonably satisfactory to the L/C Issuer (such date, the "**Termination Date**"), Holdings and the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03, 6.14, 6.18 and 6.19) cause each Restricted Subsidiary to:

Section 6.01. *Financial Statements*. Deliver to the Administrative Agent for further distribution to each Lender:

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of Holdings ending after the Closing Date (or, with respect to the fiscal year ending December 31, 2018, 150 days), a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form, the figures for the previous fiscal year, and including a customary management's discussion and analysis, all in reasonable detail and prepared in accordance with GAAP, and audited and accompanied by a report and opinion of KPMG or any other independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" qualification (other than an emphasis of matter paragraph) (other than with respect to, or resulting from, (x) a current debt maturity and/or (y) any potential default or event of default of any financial covenant under this Agreement and/or any other Indebtedness) or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of Holdings beginning with the first fiscal quarter ending after the Closing Date (or, with respect to the fiscal quarter ending March 31, 2019, 60 days), a consolidated and segmented balance sheet of Holdings and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of the fiscal year then ended, setting forth, in each case, in comparative form, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year and including a customary management's discussion and analysis, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of Holdings and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) as soon as available, but in any event no later than the deadline for delivery of the financial statements in Section 6.01(a), commencing with the deadline for the financial statements for the fiscal year ending December 31, 2018 and for each fiscal year thereafter prior to the consummation of a Qualifying IPO, forecasts prepared by management of the Borrower, a consolidated balance sheet, statements of operations and cash flow statements of Holdings and its Subsidiaries for the fiscal year after the fiscal year covered by such financial statements, which shall be prepared in good faith upon reasonable assumptions at the time of preparation), it being understood that actual results may vary from such forecasts and that such variations may be material; and

(d) if there are any Unrestricted Subsidiaries as of the last day of any fiscal quarter, simultaneously with the delivery of a Compliance Certificate referred to in Section 6.02(a) below, the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from such consolidated financial statements.

Notwithstanding the foregoing, the obligations in paragraphs (a) through (b) of this Section 6.01 may be satisfied by furnishing (A) the applicable financial statements or other information required by such paragraphs of Holdings (or any other direct or indirect parent company of Holdings) and/or (B) Holdings' (or any other direct or indirect parent company of Holdings), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC or otherwise made available to the Administrative Agent for delivery to the Lenders, in each case, within the time periods specified in such paragraphs; *provided* that with respect to each of clauses (A) and (B) hereof, (i) to the extent such financial statements relate to Holdings (or any other direct or indirect parent company of Holdings), the Compliance Certificate delivered in connection with such financial statements shall be accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such other parent company), on the one hand, and the information relating to Holdings and its Restricted Subsidiaries on a standalone basis, on the other hand, which consolidating information shall be certified by a Responsible Officer of the Borrower as having been fairly presented in all material respects and (ii) to the extent such financial statements are in lieu of statements required to be provided under Section 6.01(a), the Compliance Certificate delivered in connection with such financial statements shall be accompanied by a report of an independent certified public accounting firm of nationally recognized standing, which statements, report and opinion may be subject to the same exceptions and qualifications as contemplated in Section 6.01(a).

Section 6.02. *Certificates; Other Information*. Deliver to the Administrative Agent for further distribution to each Lender:

(a) no later than five Business Days after the delivery of each set of consolidated financial statements referred to in Sections 6.01(a) and 6.01(b), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;

(b) [reserved];

(c) promptly after the receipt thereof by a Specified Responsible Officer of the Borrower and to the extent permitted by applicable Law, copies of each notice or other correspondence
received from any Governmental Authority concerning any material investigation or other material inquiry regarding any material violation of applicable Law by any Restricted Company, in each case of the foregoing, which would reasonably be expected to have a Material Adverse Effect (in each case, excluding any privileged information);

(d) promptly after any request therefor, such additional information regarding the business or financial condition of Holdings and its Restricted Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time reasonably request; *provided* that, notwithstanding anything to the contrary in this Section 6.02(f), none of Holdings or any Restricted Subsidiary will be required to disclose or permit the inspection or discussion of, any document, information or other matter (x) that constitutes non-financial trade secrets or non-financial proprietary information, (y) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) would be in breach of any confidentiality obligations, fiduciary duty or Law or (z) that is subject to attorney client or similar privilege or constitutes attorney work product; *provided* that, in the event the Borrower does not provide information in reliance on this sentence, the Borrower shall provide notice to the Administrative Agent that such information is being withheld and the Borrower shall use commercially reasonable efforts to communicate the applicable information in a way that would not violate the applicable obligation or risk waiver of such privilege.

Documents required to be delivered pursuant to Section 6.01(a), 6.01(b), 6.02(a) or 6.02(c) may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower (or any parent entity thereof) posts such documents, or provides a link thereto on the Borrower's (or any such parent entity's) website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Borrower's behalf on SyndTrak, IntraLinks, DebtDomain or other relevant website, to which each Lender and the Administrative Agent are granted access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that the Borrower shall notify (which may be by facsimile or electronic mail or by an automated electronic alert of a posting) the Administrative Agent of any such posting by the Borrower of any such documents which notice may be included in the certificate delivered pursuant to Section 6.02(a). The Borrower hereby acknowledges that (A) the Administrative Agent will make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Borrower hereunder (collectively, " **Borrower Materials**") by posting the Borrower Materials on SyndTrak, IntraLinks or another similar electronic system (the "**Platform**") and (B) certain of the Lenders may be "**Public-Side**" Lenders (i.e., Lenders that wish to receive only information that (i) is publicly available, (ii) is not material with respect to Holdings, its subsidiaries or their respective securities for purposes of United States federal or state securities laws or (iii) constitutes information of the type that would be publicly available if Holdings, the Borrower or their respective subsidiaries were public reporting companies (collectively, the "**Public Side Information**"; any information that is not Public Side Information, "**Private Side Information**")) (each, a "**Public Lender**") . Each of the Borrower and Holdings hereby agrees that (x) it will identify that portion of the Borrower Materials that are to be made available to Public Lenders (including, by marking such materials "PUBLIC") and (y) by marking Borrower Materials "PUBLIC," it shall be deemed to have authorized the Administrative Agent, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any Private Side Information (it being understood that none of Holdings or its Restricted Subsidiaries or any parent entity thereof shall be under any obligation to mark the Borrower Materials "PUBLIC"). Each of the Administrative Agent and each Lender agrees that it shall treat any Borrower Materials that are not marked "PUBLIC" as being deemed to contain Private Side Information. Notwithstanding the foregoing, the Borrower agrees that (i) any Loan Documents, (ii) any financial statements delivered pursuant to Sections 6.01(a) and 6.01(b)), (iii) any Compliance Certificates delivered pursuant to Section 6.02(a) and (iv) notices delivered pursuant to Section 6.03(a) will be deemed to be Public Side Information and may be made available to Public Lenders.

Section 6.03. *Notices*. Promptly (but in no event later than five (5) Business Days after obtaining knowledge thereof) notify the Administrative Agent after a Specified Responsible Officer obtains knowledge of:

(a) the occurrence of any Default; and

(b) any matter that has resulted or would reasonably be expected to result in a Material Adverse Effect, including any matter arising out of or resulting from (i) breach or non-performance of, or any default under, a Contractual Obligation of any Loan Party or any Subsidiary, (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Restricted Subsidiary and any Governmental Authority, (iii) the commencement of, or any material adverse development in, any litigation, investigation or proceeding affecting any Loan Party or any Subsidiary, or (iv) the occurrence of any ERISA Event.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of Holdings (x) that such notice is being delivered pursuant to Section 6.03(a) or 6.03(b) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action Holdings has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe to the extent known the provisions of this Agreement and any other Loan Document in respect of which such Default exists.

Section 6.04. *[Reserved]*.

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

Section 6.06. *Maintenance of Properties*. Except if the failure to do so could not reasonably be expected to have a Material Adverse Effect, (a) maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, ordinary wear and tear excepted and casualty and condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions to material properties and equipment in accordance with prudent industry practice.

Section 6.07. *Maintenance of Insurance*. Maintain with financially sound and reputable insurance companies, insurance of such types and in such amounts (after giving effect to any self-insurance) reasonable and customary for similarly situated Persons engaged in the same or similar businesses as Holdings and its Restricted Subsidiaries as are customarily carried under similar circumstances by such other Persons (but not, for the avoidance of doubt, cyber liability insurance or directors and officers insurance, in each case except to the extent required by Law), except, in the case of Non-U.S. Subsidiaries, to the extent that the failure to maintain such insurance with respect to one or more Non-U.S. Subsidiaries could not reasonably be expected to result in a Material Adverse Effect. With respect to any Material Real Property that is subject to a Mortgage (collectively, the **"Mortgaged Properties**") and located in an area designated by the Federal Emergency Management Agency as having special flood or mudslide hazards, obtain flood insurance from such provider, on such terms, and in such total amount as to comply with the National Flood Insurance Program as set forth in the Flood Insurance Laws or as otherwise required by the Required Lenders.

Section 6.08. *Compliance with Laws*. Comply with the requirements of all Laws (including, without limitation, Environmental Laws, ERISA, OFAC, FCPA and other applicable anti-corruption law and other laws applicable to sanctioned persons) and, in each case, all orders, writs, injunctions, and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect or the necessity of compliance therewith is being contested in good faith by appropriate proceedings; *provided* that with respect to (i) Sanctions, the Borrower shall, and shall cause each Restricted Subsidiary to, comply in all respects and (ii) the FCPA and other applicable anti-corruption laws, the Borrower shall, and shall cause each Restricted Subsidiary to, comply in all material respects.

Section 6.09. *Books and Records*. Maintain proper books of record and account, in a manner to allow financial statements to be prepared in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of Holdings or such Restricted Subsidiary, as the case may be.

Section 6.10. *Inspection Rights*. With respect to any Loan Party, permit representatives or agents of the Administrative Agent or, subject to the following provisions, any Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors and officers, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Holdings; *provided* that, absent the existence of a Specified Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than once during any calendar year and such inspections shall be conducted at the sole expense of the Administrative Agent without charge to the Borrower; *provided further* that when a Specified Event of Default exists the Administrative Agent (or any of its representatives or agents, or any Lender if accompanying the Administrative Agent) may do any of the foregoing at the expense of Holdings at any time during normal business hours and upon reasonable advance notice. Notwithstanding anything to the contrary in this Section 6.10, none of Holdings or any Restricted Subsidiary will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) would be in breach of any confidentiality obligations, fiduciary duty or Law or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product *provided* that, in the event the Borrower does not provide information in reliance on this sentence, the Borrower shall provide notice to the Administrative Agent that such information is being withheld and the Borrower shall use commercially reasonable efforts to communicate the applicable information in a way that would not violate the applicable obligation or risk waiver of such privilege.

Section 6.11. *Use of Proceeds*. Use the proceeds of the Credit Extensions (i) to effectuate the Transactions, including, without limitation, to pay fees and expenses incurred in connection with the Transactions and (ii) to provide ongoing working capital and for other general corporate purposes of Holdings and its Restricted Subsidiaries and for any other purpose not prohibited by this Agreement.

Section 6.12. *Payment of Taxes*. Holdings shall, and shall cause each of its Subsidiaries to, pay and discharge Taxes, assessments and governmental charges or levies upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which material penalties attach thereto, and all lawful material claims that, if unpaid, could reasonably be expected to become a Lien upon any of its material properties; *provided* that neither Holdings nor any of its Subsidiaries shall be required hereunder to pay any such Tax, assessment, charge, levy or claim that is (a) being contested in good faith and by proper proceedings if it has maintained adequate reserves (in the good faith judgment of the management of Holdings) with respect thereto in accordance with GAAP or (b) with respect to which the failure to pay or discharge could not reasonably be expected to have a Material Adverse Effect.

Section 6.13. *Covenant to Guarantee Guaranteed Obligations and Give Security*. (a) On the Closing Date, cause all Loan Parties to guarantee the Guaranteed Obligations.

(b) Upon (x) the formation or acquisition of any Subsidiaries of Holdings organized under the laws of the United States (or any state thereof) (other than an Excluded Subsidiary) or (y) any Excluded Subsidiary ceasing to constitute an Excluded Subsidiary (each, an "**Additional Guarantor**"), the Borrower shall within sixty (60) days after such formation, acquisition or cessation occurred (or such longer period as the Administrative Agent may agree in its reasonable discretion), notify the Administrative Agent and:

(i) cause any Additional Guarantor to duly execute and deliver to the Administrative Agent a guaranty substantially in the form of the Guaranty Supplement or such other form of guaranty or guaranty supplement to guarantee the Guaranteed Obligations in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, it being understood and agreed that each Loan Party shall duly execute and deliver to the Administrative Agent a Subsidiary Guaranty on the Closing Date;

(ii) cause such Additional Guarantor to duly execute and deliver to the Administrative Agent Mortgages (subject to the time periods and other requirements of Section 6.13(c)), Security Agreement Supplements (including Perfection Certificates), Intellectual Property Security Agreements and other security documents, as specified by and in form and substance reasonably satisfactory to the Administrative Agent (consistent with the Collateral Documents in effect on the Closing Date), granting a Lien in substantially all of the assets that would constitute Collateral (in each case, other than any Excluded Asset) directly held by such Restricted Subsidiary, in each case securing the Secured Obligations of such Additional Guarantor;

(iii) cause such Additional Guarantor to deliver, to the extent required to be pledged hereunder or under the Collateral Documents, any and all certificates representing Equity Interests owned by such Loan Party accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(iv) to the extent required by the Collateral Documents and subject to clause (d) below, take and cause such Additional Guarantor to take whatever action (including the filing of Uniform Commercial Code financing statements, and delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the Collateral Documents delivered pursuant to this Section 6.13, enforceable against all third parties in accordance with their terms; and

(c) With respect to any Material Real Property, within 90 days after the Closing Date or within 90 days after the acquisition of any other Material Real Property (or in each case such longer period as the Administrative Agent may agree in its reasonable discretion), the applicable Loan Party shall grant to the Administrative Agent a security interest in and deliver a mortgage, deed of trust or deed to secure debt in a form reasonably satisfactory to the Administrative Agent (a "**Mortgage**") as additional security for the Obligations. Any such Mortgage in a mortgage Tax state shall be capped at the fair market value of the applicable property. The Mortgages or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by Law to perfect the Liens in favor of the Administrative Agent. All Taxes, fees and other charges payable in connection therewith shall be paid in full. Such Loan Party shall otherwise take such actions and execute and/or deliver to the Administrative Agent such documents as the Administrative Agent shall reasonably require, including to confirm the validity, perfection and priority of the Lien of any existing Mortgage or new Mortgage against such after acquired Material Real Property (including, to the extent so required, a Title Policy, a Survey, a local counsel opinion (in form and substance reasonably satisfactory to the Administrative Agent), and to the extent existing and available, environmental assessment reports and (i) a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination, (ii) in the event that such after acquired Material Real Property is located in a special flood hazard area, a notice executed by such Loan Party about such special flood hazard area status in respect of such Mortgage and (iii) if the Loan Party notice described in the immediately preceding clause (ii) is required to be given and, to the extent flood insurance is required by any applicable Flood Insurance Laws, evidence, in form and substance reasonably satisfactory to the Administrative Agent, of a flood insurance policy in compliance in all material respects with the Flood Insurance Laws (including without limitation, in an amount required under the Flood Insurance Laws)). No later than 45 days prior to the date on which a Mortgage is to be executed by the Administrative Agent, the Administrative Agent shall use commercially reasonable efforts to provide any Lenders notice of entry into such Mortgage (which notice may be delivered electronically and which notice shall be delivered promptly (and, in any event, within five Business Days) after the Administrative Agent has received notice from the Borrower of the intention to enter into such Mortgage (the date of delivery of such notice to the Lenders, the "**Mortgage Notification Date**")), together with copies of the deliverables specified in clauses (i), (ii) and (iii) above and upon confirmation from each Lender that the flood insurance due diligence required to be conducted by such Lender has been completed and any other flood insurance requirements applicable to such Lender have been complied with, in each case under applicable Flood Insurance Laws, the relevant Loan Party may provide such Mortgage. Notwithstanding anything to the contrary contained herein, if due to the Administrative Agent's failure to deliver the notice to the Lenders set forth in this clause (c), a Mortgage cannot be executed within the time period set forth in clause (b) above, then (i) the Administrative Agent agrees that the extension of the deadline to execute such Mortgage to the date that is 45 days after the Mortgage Notification Date is reasonable and the Administrative Agent consents to such extension and (ii) no Default or Event of Default shall be deemed to have occurred due to the failure of the applicable Loan Party to execute such Mortgage within such original time period.

(d) [Reserved].

(e) [Reserved].

(f) Notwithstanding the foregoing, (i) the Loan Parties shall not be required to grant a security interest in any assets to the extent the grant or perfection of a security interest in such asset would be prohibited by applicable Law, (ii) no action outside of the United States shall be required in order to create or perfect any security interest in any asset, and no security or pledge agreements or intellectual property filing, search or schedule shall be required that is not governed by the Laws of the United States, (iii) the following Collateral shall not be required to be perfected (other than to the extent perfected by the filing of a UCC financing statement): (A) assets requiring perfection through control agreements or other control arrangements, including in respect of any deposit, securities or commodities accounts (other than control of pledged capital stock and material intercompany notes, in each case to the extent otherwise constituting Collateral), (B) commercial tort claims in which the amount claimed is less than $3,000,000 individually, (C) motor vehicles and other assets subject to certificates of title and letter of credit rights with a value of less than $3,000,000 (to the extent not constituting a supporting obligation) (it being understood that no actions shall be required to perfect a security interest in letter of credit rights other than the filing of a Uniform Commercial Code financing statement or the equivalent thereof), (iv) promissory notes to the extent evidencing third-party debt for borrowed money in a principal amount (individually) of less than $3,000,000 shall not be required to be delivered and (v) share certificates of Immaterial Subsidiaries, Unrestricted Subsidiaries, non-wholly-owned Subsidiaries and Persons that are not Subsidiaries shall not be required to be delivered.

Section 6.14. *Further Assurances*.

(a) Promptly upon reasonable request by the Administrative Agent, (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Loan Document or other document or instrument relating to any Collateral and (ii) 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 may reasonably require from time to time in order to carry out more effectively the purposes of the Collateral Documents.

(b) Concurrently with the delivery of each Compliance Certificate pursuant to Section 6.02(a), sign and deliver to the Administrative Agent an appropriate Intellectual Property Security Agreement with respect to all after-acquired intellectual property (as defined in the Security Agreement) owned by it as of the last day of the period for which such Compliance Certificate is delivered, to the extent that such after-acquired intellectual property is not covered by any previous Intellectual Property Security Agreement so signed and delivered by it; *provided* that an Intellectual Property Security Agreement shall not be required to be delivered with respect to after-acquired intellectual property except as provided in the Security Agreement. In each case, the Borrower will, and will cause each of the Subsidiary Guarantors to, promptly cooperate as necessary to enable the Administrative Agent to make any necessary or reasonably desirable recordations with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as appropriate.

Section 6.15. *Designation of Subsidiaries*. The Borrower may at any time designate any Restricted Subsidiary of the Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (a), immediately before and after such designation, no Event of Default shall have occurred and be continuing, (b) the Borrower shall not be designated as an Unrestricted Subsidiary and (c) after giving Pro Forma Effect to any such designation, the Total Net Leverage Ratio shall not exceed 4.00:1.00. The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the applicable Restricted Companies therein at the date of designation in an amount equal to the net book value (or, in the case of any guarantee or similar Investment, the amount) of the Restricted Companies' Investments therein. If any Person becomes a Restricted Subsidiary on any date after the Closing Date (including by redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary), the Indebtedness of such Person outstanding on such date will be deemed to have been incurred by such Person on such date for purposes of Section 7.03, but will not be considered the sale or issuance of Equity Interests for purposes of Section 7.05.

Section 6.16. *[Reserved]*.

Section 6.17. *[Reserved]*.

Section 6.18. *Ratings*. Use commercially reasonable efforts to obtain (and maintain in effect) a public corporate family and/or public corporate credit rating, as applicable, and public ratings in respect of the Initial Term Facility provided pursuant to this Agreement, in each case, from each of S&P and Moody's; *provided* that in no event shall the Borrower be required to maintain any specific rating with any such agency.

Section 6.19. *Lender Calls*. Following each delivery of the annual and quarterly financials pursuant to Sections 6.01(a) and (b), host a conference call, at the time selected by Holdings and reasonably acceptable to the Administrative Agent, with the Lenders to review the financial information provided therein.

Section 6.20. *Post-Closing Covenants*. Each of Holdings and the Borrower agrees to deliver, or cause to be delivered to the Administrative Agent, the items described on Schedule 6.20 on the dates and by the times specified with respect to such items, or such later time as may be agreed to by the Administrative Agent in its reasonable discretion.

## ARTICLE 7
## NEGATIVE COVENANTS

From the Closing Date until the Termination Date, each of Holdings and the Borrower shall not, nor shall Holdings or the Borrower permit any of the Restricted Subsidiaries to, directly or indirectly:

Section 7.01. *Liens*. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the Closing Date securing Indebtedness or other obligations in existence on the Closing Date listed on Schedule 7.01 and any modifications, replacements, refinancings, renewals or extensions thereof; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof and (ii) the modification, replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens (if such obligations constitute Indebtedness) is permitted by Section 7.03;

(c) Liens for Taxes, assessments or governmental charges (i) not yet due and payable, (ii) the amount or validity of which is being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or (iii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(d) statutory Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens arising in the ordinary course of business which secure amounts not overdue for a period of more than 60 days or, if more than 60 days overdue, (i) no action has been taken to enforce such Lien, (ii) such Lien is being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or (iii) with respect to which the failure to make payment as to all such amounts, in the aggregate, could not reasonably be expected to have a Material Adverse Effect;

(e) (i) Liens incurred in the ordinary course of business in connection with workers' compensation, pensions, unemployment insurance and other social security legislation and (ii) Liens incurred in the ordinary course of business securing insurance premiums or reimbursement obligations under insurance policies;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds, performance and completion guarantees and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(g) (i) easements, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances and minor title defects affecting real property which, in the aggregate, do not in any case materially and adversely interfere with the ordinary conduct of the business of Holdings and its Restricted Subsidiaries and (ii) with respect to any Material Real Property subject to a Mortgage, any exception on the Title Policy related thereto;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Section 7.03(f); provided that (i) such Liens attach concurrently with or within two hundred seventy (270) days after the acquisition, construction, repair, replacement or improvement (as applicable) of the property subject to such Liens, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, replacements thereof and additions and accessions to such property and the proceeds and the products thereof and customary security deposits, and (iii) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any assets (except for additions and accessions to such assets, replacements and products thereof and customary security deposits) other than the assets subject to such Capitalized Leases; provided that individual financings of equipment provided by one lender may be cross-collateralized to other financings of equipment provided by such lender;

(j) (i) leases, licenses, subleases or sublicenses granted to other Persons in the ordinary course of business which do not (A) interfere in any material respect with the business of Holdings or any of its material Restricted Subsidiaries or (B) secure any Indebtedness (other than any obligation that is Indebtedness solely as a result of the operation of clause (e) of the definition thereof), (ii) the rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by Holdings or any Restricted Subsidiary or by a statutory provision to terminate any such lease, license, franchise, grant or permit or to require periodic payments as a condition to the continuance thereof and (iii) any interest or title of a lessor, sublessor, or licensor under any lease or lease agreement to which Holdings or any of its material Restricted Subsidiaries is a party, and interests of any other party granted by such licensor or lessor in such licensor's or lessor's fee or other interest;

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

(l) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code or similar law on items in the course of collection, (ii) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business, (iii) in favor of a banking or other financial institution or entities and/or electronic payment service providers arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of set off) and which are within the general parameters customary in the banking industry and (iv) arising by the terms of documents of banks or other financial institutions in relation to the maintenance or administration of deposit accounts or, securities accounts;

(m) Liens (i) (A) on advances of cash or Cash Equivalents or escrow deposits in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.02 to be applied against the purchase price for such Investment, and (B) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05 and (ii) on cash earnest money deposits made by Holdings or any Restricted Subsidiary in connection with any letter of intent or purchase agreement permitted hereunder;

(n) Liens on assets that are not Collateral, including on the property of any Non-U.S. Subsidiary of the Borrower (including Equity Interests held by such Non-U.S. Subsidiary) securing Indebtedness of such Non-U.S. Subsidiary to the extent permitted under Section 7.03; provided that, to the extent such Liens are on assets owned by a Loan Party, such Liens shall only secure Indebtedness or other obligations otherwise permitted hereunder and in an aggregate principal amount not to exceed the greater of (x) $5,000,000 and (y) 7.5% of Consolidated EBITDA as of the last day of the most recently ended Test Period;

(o) Liens in favor of Holdings or any Restricted Subsidiary securing Indebtedness permitted under Section 7.03(e) or other obligations other than Indebtedness owed by Holdings or any Restricted Subsidiary to Holdings or any Restricted Subsidiary;

(p) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 6.15), in each case after the date hereof; *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) any such Lien shall not encumber any other property of Holdings or any of the Restricted Subsidiaries (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (iii) the Indebtedness secured thereby is permitted under Section 7.03;

(q) Liens arising from precautionary UCC financing statement filings (or similar filings under applicable Law) regarding leases entered into by Holdings or any of the Restricted Subsidiaries in the ordinary course of business (and Liens consisting of the interests or title of the respective lessors thereunder);

(r) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by Holdings or any Restricted Subsidiary in the ordinary course of business not prohibited by this Agreement;

(s) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness (other than Indebtedness described in clause (e) of the definition thereof), (ii) relating to pooled deposit or sweep accounts of Holdings or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of such Restricted Company and (iii) relating to purchase orders and other similar agreements entered into in the ordinary course of business;

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

(u) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property;

(v) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit and/or bank guarantees issued for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods in the ordinary course of business;

(w) any pledge of the Equity Interests of an Unrestricted Subsidiary or Non-U.S. Subsidiary (other than any Equity Interests of a Non-U.S. Subsidiary that constitute Collateral) to secure Indebtedness of such Unrestricted Subsidiary or Non-U.S. Subsidiary, as applicable, to the extent such pledge constitutes an Investment permitted under this Agreement;

(x) other Liens securing Indebtedness or other obligations outstanding in an aggregate principal amount not to exceed the greater of (x) $5,000,000 and (y) 10.0% of Consolidated EBITDA as of the last day of the most recently ended Test Period;

(y) Liens securing Indebtedness permitted under Section 7.03(y) (*provided that* (i) such Liens shall only secure the obligations secured on the date of the Permitted Acquisition or other Investment and such liens shall not extend to any other property of Holdings and its Restricted Subsidiaries and (ii) no such Lien was created in contemplation of the applicable acquisition or other Investment), Section 7.03(z), Section 7.03(aa), Section 7.03(bb) and Section 7.03(ee), in each case, to the extent contemplated by, and subject to the limitations set forth in such provisions; *provided that*, to the extent such Lien is on the Collateral, the beneficiaries thereof (or an agent on their behalf) shall have become party to an Acceptable Intercreditor Agreement pursuant to the terms thereof;

(z) Liens on the Collateral securing any Credit Agreement Refinancing Indebtedness;

(aa) Liens on the Collateral securing Secured Hedging Obligations and Cash Management Obligations;

(bb) Liens on cash or Cash Equivalents deposited with the applicable representative of the holder of the applicable Indebtedness pending application of such cash or Cash Equivalents to the defeasance, discharge or redemption of such Indebtedness;

(cc) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located;

(dd) Liens solely on any cash earnest money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(ee) with respect to any Non-U.S. Subsidiary, other Liens and privileges arising mandatorily by Law;

(ff) Liens on receivables and related assets arising in connection with a Qualified Securitization Financing and/or Permitted Receivables Financing;

(gg) Liens incurred in the ordinary course of business with respect to any overdraft and related liabilities arising from treasury, depository and cash management services, credit card services, including purchasing card services, or any automated clearing house transfers of funds;

(hh) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(ii) Liens on cash or Cash Equivalents securing Swap Contracts in the ordinary course of business submitted for clearing in accordance with applicable Requirements of Law;

(jj) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(kk) Liens arising in connection with any Permitted Tax Restructuring; and

(ll) Liens on cash or Cash Equivalents held in Escrow for the purpose of satisfying or discharging Indebtedness pursuant to customary escrow arrangements as described or contemplated in this Agreement.

Section 7.02. *Investments*. Make or hold any Investments, except for the following:

(a) Investments by Holdings or any Restricted Subsidiary in assets that were Cash Equivalents when such Investment was made, and the holding of cash or Cash Equivalents at any time by Holdings or any Restricted Subsidiary;

(b) loans or advances to officers, directors, managers, partners and employees of Holdings (or any direct or indirect parent thereof), Holdings or its Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of Holdings (or any direct or indirect parent thereof) (*provided* that, the proceeds of any such loans and advances shall be contributed to Holdings or the Borrower in cash as common equity) and (iii) for purposes not described in the foregoing clauses (i) and (ii), in an aggregate principal amount outstanding, together with the amount outstanding under clause (ii), not to exceed $5,000,000;

(c) [reserved];

(d) Investments (i) by any Loan Party in any other Loan Party, (ii) by any Person that is not a Loan Party in any Loan Party, (iii) by any Person that is not a Loan Party in any Restricted Subsidiary of Holdings that is not a Loan Party and (iv) by any Loan Party in any Restricted Subsidiary of Holdings that is not a Loan Party; *provided*, that any such Investments under this clause (iv) by Loan Parties in such Persons that are not Loan Parties shall be either (A) in the ordinary course of business or (B) in an aggregate amount not to exceed the greater of (x) $6,000,000 and (y) 10.0% of Consolidated EBITDA as of the last day of the most recently ended Test Period;

(e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(f) Investments consisting of Liens, Indebtedness, fundamental changes, Dispositions and Restricted Payments permitted (other than, in each case, by reference to this Section 7.02) under Sections 7.01, 7.03, 7.04, 7.05 and 7.06, respectively;

(g) Investments existing or contemplated on the Closing Date set forth on Schedule 7.02 and any modification, replacement, renewal or extension thereof; *provided* that the amount of the original Investment is not increased except by the terms of such Investment or as otherwise permitted by this Section 7.02;

(h) Investments in Swap Contracts permitted under Section 7.03(g);

(i) promissory notes and other noncash consideration received in connection with Dispositions permitted by Section 7.05;

(j) the purchase or other acquisition of (x) all or substantially all of the property and assets or businesses of any Person, (y) assets constituting a business unit, a line of business or division of any Person, or (z) Equity Interests in (i) a Person that becomes a Restricted Subsidiary as a result of such purchase or acquisition (including as a result of a merger or consolidation), subject to the Borrower's right to designate any such Person as an Unrestricted Subsidiary and/or (ii) a Restricted Subsidiary to increase the percentage of ownership thereof held by Holdings or any Restricted Subsidiary (each, a "**Permitted Acquisition**"); provided that (i) after giving effect to any such purchase or other acquisition, and subject in all respects to the LCT Provisions (if applicable), no Specified Event of Default shall have occurred and be continuing or would result therefrom and Holdings shall be in compliance with the covenant in Section 7.11 and (ii) to the extent required pursuant to Section 6.13, (A) the property, assets and businesses acquired in such purchase or other acquisition shall become Collateral and (B) any newly created or acquired Restricted Subsidiary (other than an Excluded Subsidiary) shall become Guarantors;

(k) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of any Person and in settlement of obligations of, or other disputes with, any Person arising in the ordinary course of business and upon foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(l) Investments in Holdings or any of its Restricted Subsidiaries in connection with intercompany cash management arrangements and related activities in the ordinary course of business;

(m) advances of payroll payments to employees in the ordinary course of business;

(n) Guarantees by Holdings or any Restricted Subsidiary of leases (other than Capitalized Leases) or other obligations that do not constitute Indebtedness, in each case, entered into in the ordinary course of business;

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

(p) Investments in JV Entities and Unrestricted Subsidiaries after the Closing Date (it being understood and agreed that the book value of the assets of an Unrestricted Subsidiary at the time of its designation as such pursuant to Section 6.15 shall be deemed to be an Investment made in such Unrestricted Subsidiary in an amount equal to such book value, but if such Unrestricted Subsidiary is not wholly-owned by Holdings or any Restricted Subsidiary, only an amount proportional to Holdings or such Restricted Subsidiary's ownership therein shall be included in this calculation) in an aggregate amount for all such Investments (less an amount equal to the book value of all Unrestricted Subsidiaries that, after the Closing Date, are redesignated by Holdings to be Restricted Subsidiaries, calculated as of the date of such redesignation) not to exceed for all JV Entities and Unrestricted Subsidiaries, at the time such Investment is made and after giving effect to such Investment, the sum of (i) an amount equal to the greater of (x) $2,500,000 and (y) 5.0% of Consolidated EBITDA as of the last day of the most recently ended Test Period as of such time plus (ii) the aggregate amount of any cash repayment of or return on such Investments theretofore received by Holdings or any Restricted Subsidiary after the Closing Date;

(q) Investments made in connection with any Permitted Tax Restructuring;

(r) loans and advances to any direct or indirect parent of Holdings in lieu of, and not in excess of the amount of (after giving effect to any other such loans or advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made to such direct or indirect parent in accordance with Section 7.06; provided that any such loan or advance shall reduce the amount of such applicable Restricted Payment thereafter permitted under Section 7.06 by a corresponding amount (if such applicable provision of Section 7.06 contains a maximum amount);

(s) other Investments in an aggregate amount, as valued at cost at the time each such In-vestment is made and including all related commitments for future Investments, not exceeding (i) the greater of (x) $15,000,000 and (y) 27.0% of Consolidated EBITDA as of the last day of the most recently ended Test Period; *provided* that after giving Pro Forma Effect to such Investment, no Specified Event of Default shall be continuing or would result therefrom; *plus* (ii) an amount equal to any returns of capital or sale proceeds actually received by Holdings or a Restricted Subsidiary after the Closing Date in cash in respect of any such Investments (which amount shall not exceed the amount of such Investment valued at cost at the time such Investment was made);

(t) Investments in an amount not to exceed the Available Amount; *provided* that with respect to Investments made in reliance on the Growth Amount, no Specified Event of Default would result therefrom;

(u) Investments in a Similar Business after the Closing Date in an aggregate amount for all such Investments not to exceed, at the time such Investment is made and after giving effect to such Investment, the sum of (i) an amount equal to the greater of (x) $15,000,000 and (y) 27.0% of Consolidated EBITDA as of the last day of the most recently ended Test Period as of such time plus (ii) the aggregate amount of any cash repayment of or return on such Investments theretofore received by Holdings or any Restricted Subsidiary after the Closing Date;

(v) other Investments; *provided* that after giving Pro Forma Effect to such Investment, no Specified Event of Default shall be continuing or would result therefrom, and the Senior Secured Net Leverage Ratio shall not exceed 3.25:1.00;

(w) Investments necessary to consummate the Transactions;

(x) (i) Investments of any Restricted Subsidiary acquired after the Closing Date (other than as a result of a redesignation of any Unrestricted Subsidiary), or of any Person (other than an Unrestricted Subsidiary) acquired by, or merged into or consolidated or amalgamated with, Holdings or any Restricted Subsidiary after the Closing Date, in each case pursuant to an Investment otherwise permitted by this Section 7.02 to the extent that such Investments of such Person were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation and (ii) any modification, replacement, renewal or extension of any Investment permitted under clause (i) of this Section 7.02(x) so long as any such modification, replacement, renewal or extension thereof does not increase the amount of such Investment;

(y) [reserved];

(z) any Investment made by any Unrestricted Subsidiary prior to the date on which such Unrestricted Subsidiary is designated as a Restricted Subsidiary so long as the relevant Investment was not made in contemplation of the designation of such Unrestricted Subsidiary as a Restricted Subsidiary;

(aa) Investments (i) in connection with a Qualified Securitization Financing or a Permitted Receivables Financing and (ii) distributions or payments of Securitization Fees and purchases of Securitization Assets or Receivables Assets in connection with a Qualified Securitization Financing or Permitted Receivables Financing;

(bb) Investments to the extent that payment for such Investments is made with Qualified Equity Interests (to the extent not otherwise applied under this Agreement and other than any Cure Amount); provided that, any amounts used for such an Investment or other acquisition that are not Qualified Equity Interests shall otherwise be permitted pursuant to this Section 7.02;

(cc) the forgiveness or conversion to Qualified Equity Interests of any intercompany Indebtedness owed to Holdings or any Restricted Subsidiary or the cancellation or forgiveness of any Indebtedness owed to Holdings (or any parent entity) or a Subsidiary from any members of management of Holdings (or any parent entity) or any Subsidiary, in each case permitted by Section 7.03; and

(dd) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses or leases of other assets, IP Rights, or other rights, in each case in the ordinary course of business.

To the extent an Investment is permitted to be made by Holdings or a Restricted Subsidiary in any Restricted Subsidiary or any other Person who is not Holdings or a Subsidiary Guarantor (each such Person, a "**Target Person**") under any provision of this Section 7.02, such Investment may be made by advance or, contribution by Borrower or other Loan Party to a Restricted Subsidiary, which is then substantially concurrently applied by such Restricted Subsidiary for purposes of making the relevant Investment in the Target Person in accordance with this Section 7.02 (other than this sentence) without such initial advance or, contribution constituting an Investment for purposes of this Section 7.02.

Section 7.03. *Indebtedness*. Create, incur, assume or suffer to exist any Indebtedness, except for the following:

(a) Indebtedness of the Loan Parties under the Loan Documents (including any Additional Loans or Additional Commitments);

(b) [reserved];

(c) Indebtedness incurred prior to the Closing Date and outstanding on the Closing Date that is permitted to remain outstanding under the Acquisition Agreement and any Permitted Refinancing thereof;

(d) Guarantees by any Loan Party in respect of Indebtedness of Holdings or another Restricted Subsidiary otherwise permitted hereunder; *provided* that if the Indebtedness being guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(e) Indebtedness of Holdings or any Restricted Subsidiary owing to Holdings or a Restricted Subsidiary that constitutes an Investment permitted by Section 7.02; *provided* that all such Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be subject to the subordination terms set forth in the Intercompany Note;

(f) (i) Attributable Indebtedness and other Indebtedness (including Capitalized Leases) financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets (provided that such Indebtedness is incurred concurrently with or within two hundred seventy (270) days after the applicable acquisition, construction, repair, replacement or improvement), (ii) Attributable Indebtedness arising out of Permitted Sale Leasebacks and (iii) any Permitted Refinancing of any Indebtedness set forth in the immediately preceding clauses (i) and (ii); provided that the aggregate principal amount of Indebtedness (including without limitation Attributable Indebtedness, but excluding Attributable Indebtedness incurred pursuant to clause (ii)) under this Section 7.03(f) does not exceed the greater of (x) $7,500,000 and (y) 15.0% of Consolidated EBITDA of Holdings for the most recently ended Test Period;

(g) Indebtedness in respect of Swap Contracts entered into in the ordinary course of business and not for speculative purposes;

(h) Indebtedness of Holdings or any of its Restricted Subsidiaries arising pursuant to any Permitted Tax Restructuring;

(i) [reserved];

(j) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits (including pursuant to any social security laws) or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(k) Indebtedness consisting of obligations of Holdings (or any direct or indirect parent of Holdings) or any of its Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in the ordinary course of business or otherwise in connection with the Transactions and Permitted Acquisitions or any other Investment expressly permitted hereunder;

(l) Indebtedness to future, present or former directors, officers, members of management, employees or consultants of Holdings or any of its Subsidiaries or their respective estates, heirs, family members, spouses or former spouses to finance the purchase or redemption of Equity Interests of Holdings (or any direct or indirect parent thereof) permitted by Section 7.06;

(m) [reserved];

(n) Indebtedness incurred by Holdings or any of its Restricted Subsidiaries in a

Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case to the extent constituting indemnification obligations or obligations in respect of purchase price (including earn-outs) or other similar adjustments;

(o) Indebtedness in connection with intercompany cash management arrangements and related activities in the ordinary course of business;

(p) Indebtedness in connection with Cash Management Obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections,
cash pooling arrangements, purchase card and similar arrangements in each case incurred in the ordinary course;

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

(r) Indebtedness of Non-Loan Parties in an aggregate principal amount not to exceed the greater of (x) $5,000,000 and (y) 10.0% of Consolidated EBITDA of Holdings as of the last day of the most recently ended Test Period;

(s) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(t) [reserved];

(u) [reserved];

(v) Indebtedness consisting of obligations owing under any customer or supplier incentive, supply, license or similar agreements entered into in the ordinary course of business;

(w) customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business;

(x) other Indebtedness in an aggregate principal amount not to exceed the greater of (x) $7,500,000 and (y) 15.0% of Consolidated EBITDA of Holdings as of the last day of the most recently ended Test Period;

(y) Indebtedness of any Person that becomes a Restricted Subsidiary (or of any Person not previously a Restricted Subsidiary) after the date hereof and/or any other Indebtedness otherwise assumed in connection with an acquisition or any other Investment not prohibited hereunder, to the extent such Indebtedness was not incurred in contemplation of such acquisition or other Investment in an aggregate principal amount for not to exceed the greater of (x) $7,500,000 and (y) 15.0% of Consolidated EBITDA of Holdings as of the last day of the most recently ended Test Period;

(z) Ratio Debt;

(aa) Incremental Equivalent Debt;

(bb) Credit Agreement Refinancing Indebtedness;

(cc) [reserved];

(dd) Indebtedness with respect to any Permitted Recourse Receivables Financing;

(ee) [reserved];

(ff) Indebtedness of Holdings or any Restricted Subsidiary in an amount equal to the aggregate amount of cash contributions made after the Closing Date to Holdings and contributed to the Borrower in exchange for Qualified Equity Interests of Holdings, except to the extent utilized in connection with any other transaction permitted by Section 7.02 or Section 7.08, and except to the extent such amount increases the Available Amount or constitutes a Cure Amount;

(gg) Indebtedness of any Restricted Subsidiary that is not a Loan Party incurred under working capital lines, lines of credit or overdraft facilities in an individual principal amount at any time outstanding not to exceed the greater of $3,000,000 and 5.0% of Consolidated EBITDA of Holdings as of the last day of the most recently ended Test Period; and

(hh) all premiums (if any), interest (including post-petition interest, capitalized interest or interest otherwise payable in kind), fees, expenses, charges and additional or contingent interest on obligations described in the foregoing clauses of this Section 7.03.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03.

Section 7.04. *Fundamental Changes*. Merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, liquidate or dissolve, including by an allocation of assets among newly divided limited liability companies pursuant to a "plan of division" under the Delaware Limited Liability Company Act, except that:

(a) (i) (A) any Person may merge, amalgamate or consolidate with or into the Borrower in a transaction in which the Borrower is the surviving entity or (B) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, which shall not be an operating company, and shall not hold any Equity Interests directly or indirectly in any operating company, the "**Successor Borrower**"), (v) no Event of Default shall exist or result therefrom, (w) the Successor Borrower shall deliver to the Administrative Agent all information as may be reasonably requested by the Administrative Agent to satisfy any applicable "know your customer" requirements, (x) the Borrower shall be an entity organized or existing under the law of the United States, (y) the Successor Borrower shall expressly assume the Obligations of the Borrower in a manner reasonably satisfactory to the Administrative Agent and (z) except as the Administrative Agent may otherwise agree, each Guarantor, unless it is the other party to such merger or consolidation, shall have executed and delivered a customary reaffirmation agreement with respect to its obligations under the Loan Documents; it being understood and agreed that if the foregoing conditions under clauses (w) through (z) are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents,

(ii) any Restricted Subsidiary may effect a merger, amalgamation, dissolution, winding up, liquidation, or consolidation into any Person in order to consummate an Investment or asset Disposition permitted by Section 7.02 or Section 7.05, respectively; provided that when any Restricted Subsidiary that is a Loan Party is merging with a Person that is not a Loan Party, to the extent such other Person is required to become a Guarantor, it shall deliver all information as may be reasonably requested by the Administrative Agent to satisfy any applicable "know your customer" requirements, and

(iii) any Restricted Subsidiary may merge, amalgamate or consolidate with or into the Borrower, or any other Restricted Subsidiary; *provided* that when any Restricted Subsidiary that is a Loan Party is merging with another Restricted Subsidiary, a Loan Party shall be the continuing or surviving Person;

(b) (i) any Restricted Subsidiary may change its legal form, in each case, if the Borrower determines in good faith that such action is in the best interests of Holdings and its Restricted Subsidiaries and is not materially disadvantageous to the Lenders and (ii) the Borrower may change its legal form (or, upon not less than fifteen (15) days' notice to the Administrative Agent, its jurisdiction of organization or formation; *provided* that, with respect to any Restricted Subsidiary that is a U.S. Subsidiary, such Restricted Subsidiary shall not change its jurisdiction of organization or formation to any jurisdiction other than that of the United States, any State thereof or the District of Columbia without the prior written consent of the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed) if it determines in good faith that such action is in the best interests of Holdings and its Restricted Subsidiaries, and the Administrative Agent reasonably determines it is not disadvantageous to the Lenders;

(c) any Restricted Subsidiary other than the Borrower may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to another Restricted Subsidiary; provided that if the transferor in such a transaction is a Loan Party, then either (i) the transferee must be a Loan Party or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Restricted Subsidiary that is not a Loan Party in accordance with Section 7.02 and Section 7.03, respectively; and

(d) the Transactions and any Permitted Tax Restructuring may be consummated.

Section 7.05. *Dispositions*. Make any Disposition of any of its property (other than any Disposition having a fair market value not in excess of (x) $1,000,000 for any single transaction or series of related transactions or (y) the greater of $3,000,000 and 5.0% of Consolidated EBITDA of Holdings as of the last day of the most recently ended Test Period in the aggregate for all such Dispositions described in this parenthetical), except:

(a) Dispositions of obsolete, used, surplus, negligible, uneconomical or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful in the conduct of the business of Holdings or any Restricted Subsidiary or Dispositions of non-core assets and property or assets and property otherwise commercially unreasonable to retain;

(b) Dispositions of inventory and immaterial assets in the ordinary course of business;

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

(d) Dispositions of property by Holdings or any Restricted Subsidiary to the Borrower or another Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (x) the transferee thereof must be a Loan Party or (y) to the extent such transaction constitutes an Investment in a Restricted Subsidiary that is not a Loan Party, such transaction is permitted by Section 7.02;

(e) Dispositions permitted (other than by reference to this Section 7.05) by Section 7.02, Section 7.04 and Section 7.06 and Liens permitted by Section 7.01;

(f) Dispositions of cash and Cash Equivalents;

(g) Dispositions of accounts receivable in connection with the collection or compromise thereof;

(h) leases, subleases, licenses or sublicenses of property in the ordinary course of business and which do not materially interfere with the business of Holdings or any Restricted Subsidiary;

(i) transfers of property subject to Casualty Events;

(j) Dispositions in the ordinary course of business consisting of the abandonment or lapse of IP Rights which, in the reasonable good faith determination of Holdings, are not material to the conduct of the business of Holdings or any Restricted Subsidiary;

(k) Dispositions of Investments in JV Entities to the extent required by, or made pursuant to buy/sell arrangements between the JV Entity parties set forth in, JV Entity arrangements and similar binding arrangements (i) in substantially the form as such arrangements are in effect on the Closing Date or (ii) to the extent that the Net Cash Proceeds of such Disposition are either reinvested or applied to prepay the Initial Term Loans pursuant to Section 2.06(b);

(l) Dispositions in connection with any Permitted Tax Restructuring;

(m) [reserved];

(n) Dispositions of tangible property in the ordinary course of business as part of a like-kind exchange under Section 1031 of the Code;

(o) voluntary terminations of Swap Contracts;

(p) Dispositions of a non-core line of business (and related property and assets) for which a commitment to Dispose of such non-core line of business has been entered into on or prior to the
first anniversary of the Closing Date and which have actually been Disposed of within 18 months from the Closing Date;

(q) Permitted Sale Leasebacks; *provided*, that the amount of such Permitted Sale Leasebacks since the Closing Date shall not, in the aggregate, exceed the greater of $10,000,000 and 19.0% of Consolidated EBITDA as of the last day of the most recently ended Test Period;

(r) Dispositions of property by Holdings or any Restricted Subsidiary not otherwise permitted under this Section 7.05; *provided* that (i) at the time of execution of any binding agreement in respect of such Disposition (or if there is no such agreement entered into, at the time of such Disposition), no Event of Default shall exist or would result from such Disposition, (ii) any such Disposition of property for a purchase price in excess of $2,500,000 is made for fair market value, (iii) with respect to any Disposition (or series of related Dispositions) under this Section 7.05(r) Holdings or any of the Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents on a cumulative basis for all such Dispositions following the Closing Date (*provided* that for the purposes of this clause (r)(ii), the following shall be deemed to be cash: (A) the assumption by the transferee of Indebtedness or other liabilities (other than Indebtedness or liabilities that are subordinated in right of payment to the Loan Obligations) contingent or otherwise of Holdings and its Restricted Subsidiaries and the valid release of Holdings or such Restricted Subsidiary by all applicable creditors in writing, from all liability on such Indebtedness or other liability in connection with such Disposition, (B) securities, notes or other obligations received by Holdings or any of its Restricted Subsidiaries from the transferee that are converted by Holdings or such Restricted Subsidiaries into cash or Cash Equivalents within 180 days following the closing of such Disposition, (C) Indebtedness (other than Indebtedness or liabilities that are subordinated in right of payment to the Loan Obligations) of any Restricted Subsidiary that is disposed of pursuant to such Disposition and that is no longer a Restricted Subsidiary as a result of such Disposition, to the extent that Holdings and each other Restricted Subsidiary are released from any Guarantee of payment of such Indebtedness in connection with such Disposition and (D) aggregate non-cash consideration received by Holdings and its Restricted Subsidiaries for all Dispositions under this clause (r) having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed the greater of (x) $5,000,000 and (y) 10.0% of Consolidated EBITDA of Holdings for the most recently ended Test Period at any time outstanding (net of any non-cash consideration converted into cash and Cash Equivalents received in respect of any such non-cash consideration) and (iv) the Net Cash Proceeds of such Disposition are either reinvested or applied to prepay the Initial Term Loans pursuant to Section 2.06(b);

(s) other Dispositions in an amount not to exceed the greater of (x) $3,000,000 and

(y) 5.0% of Consolidated EBITDA as of the last day of the most recently ended Test Period;

(t) the Borrower and its Restricted Subsidiaries may surrender or waive contractual rights and leases and settle or waive contractual or litigation claims in the ordinary course of business;

(u) Dispositions of assets (including Equity Interests) acquired in connection with Permitted Acquisitions or other similar Investments permitted hereunder for the fair market value thereof, which assets are obsolete or not used or useful to the core or principal business of the Borrower and the Restricted Subsidiaries or which Dispositions are made to obtain the approval of any applicable antitrust authority in connection with such Permitted Acquisition or similar Investment;

(v) any swap of assets in exchange for services or other assets of comparable or greater fair market value useful to the business of Holdings and its Restricted Subsidiaries as a whole, as determined in good faith by the Borrower;

(w) any sale of Equity Interests in, or Indebtedness of or other securities of, an Unrestricted Subsidiary (other than any Unrestricted Subsidiaries, all or substantially all the assets which consist of cash and Cash Equivalents);

(x) Dispositions of Securitization Assets or Receivables Assets, or participations therein, in connection with any Qualified Securitization Financing or Permitted Receivables Financing, or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with past practice;

(y) the Transactions may be consummated; and

(z) Dispositions of any assets that are not Collateral.

To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person that is not a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents and, if requested by the Administrative Agent, upon the certification by the Borrower that such Disposition is permitted by this Agreement, the Administrative Agent or the Administrative Agent, as applicable, shall be authorized to, and are directed by the Required Lenders, to take and shall take any actions deemed appropriate in order to effect the foregoing.

Section 7.06. *Restricted Payments*. Declare or make, directly or indirectly, any Restricted Payment, except:

(a) Restricted Payments to Holdings, the Borrower or any other Restricted Subsidiary;

(b) (i) Holdings may (or may make Restricted Payments to permit any direct or indirect parent thereof to) redeem in whole or in part any of its Equity Interests in exchange for another class of its (or such parent's) Equity Interests or rights to acquire its Equity Interests or with proceeds from substantially concurrent capital contributions or issuances of new Equity Interests, provided that any terms and provisions material to the interests of the Lenders, when taken as a whole, contained in such other class of Equity Interests are at least as advantageous to the Lenders as those contained in the Equity Interests redeemed thereby and (ii) Holdings may declare and make dividend payments or other distributions payable solely in the Equity Interests (other than Disqualified Equity Interests) of Holdings;

(c) Holdings may make additional Restricted Payments so long as (1) no Event of Default is continuing or would result therefrom and (2) immediately after giving effect to such Restricted Payment, the Senior Secured Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 3.00:1.00;

(d) to the extent constituting Restricted Payments permitted by other clauses of this Section 7.06, Holdings and its Restricted Subsidiaries may enter into transactions expressly permitted by Section 7.04, Section 7.05 (other than Section 7.05(e)) or Section 7.07 (other than Section 7.07(j));

(e) repurchases of Equity Interests in the ordinary course of business of Holdings (or any direct or indirect parent thereof) deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(f) Holdings may make cash payments in lieu of issuing fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of Holdings and its Restricted Subsidiaries;

(g) Holdings may make Restricted Payments in an aggregate amount not to exceed the Available Amount; *provided* that with respect to Restricted Payments made in reliance on the Growth Amount, (x) no Event of Default would result therefrom and (y) the Total Net Leverage Ratio shall not exceed the Total Net Leverage Ratio as of the Closing Date on a Pro Forma Basis;

(h) Holdings may, in good faith, pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of it or any direct or indirect parent thereof held by any future, present or former employee, director, manager, officer or consultant (or any Affiliates, spouses, former spouses, other immediate family members, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of Holdings (or any direct or indirect parent of Holdings) or any of its Subsidiaries pursuant to any employee, management, director or manager equity plan, employee, management, director or manager stock option plan or any other employee, management, director or manager benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, manager, officer or consultant of Holdings (or any direct or indirect parent thereof), the Borrower or any Restricted Subsidiary; provided that such payments shall not exceed $5,000,000 in any calendar year (or, after a Qualifying IPO, the greater of (x) $8,000,000 and (y) 15.0% of Consolidated EBITDA of Holdings as of the last day of the most recently ended Test Period), p*rovided* that any unused portion of the preceding basket for any calendar year may be carried forward to succeeding calendar years, so long as the aggregate amount of all Restricted Payments made pursuant to this Section 7.06(h) in any calendar year (after giving effect to such carry forward) shall not exceed $10,000,000 in any calendar year (or, after the Qualifying IPO, the greater of (x) $14,000,000 and (y) 25.0% of Consolidated EBITDA of Holdings as of the last day of the most recently ended Test Period); *provided further* that, cancellation of Indebtedness owing to the Borrower (or any direct or indirect parent thereof) or any of its Subsidiaries from members of management of the Borrower, any of the Borrower's direct or indirect parent companies or any of the Borrower's Restricted Subsidiaries in connection with a repurchase of Equity Interests of any of the Borrower's direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement; *provided further* that such amount in any calendar year may be increased by an amount not to exceed:

(i) the cash proceeds from the sale of Equity Interests (other than Disqualified Equity Interests) of Holdings and, to the extent contributed to the capital of Holdings (other than through the issuance of Disqualified Equity Interests), Equity Interests of any parent entity of Holdings, in each case to members of management, directors or consultants of Holdings, any of its Subsidiaries or any parent entity thereof that occurred after the Closing Date, in each case to the extent not otherwise applied under this Agreement or constituting a Cure Amount; plus

(ii) the cash proceeds of key man life insurance policies received by Holdings and its Restricted Subsidiaries after the Closing Date; less

(iii) the amount of any Restricted Payments made in previous calendar years pursuant to clauses (i) and (ii) of this proviso;

(i) Holdings may make additional Restricted Payments in an amount not to exceed $1,000,000; *provided* that no Specified Event of Default has occurred and is continuing or would result therefrom;

(j) Holdings may make Restricted Payments to any direct or indirect parent of Holdings:

(i) the proceeds of which will be used to pay the consolidated, combined, unitary or similar Tax liability of such parent's income Tax that is attributable to the income of Holdings, the Borrower or their respective Subsidiaries; *provided that* Holdings, the Borrower, and their applicable Subsidiaries are members of a consolidated, combined, or unitary group for U.S. federal tax purposes of which the direct or indirect parent of Holdings is the common parent; *provided further* that no such payments shall exceed the Tax liability that would have been imposed on Holdings, the Borrower and/or the applicable Subsidiaries had such entities filed a consolidated, combined, unitary or similar Tax return where Holdings was the parent entity of such group and the only subsidiaries of Holdings were Borrower and its Subsidiaries;

(ii) the proceeds of which shall be used to pay such equity holder's operating costs and expenses incurred in the ordinary course of business, other overhead costs and expenses and fees (including (v) administrative, legal, accounting and similar expenses provided by third parties, (w) trustee, directors, managers and general partner fees, (x) [reserved], (y) fees and expenses (other than such owed to Affiliates) (including any underwriters discounts and commissions) related to any investment or acquisition transaction (whether or not successful) and (z) payments in respect of indebtedness and equity securities of any direct or indirect holder of Equity Interests in Holdings to the extent the proceeds are used or will be used to pay expenses or other obligations described in this Section 7.06(j)) which are in each case reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of Holdings and its Restricted Subsidiaries (including any reasonable and customary indemnification claims made by directors, managers or officers of any direct or indirect parent of Holdings attributable to the direct or indirect ownership or operations of Holdings and its Restricted Subsidiaries) and fees and expenses otherwise due and payable by Holdings or any Restricted Subsidiary and permitted to be paid by Holdings or such Restricted Subsidiary under this Agreement;

(iii) the proceeds of which shall be used to pay franchise and excise Taxes, and other fees and expenses, in each case required to maintain its (or any of its direct or indirect parents') existence;

(iv) which shall be used to pay customary salary, bonus, severance and other benefits payable to officers and employees of Holdings or any other direct or indirect parent company of Holdings, including Holdings to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of Holdings and its Restricted Subsidiaries;

(v) to finance any Investment made by such direct or indirect parent that, if made by Holdings, would be permitted to be made pursuant to Section 7.02; provided that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be held by or contributed to Holdings or a Restricted Subsidiary or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into Holdings or a Restricted Subsidiary in order to consummate such Permitted Acquisition, in each case, in accordance with the requirements of Section 6.13; and/or

(vi) the proceeds of which shall be used to (A) pay customary costs, fees and expenses (other than to Affiliates) related to any equity or debt offering permitted by this Agreement and (B) without duplication, to pay Public Company Costs;

(k) Holdings may make Restricted Payments in connection with the Transactions (other than clause (c) of the definition thereof);

(l) [reserved];

(m) Restricted Payments in an amount equal to the aggregate amount of cash contributions made after the Closing Date to Holdings and contributed to the Borrower in exchange for Qualified Equity Interests of Holdings, except to the extent utilized in connection with any other transaction permitted by Section 7.02 or Section 7.08, and except to the extent such amount increases the Available Amount or constitutes a Cure Amount;

(n) [reserved];

(o) [reserved];

(p) the declaration and payment of dividends on Disqualified Equity Interests incurred in accordance with Section 7.03;

(q) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant and any repurchases of Equity Interests in consideration of such payments including deemed repurchases in connection with the exercise of stock options or warrants and the vesting of restricted stock and restricted stock units; and

(r) distributions or payments of Securitization Fees, sales contributions and other transfers of Securitization Assets or Receivables Assets and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Repurchase Obligation, in each case in connection with a Qualified Securitization Financing or Permitted Receivables Financing.

Section 7.07. *Transactions with Affiliates*. Enter into any transaction (other than any transaction or series of transactions having a fair market value not in excess of the greater of (x) $3,000,000 and (y) 5.0% of Consolidated EBITDA of Holdings for the most recently ended Test Period) of any kind with any Affiliate of Holdings, whether or not in the ordinary course of business on terms that are less favorable to Holdings or such Restricted Subsidiary, as the case may be, than those that would be obtained at the time in a comparable arm's-length transaction with a Person who is not an Affiliate, other than:

(a) transactions among Holdings or the Restricted Subsidiaries or any entity that becomes a Restricted Subsidiary as a result of such transaction;

(b) [reserved];

(c) the Transactions and the payment of fees and expenses in connection with the consummation of the Transactions;

(d) the payment of (i) advisory, consulting, refinancing, subsequent transaction and exit fees in an aggregate amount in any fiscal year not to exceed the greater of (x) the amount permitted to be paid pursuant to the Sponsor Management Agreement as in effect on the date hereof and any Sponsor Termination Fees not to exceed the amount set forth in the Sponsor Management Agreement as in effect on the date hereof and (y) the greater of (1) $1.0 million and (2) 0.25% of the Consolidated EBITDA of Holdings for the most recently ended Test Period per fiscal year and (ii) related indemnities and reasonable expenses; provided that, upon the occurrence and during the continuance of a Specified Event of Default, such amounts described in clause (i) may accrue, but not be payable in cash during such period, but all such accrued amounts (plus accrued interest, if any, with respect thereto) may be payable in cash upon the cure or waiver of such Specified Event of Default;

(e) transactions with customers, clients, suppliers, joint ventures, purchasers or sellers of goods or services or providers of employees or other labor entered into in the ordinary course of business, which are fair to Holdings and/or its applicable Restricted Subsidiary in the good faith determination of the board of directors (or similar governing body) of Holdings or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(f) [reserved];

(g) payments by Holdings or any Restricted Subsidiary pursuant to Tax sharing agreements among Holdings and its Subsidiaries (and any direct or indirect parent thereof) on customary terms;

(h) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, managers, officers, employees and consultants of Holdings and its Restricted Subsidiaries or any direct or indirect parent of Holdings in the ordinary course of business;

(i) transactions pursuant to agreements in effect on the Closing Date and set forth on Schedule 7.07 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect;

(j) Restricted Payments permitted under Section 7.06 and/or Investments permitted under Section 7.02 (in each case, other than by reference to this Section 7.07);

(k) transactions engaged in by Holdings or any Restricted Subsidiary with Unrestricted Subsidiaries in good faith to effect the operations, governance, administration, accounting and corporate overhead of Holdings and its Subsidiaries;

(l) customary payments by the Borrower and any Restricted Subsidiaries to the Sponsor made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestitures), which payments are approved by the majority of the members of the board of directors or a majority of the disinterested members of the board of directors of the Borrower in good faith;

(m) transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary pursuant to Section 6.15; provided that such transactions were not entered into in contemplation of such redesignation; it being agreed that for the purposes of this Section 7.07, each Unrestricted Subsidiary shall be deemed to be an Affiliate of each Restricted Company;

(n) the payment of reasonable out-of-pocket costs and expenses related to registration rights and customary indemnities provided to shareholders under any shareholder agreement;

(o) (i) any purchase by Holdings (or any parent company thereof) of the Equity Interests of (or contribution to the equity capital of) Holdings and (ii) any intercompany loans made by Holdings to Holdings, a parent company thereof or any Restricted Subsidiary;

(p) transactions in connection with any Permitted Tax Restructuring;

(q) (i) any collective bargaining, employment or severance agreement or compensatory (including profit sharing) arrangement entered into by Holdings or any of its Restricted Subsidiaries with their respective current or former officers, directors, members of management, managers, employees, consultants or independent contractors or those of any parent company of Holdings, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current or former officers, directors, members of management, managers, employees, consultants or independent contractors and (iii) transactions and/or issuance, sale or grant of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or to fund, any employee compensation, benefit plan, stock option plan or arrangement, any health, disability or similar insurance plan which covers current or former officers, directors, members of management, managers, employees, consultants or independent contractors or any employment contract or arrangement, in each case in the ordinary course of business;

(r) any transaction in respect of which the Borrower delivers to the Administrative Agent a letter addressed to the board of directors (or equivalent governing body) of Holdings from an accounting, appraisal or investment banking firm of nationally recognized standing stating that such transaction is on terms that are no less favorable to Holdings or the applicable Restricted Subsidiary than might be obtained at the time in a comparable arm's length transaction from a Person who is not an Affiliate; and

(s) any transaction with a Securitization Subsidiary effected as part of a Qualified Securitization Financing or Permitted Receivables Financing, including any disposition or repurchase of Securitization Assets, Receivables Assets or related assets in connection with any Qualified Securitization Financing and/or Permitted Receivables Financing.

Section 7.08. *Prepayments, Etc. of Indebtedness*. Prepay, redeem, purchase, defease or otherwise satisfy in each case prior to the due date thereof in any manner (it being understood that payments of interest, fees, premiums, indemnification payments and expenses when due and mandatory prepayments shall be permitted) any Junior Indebtedness in an outstanding principal amount exceeding the greater of (1) $8,000,000 and (2) 15.0% of the Consolidated EBITDA of Holdings for the most recently ended Test Period or make any payment in violation of any subordination terms of any such Junior Indebtedness (collectively, "**Restricted Prepayments**"), except:

(a) the refinancing thereof with the net cash proceeds of (i) any issuance of Qualified Equity Interests of Holdings (or parent company thereof) to the extent not otherwise applied under this Agreement or constituting a Cure Amount or (ii) Indebtedness that (x) constitutes a Permitted Refinancing of such Junior Indebtedness and (y) is subordinated in right of payment to the Obligations;

(b) the conversion of any Junior Indebtedness to Qualified Equity Interests;

(c) Restricted Prepayments in an amount not to exceed the Available Amount; *provided* that with respect to Restricted Prepayments made in reliance on the Growth Amount, (x) no Event of Default shall result therefrom and (y) the Total Net Leverage Ratio shall not exceed the Total Net Leverage Ratio as of the Closing Date on a Pro Forma Basis;

(d) [reserved];

(e) additional Restricted Prepayments so long as (x) no Event of Default has occurred and is continuing or would result therefrom and (y) immediately after giving effect to such Restricted Prepayment, the Senior Secured Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 3.00:1.00;

(f) Restricted Prepayments as part of an applicable high yield discount obligation catch-up payments; and

(g) Restricted Prepayments with respect to intercompany Indebtedness owed to Holdings or any of its Restricted Subsidiaries permitted under Section 7.03, subject to the subordination provisions applicable thereto.

Section 7.09. *Subsidiary Distributions* Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of any Restricted Subsidiary to make Restricted Payments to any Loan Party or to otherwise transfer property to or invest in any Loan Party; provided that the foregoing shall not apply to Contractual Obligations which (i) (x) exist on the Closing Date and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted renewal, extension or refinancing of such Indebtedness so long as such renewal, extension or refinancing does not expand the scope of such restrictions that are contained in such Contractual Obligation, (ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary, (iii) arise in connection with any Disposition permitted by Section 7.05, (iv) are customary provisions in JV Entity agreements and other similar agreements applicable to JV Entities permitted under Section 7.02 and applicable solely to such JV Entity entered into in the ordinary course of business, (v) [reserved], (vi) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions may relate to the assets subject thereto, (vii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest, (viii) are customary provisions restricting assignment or transfer of any agreement entered into in the ordinary course of business, (ix) are on cash, other deposits or net worth or similar restrictions imposed by Persons under contracts entered into in the ordinary course of business, (x) are contained in any employment, compensation or separation agreement or arrangement entered into by Holdings or any Restricted Subsidiary in the ordinary course of business, (xi) arising in any Swap Contracts and/or any agreement relating to any Cash Management Obligation or obligations of the type referred to in Section 7.02(l) or (xii) are set forth in any agreement relating to any Lien permitted by Section 7.01 that limits the right of Holdings or any Restricted Subsidiary to Dispose of or encumber the assets subject thereto.

Section 7.10. *No Changes in Fiscal Year*. Change its fiscal year for financial reporting purposes (other than any Restricted Subsidiary acquired after the Closing Date, and in such case only to the extent necessary to conform to the fiscal year of Holdings) from its present basis without the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld); *provided* that in the event that the Administrative Agent shall so consent to such change, Holdings and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary in order to reflect such change in financial reporting.

Section 7.11. *Financial Covenant*. Except with the written consent of the Required Revolving Credit Lenders, permit the First Lien Net Leverage Ratio as of the last day of a Test Period (commencing with the Test Period ending on or about June 30, 2019) to exceed 6.00:1.00 (the "**Financial Covenant**") (provided that the provisions of this Section 7.11 shall not be applicable to any such Test Period if on the last day of such Test Period the aggregate principal amount of Revolving Credit Loans (excluding but only for the Test Period ending on or about June 30, 2019 amounts borrowed on the Closing Date to fund (i) any costs or expenses associated with the Transactions (including any consideration for the Acquisition) and (ii) additional upfront fees or OID required by the terms of the "market flex" provisions of the Arranger Fee Letter and/or Letters of Credit (excluding up to $5,000,000 of Letters of Credit and other Letters of Credit which have been Cash Collateralized or backstopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer) that are issued and/or outstanding is equal to or less than 35% of the Revolving Credit Facility).

Section 7.12. *Lines of Business*. Engage to any material extent in any business other than any of the businesses in which the Borrower and its Restricted Subsidiaries are engaged on the Closing Date, and any business reasonably related, incidental, complementary or ancillary thereto or extensions, expansions or developments thereof.

## ARTICLE 8
## EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Any of the following shall constitute an "**Event of Default**":

(a) Non-Payment. Any Loan Party fails to pay (i) when due, any amount of principal of any Loan, (ii) when and as required to be paid herein, any amount required to be prepaid and/or cash collateralized pursuant to Section 2.06(b)(vii) or (iii) within five Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants*. Holdings or any Restricted Subsidiary fails to perform or observe any term, covenant or agreement contained in any (i) of Section 6.05(a) (solely with respect to the Borrower) or Article 7 (other than Section 7.11), or (ii) Section 7.11; *provided* that (i) any Default or Event of Default under Section 7.11 shall (x) be subject to cure pursuant to Section 8.04 and (y) not constitute a Default or an Event of Default for purposes of any Term Loans unless and until the Initial Revolving Credit Lenders have actually terminated the Initial Revolving Credit Commitments and/or declared all outstanding Initial Revolving Credit Loans and obligations under the Initial Revolving Credit Facility to be immediately due and payable; *provided further* that no Default or Event of Default shall arise under Section 7.11 until the 10th Business Day after the day on which financial statements are required to be delivered for the relevant fiscal quarter or fiscal year, as applicable, under Sections 6.01(a) or (b), as applicable (unless Cure Rights have been exercised for an aggregate of five times over the life of this Agreement and/or Cure Rights have been exercised twice in the four consecutive fiscal quarter period most recently ended or the Borrower has notified the Administrative Agent that a Cure Right will not be exercised with respect thereto), and then only to the extent the Cure Amount has not been received on or prior to such date; *provided* that, commencing on the earlier of the day on which financial statements have been delivered or are required to be delivered for the relevant fiscal quarter or fiscal year, as applicable, under Sections 6.01(a) or (b), as applicable, no Revolving Credit Lender or L/C Issuer shall be required to make any Revolving Credit Loan or issue or amend any Letter of Credit until the Cure Amount is actually received; or

(c) *Other Defaults*. Any Restricted Company fails to perform or observe any other term, covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after notice thereof by the Administrative Agent to the Borrower; or

(d) *Representations and Warranties*. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Restricted Company herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material and adverse respect when made or deemed made, subject, in the case of representations, warranties, certifications or statements of fact that are capable of being cured, to a grace period of 30 days following the Borrower's receipt of written notice of the inaccuracy of the relevant representation, warranty or certification; it being understood and agreed that (x) any breach of representation, warrant or certification resulting from the failure of the Administrative Agent to file any Uniform Commercial Code continuation statement shall not result in an Event of Default under this Section 7.01(d) or any other provision of any Loan Document and (y) the Specified Representations made on the Closing Date are incapable of being cured; or

(e) *Cross-Default*. Any Material Company (i) fails to make any payment after the applicable grace period with respect thereto, if any, (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder and Indebtedness owed by one Restricted Company to another Restricted Company) having an outstanding principal amount of not less than the Threshold Amount or (ii) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to such Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts (it being understood that clause (i) of this Section 7.01(e) will apply to any failure to make any payment required as a result of such termination or equivalent event)), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, (x) such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or (y) a mandatory offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that this clause (e)(ii) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; *provided further* that, any failure described under clauses (i) or (ii) above is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the commitments or acceleration of the Loans pursuant to Article 8; or

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

(g) *Inability to Pay Debts; Attachment*. (i) Any Material Company becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any Material Company in an amount exceeding the Threshold Amount and is not paid, released, discharged, vacated or fully bonded within 60 days after its issue or levy; or

(h) *Judgments*. There is entered against any Material Company a final judgment or order for the payment of money in an amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and does not deny coverage) and there is a period of 60 consecutive days during which such judgment has not been paid and during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) *ERISA*. (i) An ERISA Event occurs that, when taken together with all other such ERISA Events or events, has resulted or could reasonably be expected to result in a Material Adverse Effect, or (ii) Holdings or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; or

(j) *Change of Control*. There occurs any Change of Control; or

(k) *Collateral Documents*. Any Collateral Document after delivery thereof pursuant to Section 4.01 or Section 6.13 shall for any reason (other than pursuant to the terms thereof including as a result of a transaction permitted under Section 7.04 or Section 7.05) cease to create a valid and perfected first priority Lien on and security interest in any material portion of the Collateral, subject to Liens permitted under the Loan Documents, or any Loan Party shall assert in writing such invalidity or lack of perfection or priority (other than in an informational notice delivered to the Administrative Agent), except to the extent that any such loss of perfection or priority results from (x) the failure of the Administrative Agent to maintain possession of certificates or other possessory collateral actually delivered to it representing securities or other collateral pledged under the Collateral Documents or to file Uniform Commercial Code financing statements and/or filings regarding IP Rights or equivalent filings that have been delivered to the Administrative Agent which the Administrative Agent (or its counsel) has agreed to file, (y) a release of Collateral in accordance with the terms hereof or thereof and/or (z) the occurrence of the Termination Date and, except as to Collateral consisting of Material Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied or disclaimed in writing that such losses are covered by such title insurance policy; or

(l) *Guaranty*. Any material Guarantee purported to be created under any Loan Document shall cease to be, or shall be asserted by any Loan Party not to be, in full force and effect in accordance with its terms, except with respect to any Subsidiary Guarantor upon the consummation of any transaction permitted by this Agreement as a result of which such Subsidiary Guarantor providing such Guarantee ceases to be a Subsidiary or upon the termination of such Guarantee in accordance with its terms.

Notwithstanding the foregoing, any Event of Default shall be deemed no longer to be "continuing" or "existing" if the events, acts or conditions that gave rise to such Event of Default have been remedied or cured or have ceased to exist after the date such events, acts or conditions first occurred.

Section 8.02. *Remedies Upon Event of Default*. (a) Except as provided in clause (b) below), if any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(i) declare the Commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such Commitments and obligation shall be terminated;

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

(iii) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to 103% of the then Outstanding Amount thereof);

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

(b) Upon the occurrence of an Event of Default arising from a breach of Section 7.11 that has occurred and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Revolving Credit Lenders, take any or all of the actions specified in Section 8.02(a) in respect of the Initial Revolving Credit Commitments (including any obligation of the L/C Issuer to make L/C Credit Extensions), the Initial Revolving Credit Loans and the L/C Obligations; *provided* that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the Commitments shall automatically terminate and the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

Section 8.03. *Application of Funds*. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including Attorney Costs payable under Section 11.04 and amounts payable under Article 3 but excluding principal of, and interest on, any Loan) payable to the Administrative Agent in its capacity as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest and Secured Hedging Obligations and Cash Management Obligations) payable to the Lenders (including Attorney Costs payable under Section 11.05 and amounts payable under Article 3), ratably among them in proportion to the amounts described in this clause Second payable to them;

*Third*, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and L/C Borrowings, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

*Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, Secured Hedging Obligations and Cash Management Obligations ratably among the Lenders, each Hedge Bank or provider of Cash Management Obligations in proportion to the respective amounts described in this clause Fourth held by them;

*Fifth*, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

*Sixth*, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

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

Subject to Section 2.04(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above and, if no Obligations remain outstanding, delivered to the Borrower. Notwithstanding the foregoing, no amounts received from any Guarantor shall be applied to any Excluded Swap Obligation of such Guarantor.

Section 8.04. *Borrower's Right to Cure*. Notwithstanding anything to the contrary in this Agreement (including this Article 8), upon the occurrence of a Default or Event of Default as a result of Holdings' failure to comply with Section 7.11 above for any fiscal quarter, Holdings shall have the right (the "Cure Right") (at any time during such fiscal quarter or thereafter until the date that is 10 Business Days after the date on which financial statements for such fiscal quarter are required to be delivered pursuant to Section 6.01(a) or (b), as applicable) to issue Qualified Equity Interests or other equity (such other equity to be on terms reasonably acceptable to the Administrative Agent) for cash or otherwise receive cash contributions in respect of its Qualified Equity Interests (the "Cure Amount"), and thereupon compliance with Section 7.11 shall be recalculated giving effect to a pro forma increase in the amount of Consolidated EBITDA by an amount equal to the Cure Amount (notwithstanding the absence of a related addback in the definition of "Consolidated EBITDA") solely for the purpose of determining compliance with Section 7.11 as of the end of such fiscal quarter and for applicable subsequent periods that include such fiscal quarter. If, after giving effect to the foregoing recalculation (but not, for the avoidance of doubt, taking into account any repayment of Indebtedness in connection therewith), the requirements of Section 7.11 would be satisfied, then the requirements of Section 7.11 shall be deemed satisfied as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of Section 7.11 that had occurred (or would have occurred) shall be deemed cured for the purposes of this Agreement. Notwithstanding anything herein to the contrary, (i) in each four consecutive fiscal quarter period there shall be at least two fiscal quarters (which may, but are not required to be, consecutive) in which the Cure Right is not exercised, (ii) during the term of this Agreement, the Cure Right shall not be exercised more than five times, (iii) the Cure Amount shall be no greater than the amount required for the purpose of complying with Section 7.11, there shall be no pro forma or actual reduction of the amount of Indebtedness by the amount of any Cure Amount for purposes of determining compliance with Section 7.11 for the fiscal quarter in respect of which the Cure Right was exercised (provided that, with respect to any future period, to the extent of any portion of such Cure Amount that is actually applied to repay Indebtedness under the Loan Documents, such repayment may be given effect) and (i) such Cure Amount shall be disregarded for purposes of determining (x) any financial ratio-based condition to the availability of any carve-out set forth in Article 7 of this Agreement or any other basket set forth in Article 7 of this Agreement, (y) any ratio-based stepdown in Article 2 of this Agreement or (z) the Applicable Margin.

## ARTICLE 9

## ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01. *Appointment and Authorization of Administrative Agent*. (a) Each Lender hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, the Administrative Agent shall have no duties or responsibilities, except those expressly set forth herein or therein, 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 the other Loan Documents with reference to any 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.

(b) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (i) provided to the Agents in this Article 9 with respect to any acts taken or omissions suffered by each L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term "**Agent**" as used in this Article 9 and in the definition of "Agent-Related Person" included such L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such L/C Issuer.

(c) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (in its capacities as a Lender, L/C Issuer (if applicable) potential provider of Cash Management Obligations and a potential Hedge Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and, subject to Section 9.13, to hold any security interest created by the Collateral Documents for and on behalf of or on trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits afforded to the Administrative Agent of all provisions of this Article 9 (including Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

Section 9.02. *Delegation of Duties*. The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or of exercising any rights and remedies thereunder) by or through agents, employees or attorneys-in-fact, such sub-agents as shall be deemed necessary by the Administrative Agent 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 sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct or material breach of the Loan Documents by it in bad faith.

Section 9.03. *Exculpatory Provisions*. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 9.04. *Reliance by Administrative Agent.* (a) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party or any of their Subsidiaries), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

Section 9.05. *Credit Decision; Disclosure of Information by Agents*. Each Lender acknowledges that no Agent-Related Person or Arranger has made any representation or warranty to it, and that no act by any Agent or Arranger hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any of their Subsidiaries thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person or Arranger to any Lender as to any matter, including whether Agent-Related Persons or the Arranger have disclosed material information in their possession. Each Lender represents to each Agent that it has, independently and without reliance upon any Agent-Related Person or Arranger and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of each Loan Party, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person or Arranger and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of each Loan Party or any of their Subsidiaries. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any of their Subsidiaries which may come into the possession of any Agent-Related Person. Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and letters of credit and not investments in a business enterprise or securities.

Section 9.06. *Indemnification of Agents*. The Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities in connection with its role as an Agent-Related Person; *provided* that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence, willful misconduct or material breach of the Loan Documents by it in bad faith; *provided* that 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 9.06; *provided further* that to the extent an L/C Issuer is entitled to indemnification under this Section 9.06 solely in connection with its role as an L/C Issuer, only the Initial Revolving Credit Lenders shall be required to indemnify such L/C Issuer in accordance with this Section 9.06. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.06 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower. The undertaking in this Section 9.06 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

Section 9.07. *Agents in their Individual Capacities*. Nomura 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 each Loan Party or any of their Subsidiaries as though Nomura (or any sub-agent or designee thereof) were not the Administrative Agent or the L/C Issuer hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, Nomura or its Affiliates (and their respective sub-agents or designees) may receive information regarding any Loan Party or any of their Subsidiaries (including information that may be subject to confidentiality obligations in favor of such Loan Party or any of their Subsidiaries) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them. With respect to its Loans, Nomura (or any sub-agent or designee thereof) shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not the Administrative Agent or the L/C Issuer, and the terms "Lender" and "Lenders" include Nomura (or any sub-agent or designee thereof) in its individual capacity.

Section 9.08. *Successor Agents*.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, to appoint a successor, which shall be a bank or other financial institution with an office in the United States, or an Affiliate of any such bank with an office in the United States, which successor agent shall be consented to by the Borrower at all times other than during the existence of an Event of Default under Section 8.01(f) or (g) (with respect to the Borrower) (which consent of the Borrower shall not be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the " **Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent, which successor agent shall be consented to by the Borrower at all times other than during the existence of an Event of Default under Section 8.01(f) and (g) (which consent of the Borrower shall not be unreasonably withheld or delayed, meeting the qualifications set forth above, provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, appoint a successor, which successor agent shall be consented to by the Borrower at all times other than during the existence of an Event of Default under Section 8.01(f) and (g) (which consent of the Borrower shall not be unreasonably withheld or delayed. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the " **Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable) and shall promptly enter into a licensing agreement with the Reference Pricing Agent, and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article, Section 11.04 and Section 11.05 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (a) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (b) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) Any resignation by Nomura as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer. If Nomura resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.04(c). Upon the appointment by the Borrower of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (b) the retiring L/C Issuer shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Nomura to effectively assume the obligations of Nomura with respect to such Letters of Credit.

Section 9.09. *Administrative Agent May File Proofs of Claim; Credit Bidding*. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.04(i), 2.04(j), 2.10 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, the L/C Issuer to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Sections 2.10 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 11.01(a) of this Agreement, (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 9.10. *Collateral and Guaranty Matters*. The Lenders irrevocably authorize the Administrative Agent:

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) on the Termination Date, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document to any Person other than a Loan Party, (iii) subject to Section 11.01, if approved, authorized or ratified in writing by the Required Lenders, (iv) owned by a Subsidiary Guarantor upon release of such Subsidiary Guarantor from its obligations under its Subsidiary Guaranty pursuant to clause Section 9.10(b)(b) below or (v) becomes an Excluded Asset or ceases to constitute Collateral;

(b) to release any Subsidiary Guarantor from its obligations under any Loan Document to which it is a party if such Person (i) ceases to be a Restricted Subsidiary, (ii) ceases to be a Subsidiary or (iii) becomes an Excluded Subsidiary, in each case, as a result of a transaction or designation permitted hereunder; *provided* that no such release shall occur if such Subsidiary Guarantor continues to be a guarantor in respect of any Junior Indebtedness with a principal amount in excess of the Threshold Amount unless and until such Subsidiary Guarantor is (or is being simultaneously) released from its guarantee with respect to such Indebtedness; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.01(f), 7.01(i), 7.01(m), 7.01(p), 7.01(s), 7.01(t), 7.01(v), 7.01(x) (to the extent the relevant Lien is of the type to which the Lien of the Administrative Agent is otherwise required to be subordinated under this clause (c) pursuant to any of the other exceptions to Section 7.01 that are expressly included in this clause (c)), 7.01(y) (to the extent the relevant Lien secures Indebtedness permitted under Section 7.03(z)(i)) and/or 7.01(ff); *provided*, that the subordination of any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent shall only be required with respect to any Lien on such property that is permitted by Sections 7.01(f), 7.01(i), 7.01(m), 7.01(p), 7.01(s), 7.01(t), 7.01(v), 7.01(x), 7.01(y) and/or 7.01(ff) to the extent that the Lien of the Administrative Agent or the Collateral Agent (as applicable) with respect to such property is required to be subordinated to the relevant Lien permitted by Section 7.01 in accordance with the documentation governing the Indebtedness that is secured by such Lien permitted by Section 7.01; and

(d) to enter into any subordination, intercreditor, collateral trust and/or similar agreement contemplated hereunder, including any Acceptable Intercreditor Agreement, including with respect to Indebtedness that is (i) required or permitted to be subordinated in right of payment hereunder and/or (ii) secured by Liens and required or permitted to be pari passu with or junior to the Liens securing the Secured Obligations, and with respect to which Indebtedness, an intercreditor, subordination, collateral trust or similar agreement is contemplated under this Agreement and including an Acceptable Intercreditor Agreement, an "**Additional Agreement**"), and the Secured Parties party hereto acknowledge that any Additional Agreement is binding upon them. Each Secured Party party hereto hereby (a) agrees that they will be bound by, and will not take any action contrary to, the provisions of any Additional Agreement and (b) authorizes and instructs the Administrative Agent to enter into any Additional Agreement and to subject the Liens on the Collateral securing the Secured Obligations to the provisions thereof. The foregoing provisions are intended as an inducement to the Secured Parties to extend credit to the Borrower, and the Secured Parties are intended third-party beneficiaries of such provisions and the provisions of any Intercreditor Agreement and/or any Additional Agreement.

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

Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent and each Secured Party hereby agree that no Secured Party shall have any right individually to realize upon any of the Collateral, to enforce the Guaranty or take any other enforcement action hereunder or under any other Loan Document, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent or the Required Lenders for the benefit of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Security Documents may be exercised solely by the Administrative Agent or the Required Lenders for the benefit of the Secured Parties in accordance with the terms thereof.

No Secured Hedging Agreement or Cash Management Obligations will create (or be deemed to create) in favor of counterparty that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Loan Documents except as expressly provided in the Security Agreement. By accepting the benefits of the Collateral, such counterparty shall be deemed to have appointed Administrative Agent, in its capacity as collateral agent, as its agent and agreed to be bound by the Loan Documents as a Secured Party, subject to the limitations set forth in this paragraph. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not the Administrative Agent, a Lender or an L/C Issuer as long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this Article 9, and Section 11.09, and the decisions and actions of the Administrative Agent and the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided that, notwithstanding the foregoing, (i) such Secured Party shall be bound by Section 11.05 only to the extent of liabilities, costs and expenses relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall be such Secured Party's pro rata share (based on the amount of Obligations owing to such Secured Party relative to the aggregate amount of Obligations) of such liabilities, costs and expenses, (ii) except as set forth specifically herein, the Administrative Agent, the Lenders and the L/C Issuer shall be entitled to act in its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (iii) except as specifically set forth herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

Section 9.11. *Other Agents; Arrangers and Managers*. None of the Lenders or other Persons identified on the facing page and/or signature pages of this Agreement as a "senior managing agent", "co-syndication agent," "co-documentation agent," "joint bookrunner," "arranger," or "joint lead arranger" shall have any right, power, obligation, liability, responsibility or duty under this Agreement. Without limiting the foregoing, none of the Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

Section 9.12. *ERISA*. Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto to, and (y) covenants, from the date such Person became a Lender party hereto until the date such Person ceases being a Lender party hereto, that at least one of the following is and will be true:

(a) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans in connection with the Loans, Commitments or the Letters of Credit,

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

(c) (i) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14),

(ii) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments, the Letters of Credit and this Agreement;

(iii) the entrance into, participation in, administration of and performance of the Loans, the Commitments, the Letters of Credit and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14; and

(iv) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement.

In addition, unless sub-clause (a) above is true with respect to a Lender, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that neither the Administrative Agent nor any of its Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

ARTICLE 10
GUARANTY

Section 10.01. *Guaranty*. (a) Each Guarantor hereby, jointly and severally, absolutely, unconditionally and irrevocably guarantees the punctual payment when due, whether at scheduled maturity or by acceleration, demand or otherwise, of all of its Guaranteed Obligations. Without limiting the generality of the foregoing, but subject to Section 10.11, the liability of each Guarantor shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Loan Party to any Secured Party under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party. This Guaranty is a guaranty of payment and not of collection.

(b) Each Guarantor, and by its acceptance of this Article 10, the Administrative Agent, on behalf of itself and each other Secured Party, hereby confirm that it is the intention of all such Persons that this Article 10 and the Guaranteed Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of Debtor Relief Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Article 10 and the Guaranteed Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Administrative Agent, the other Secured Parties and the Guarantors hereby irrevocably agree that the Guaranteed Obligations of each Guarantor under this Article 10 at any time shall be limited to the maximum amount as will result in the Guaranteed Obligations of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance under Debtor Relief Law or any comparable provision of applicable Law.

Section 10.02. *Contribution*. Subject to Section 10.03, each Guarantor hereby unconditionally agrees that in the event any payment shall be required to be made to any Secured Party under this Article 10 or any other Guaranty, such Guarantor in its capacity as such will contribute, to the maximum extent permitted by Law, such amounts to each other Guarantor so as to maximize the aggregate amount paid to the Secured Parties under or in respect of the Loan Documents.

Section 10.03. *Guaranty Absolute*. Each Guarantor guarantees that its Guaranteed Obligations will be paid in accordance with the terms of the Loan Documents regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of any Secured Party with respect thereto. The Obligations of each Guarantor under or in respect of this Article 10 are independent of the Guaranteed Obligations or any other Obligations of any other Loan Party under or in respect of the Loan Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Article 10, irrespective of whether any action is brought against the Borrower or any other Loan Party or whether the Borrower or any other Loan Party is joined in any such action or actions. The liability of each Guarantor under this Article 10 shall be irrevocable, absolute and unconditional, and each Guarantor hereby irrevocably waives any defenses (other than payment in full of the Guaranteed Obligations) it may now have or hereafter acquire in any way, including relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of its Guaranteed Obligations or any other Obligations of any other Loan Party under or in respect of the Loan Documents, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in its Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or any of its Subsidiaries or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral or any other collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of its Guaranteed Obligations;

(d) any manner of application of Collateral or any other collateral, or proceeds thereof, to all or any of its Guaranteed Obligations, or any manner of sale or other disposition of any Collateral or any other collateral for all or any of its Guaranteed Obligations or any other Secured Obligations of any Loan Party under the Loan Documents or any other assets of any Loan Party or any of its Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any Loan Party or any of its Subsidiaries;

(f) any failure of any Secured Party to disclose to any Loan Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or
prospects of any other Loan Party now or hereafter known to such Secured Party (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information);

(g) the failure of any other Person to execute or deliver any other guaranty or agreement or the release or reduction of liability of any other guarantor or surety with respect to its Guaranteed Obligations; or

(h) any other circumstance or any existence of or reliance on any representation by any Secured Party that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety other than satisfaction in full of the Obligations.

This Article 10 shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of such Guarantor's Guaranteed Obligations is rescinded or must otherwise be returned by any Secured Party or any other Person upon the insolvency, bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise, all as though such payment had not been made.

Section 10.04. *Waiver and Acknowledgments*. Except for the termination of a Guarantor's obligations hereunder upon the Termination Date, (a) each Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of nonperformance, default, acceleration, protest or dishonor and any other notice with respect to any of its Guaranteed Obligations and this Article 10 (other than any demand, presentment or notice expressly required by the Loan Documents) and any requirement that any Secured Party protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against any Loan Party or any other Person or any Collateral.

(b) Each Guarantor hereby unconditionally and irrevocably waives any right to revoke this Article 10 and acknowledges that this Article 10 is continuing in nature and applies to all of its Guaranteed Obligations, whether existing now or in the future.

(c) Each Guarantor hereby unconditionally and irrevocably waives any defense arising by reason of any claim or defense based upon an election of remedies by any Secured Party that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Loan Parties, any other guarantor or any other Person or any Collateral and any defense based on any right of set-off or counterclaim against or in respect of the Obligations of such Guarantor under this Article 10.

(d) Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of any Secured Party to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party or any of its Subsidiaries now or hereafter known by such Secured Party.

(e) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Loan Documents and that the waivers set forth in this Article 10 are knowingly made in contemplation of such benefits.

Section 10.05. *Subrogation*. Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against any other Loan Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's Guaranteed Obligations under or in respect any Loan Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of any Secured Party against any other Loan Party or any other insider guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any other Loan Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until the Termination Date. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the latest of (a) the Termination Date, (b) the Latest Maturity Date and (c) the latest date of expiration or termination of all Letters of Credit or other provision therefor in full in a manner reasonably satisfactory to the L/C Issuer, such amount shall be received and held in trust for the benefit of the Secured Parties, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Administrative Agent in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to such Guarantor's Guaranteed Obligations and all other amounts payable by it under this Article 10, whether matured or unmatured, in accordance with the terms of the Loan Documents, or to be held as Collateral for any of such Guarantor's Guaranteed Obligations or other amounts payable by it under this Article 10 thereafter arising. If (i) all of the Guaranteed Obligations and all other amounts payable under this Article 10 shall have been paid in full in cash, (ii) the Latest Maturity Date shall have occurred and (iii) all Letters of Credit shall have expired or been terminated or other provision therefor in full shall have been made in a manner reasonably satisfactory to the L/C Issuer, the Lenders will, at any Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Article 10.

Section 10.06. *Payment Free and Clear of Taxes*. Any and all payments by any Guarantor under this Article 10 shall be made in accordance with the provisions of this Agreement, including the provisions of Section 3.01 (and such Guarantor shall make such payments of Taxes or Other Taxes to the extent described in Section 3.01), as though such payments were made by the Borrower.

Section 10.07. *Covenants*. Each Subsidiary Guarantor covenants and agrees that, from the Closing Date to the Termination Date, such Subsidiary Guarantor will perform and observe, and cause each of the Restricted Subsidiaries to perform and observe, all of the terms, covenants and agreements set forth in the Loan Documents on its or their part to be performed or observed or that Holdings has agreed to cause such Subsidiary Guarantor or such Restricted Subsidiaries to perform or observe.

Section 10.08. *Release of Subsidiary Guarantors*. A Subsidiary Guarantor shall automatically be released from this Article 10 and its obligations hereunder upon consummation of any transaction or designation permitted by this Agreement as a result of which such Subsidiary Guarantor (i) ceases to be a Restricted Subsidiary, (ii) ceases to be a Subsidiary or (iii) becomes an Excluded Subsidiary, in each case, as a result of a transaction or designation permitted hereunder (*provided* that no such release shall occur if such Subsidiary Guarantor is a guarantor in respect of any Junior Indebtedness with a principal amount in excess of the Threshold Amount). The Administrative Agent will, at the Borrower's expense, promptly execute and deliver to such Subsidiary Guarantor such documents as the Borrower shall reasonably request to evidence the release of such Subsidiary Guarantor from its Guaranty hereunder pursuant to this Section 10.08; *provided* that the Borrower shall have delivered to the Administrative Agent a written request therefor and a certificate of the Borrower to the effect that the release of such Guarantor is in compliance with the Loan Documents. The Administrative Agent shall be authorized to rely on any such certificate without independent investigation.

Section 10.09. *Guaranty Supplements*. Upon the execution and delivery by any Person of a guaranty supplement in substantially the form of Exhibit G hereto (each, a " **Guaranty Supplement**"), (a) such Person shall be referred to as an "Additional Guarantor" and shall become and be a Guarantor hereunder, and each reference in this Article 10 to a "Guarantor" shall also mean and be a reference to such Additional Guarantor, and each reference in any other Loan Document to a "Guarantor" shall also mean and be a reference to such Additional Guarantor, and (b) each reference herein to "this Article 10", "hereunder", "hereof" or words of like import referring to this Article 10, and each reference in any other Loan Document to the "Guaranty", "thereunder", "thereof" or words of like import referring to this Article 10, shall mean and be a reference to this Article 10 as supplemented by such Guaranty Supplement.

Section 10.10. *No Waiver; Remedies*. No failure on the part of any Secured Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 10.11. *[Reserved]*.

Section 10.12. *Continuing Guaranty; Assignments under this Agreement*. This Article 10 is a continuing guaranty and shall (a) remain in full force and effect until the Termination Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Secured Parties and their permitted successors, transferees and assigns. No Guarantor shall have the right to assign its rights hereunder or any interest herein without the prior written consent of all Lenders.

Section 10.13. *Subordination of Certain Intercompany Indebtedness.* Each Guarantor hereby agrees that any Indebtedness owed by it to another Loan Party shall be subordinated to the Obligations of such Guarantor and that any Indebtedness owed to it by another Loan Party shall be subordinated to the Obligations of such other Loan Party, it being understood that such Guarantor or such other Loan Party, as the case may be, may make payments on such intercompany Indebtedness unless an Event of Default has occurred and is continuing.

Section 10.14. *Keepwell*. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each Non-ECP Guarantor to honor all of its obligations under this Agreement in respect of any Swap Obligations that would otherwise be Excluded Swap Obligations but for this Section 10.14 (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.04 for the maximum amount of such liability that can hereby be incurred and otherwise subject to the limitations on the Obligations of the Guarantors contained in this Guaranty Agreement without rendering its obligations under this Section 10.04, or otherwise under this Agreement, as it relates to such Loan Party, voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). This Section 10.14 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Non-ECP Guarantor for all purposes of § 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Section 10.15. *Maximum Liability*. It is the desire and intent of the Guarantors and the Secured Parties that this Guarantee shall be enforced against the Guarantors to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. The provisions of this Guarantee are severable, and in any action or proceeding involving any state or federal corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under this Guarantee would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Guarantor's liability under this Guarantee, then, notwithstanding any other provision of this Guarantee to the contrary, the amount of such liability shall, without any further action by the Guarantors or the Secured Parties, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Guarantor's "**Maximum Liability**"). Each Loan Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the Maximum Liability of each Guarantor without impairing this Guarantee or affecting the rights and remedies of the Secured Parties hereunder; *provided* that, nothing in this sentence shall be construed to increase any Guarantor's obligations hereunder beyond its Maximum Liability.

## ARTICLE 11
## MISCELLANEOUS

Section 11.01. *Amendments, Etc.* (a) Except as provided in Section 2.16 with respect to any Incremental Joinder, Section 2.18 with respect to any Extension Amendment and Section 2.19 with respect to any Refinancing Amendment or as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders, Holdings and the Borrower or the applicable Loan Party, as the case may be (with an executed copy thereof promptly delivered to the Administrative Agent if not otherwise a party thereto), and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that:

(i) no amendment, waiver or consent shall, without the written consent of each Lender directly and adversely affected thereby (and not, for the avoidance of doubt, the Required Lenders):

(A) extend or increase the Commitment of any Lender (it being understood that a waiver of any condition precedent set forth in Section 4.01 or 4.02, or the waiver of any Default, Event of Default or mandatory prepayment shall not constitute an extension or increase of any Commitment of any Lender);

(B) postpone any date scheduled for any payment of principal or interest under Section 2.08 or 2.09 or fees under Section 2.04(i), 2.04(j), 2.10(b), 2.17(c)(iv), 2.17(c)(v), it being understood that the amendment, supplement, modification and/or waiver of (or amendment to the terms of) any mandatory prepayment of the Term Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest and the application thereof shall not constitute a postponement or reduction of the amount of interest or other amounts;

(C) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (3) of the second proviso to this Section 11.01(a)) any fees or other amounts payable hereunder or under any other Loan Document, it being understood that any change to the definition of any financial ratio (including the First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio and/or the Total Net Leverage Ratio) or in each case, the component definitions thereof shall, in each case of the foregoing, not constitute a reduction in the rate of interest or fees or other amounts payable; *provided* that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate; or

(D) change Section 2.07, 2.08, 2.13(a) or (f), 2.14, or 8.03 in any manner that would alter the pro rata nature of payments (and, in the case of Section 2.07, reductions of Commitments (other than the termination of any Lender as provided in Section 3.09)) required thereby (it being understood and agreed that this clause (D) shall not apply to any transaction permitted under Sections 2.15, 2.16, 2.18, 2.19, 11.07(k), or 11.07(l) or as otherwise provided in this Agreement); and

(ii) no amendment, waiver or consent shall, without the written consent of each Lender:

(A) change any provision of this Section 11.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder; or

(B) release all or substantially all of the Collateral in any transaction or series of related transactions, or release all or substantially all of the value of the Guaranty;

*provided further* that:

(1) no amendment, waiver or consent shall, unless in writing and signed by the relevant L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it;

(2) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document;

(3) the definition of "Letter of Credit Sublimit" may be amended or rights and privileges thereunder waived with the consent of each L/C Issuer, the Administrative Agent and the Required Revolving Credit Lenders;

(4) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto;

(5) the conditions precedent set forth in Section 4.02 to a Credit Extension under the Revolving Credit Facility after the Closing Date may be amended or rights and privileges thereunder waived only with the consent of the Required Revolving Credit Lenders and, in the case of a Credit Extension that constitutes the issuance of a Letter of Credit, the applicable L/C Issuer; and

(6) only the consent of the Required Revolving Credit Lenders shall be necessary to amend, modify or waive the terms and provision of the financial covenant set forth in Section 7.11 or any default or Event of Default with respect thereto (and any related definitions as used in such Section, but not as used in other Sections of this Agreement).

(b) Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended nor the principal amount owed to such Lender reduced nor the final maturity thereof extended without the consent of such Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded from a vote of the Lenders hereunder requiring any consent of the Lenders).

(c) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) to add one or more additional credit facilities to this Agreement in accordance with Section 2.18 or 2.19 and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Initial Term Loans and the Initial Revolving Credit Loans and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

(d) Notwithstanding anything to the contrary contained herein, in order to implement any Incremental Term Loan Class or Incremental Revolving Credit Commitments in accordance with Section 2.16, this Agreement and the other Loan Documents may be amended, without the consent of the other Lenders, as may be necessary or appropriate, as reasonably determined by the Administrative Agent and the Borrower, to add such Incremental Term Loan Class or Incremental Revolving Credit Commitments in accordance with Section 2.16 and otherwise effect the provisions of Section 2.16, which amendments may be effectuated in the applicable Incremental Joinder. The Lenders hereby irrevocably authorize the Administrative Agent to enter into any Incremental Joinder and any amendment to any of the other Loan Documents with the Loan Parties as may be necessary in order to establish new tranches or sub-tranches in respect of Loans or Commitments increased or extended pursuant to Section 2.16 and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Loans or Commitments, in each case, on terms consistent with Section 2.16, including any changes to this Agreement as may be necessary to ensure that any Incremental Term Loan Class is fungible with the applicable existing Term Loans if such Incremental Term Loan Class is intended to be of the same Class as the relevant existing Term Facility (including by adding terms to an existing Class of Loans or Commitments that are more favorable to the Lenders of such Class (as reasonably determined by the Administrative Agent).

(e) Notwithstanding anything to the contrary contained in this Section 11.01, any guarantees, collateral security documents and related documents executed by any Loan Party of its subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended, supplemented and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any Lender if such amendment, supplement or waiver is delivered in order (i) to comply with local Law, (ii) to correct or cure (x) ambiguities, errors, mistakes, omissions or defects, (y) to effect administrative changes of a technical or immaterial nature or (z) incorrect cross references or similar inaccuracies in this Agreement or the applicable Loan Document or (iii) to cause such guarantee, collateral security document or other Loan Document to be consistent with this Agreement and the other Loan Documents; it being agreed that in the case of any conflict between this Agreement and any other Loan Document, the provisions of this Agreement shall control (except that in the case of any conflict between this Agreement and an Acceptable Intercreditor Agreement, such Acceptable Intercreditor Agreement with respect to the Collateral shall control).

(f) Notwithstanding anything to the contrary contained in this Section 11.01, in the event that the Borrower requests that this Agreement be modified or amended in a manner that would require the unanimous consent of all of the Lenders (or all affected Lenders or all Lenders or affected Lenders of a particular Class) and such modification or amendment is agreed to by the Required Lenders (other than in connection with an extension of maturity, in which case such consent shall not be necessary), then the Borrower shall be permitted to (A) replace the Lender or Lenders that did not agree to the modification or amendment requested by the Borrower (such Lender or Lenders, collectively the "**Dissenting Lenders**") (without the consent of any Dissenting Lender) by causing such Dissenting Lenders to (and such Dissenting Lenders shall be obligated to) assign 100% of its relevant Commitments and the principal of its relevant outstanding Loans (including, for the avoidance of doubt, any L/C Advances made by any Dissenting Lender) at par plus any accrued and unpaid interest pursuant to Section 11.07(d) (without any assignment fee to be paid by the Borrower) all of its relevant rights and obligations under this Agreement to one or more Eligible Assignees; or (B) terminate the Commitment of such Dissenting Lender and repay all obligations of the Borrower owing to such Dissenting Lender relating to the Loans and participations in L/C Obligations held by such Dissenting Lender as of such termination date;

Section 11.02. *Notices and Other Communications; Facsimile Copies*. (a) Generally. Unless otherwise expressly provided herein, all notices and other communications provided for under any Loan Document shall be in writing (including by facsimile transmission and, except as otherwise specifically provided herein, electronic mail). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or (subject to Section 11.02(c)) electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent or the L/C Issuer, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 11.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower, the Administrative Agent and the L/C Issuer.

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

All such notices and other communications shall be deemed to be given or made upon the earlier of (x) actual receipt by the relevant party and (y) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party; (B) if delivered by mail, four Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail, when delivered; *provided* that notices and other communications to the Administrative Agent and the L/C Issuer pursuant to Article 2 shall not be effective until actually received by such Person. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

(b) *Effectiveness of Facsimile Documents and Signatures*. Loan Documents may be transmitted and/or signed by facsimile or other electronic means. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually signed originals and shall be binding on each Loan Party, each Agent and each Lender. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

(c) *Electronic Communications*. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including electronic mail, EPML Messaging and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article 2 if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(d) *Reliance by Agents and Lenders*. Reliance by Agents and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices, Loan Notices and Letter of Credit Applications) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent-Related Person the L/C Issuer, and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence or willful misconduct. All telephonic notices to the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording; *provided* that, it is acknowledged and agreed that any recording of telephonic communications (other than such telephonic notices) between a Loan Party and the Administrative Agent may not be recorded without the express written consent of the Borrower.

(e) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons (collectively, the "Agent Parties") or the Borrower have any liability to any other party hereto for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the transmission of Borrower Materials or notices through the platform, any other electronic platform or electronic messaging service, or through the Internet; except to the extent such losses, claims, damages, liabilities or expenses result from the gross negligence, willful misconduct, bad faith or material breach of this Agreement (as determined by a court of competent jurisdiction).

Section 11.03. *No Waiver; Cumulative Remedies*. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided under each Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 11.04. *Attorney Costs, Expenses and Taxes*. The Borrower agrees (a) to pay or reimburse the Administrative Agent and the Arranger (without duplication) for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, (b) to pay or reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses incurred in connection with any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, but in the case of Attorney Costs in each of clauses (a) and (b) hereof, limited to the reasonable fees and reasonable documented out-of-pocket expenses of a single primary firm of counsel to the Arranger and the Administrative Agent, and, if necessary, of a single firm of local counsel to the Arranger and the Administrative Agent in each appropriate material jurisdiction, and (c) to pay or reimburse the Administrative Agent and each Lender for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law), but in the case of Attorney Costs, limited to the reasonable fees and reasonable documented out-of-pocket expenses of a single primary firm of counsel to (and, if necessary, of a single firm of local counsel in each appropriate material jurisdiction to the Administrative Agent and the Lenders, taken as a whole, unless the Administrative Agent and the Lenders reasonably determine that separate counsel is necessary to avoid a conflict of interest in which case one additional counsel may be appointed for all affected parties, taken as a whole). The foregoing costs and expenses shall include all search, filing, recording, title insurance and appraisal charges relevant to the Collateral and fees and Taxes related thereto, and the related reasonable and documented out-of-pocket expenses incurred by any Agent. All amounts due under this Section 11.04 shall be paid within thirty (30) days after receipt by the Borrower of an invoice in reasonable detail. The agreements in this Section 11.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations.

Section 11.05. *Indemnification by the Borrower*. Whether or not the transactions contemplated hereby are consummated, the Borrower shall indemnify and hold harmless each Agent, the Arranger, each Lender, each L/C Issuer and each of their respective Affiliates and the directors, officers, employees, counsel, agents and advisors of the foregoing (collectively the "**Indemnitees**") from and against any and all liabilities, losses, damages, claims and reasonable out-of-pocket costs (including Attorney Costs, which shall be limited to one outside counsel to the Indemnitees, taken as a whole (and, if necessary, of a single firm of local counsel to the Indemnitees, taken as a whole, in each appropriate material jurisdiction), unless the Indemnitees reasonably determine that separate counsel is necessary to avoid a conflict of interest, in which case one additional counsel may be appointed for all affected Indemnitees, taken as a whole), for any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with:

(a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby;

(b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit); or

(c) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned, leased or operated by any Restricted Company or any of their Subsidiaries, or any Environmental Liability related in any way to any Restricted Company or any of their Subsidiaries; or

(d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation or proceeding is brought by the Borrower or any other Loan Party or their respective equity holders, Affiliates, creditors or any other third Person and based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (a "**Proceeding**");

(all the foregoing, collectively, the "**Indemnified Liabilities**"), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, losses, damages, claims and costs (collectively, the "**Losses**") (x) have resulted from the gross negligence or willful misconduct or material breach of the Loan Documents in bad faith of or by such Indemnitee as determined by the final non-appealable judgment of a court of competent jurisdiction, (y) arise from claims of any of the Indemnitees solely against one or more Indemnitees (other than any claims against an Indemnitee in its capacity as agent, arranger or other similar role hereunder) that have not resulted from any misrepresentation, default or the breach of any Loan Document or any actual or alleged performance or non-performance by the Borrower or any other Loan Party, any direct or indirect parent or controlling person thereof or their respective Subsidiaries or any of their respective officers, directors, stockholders, partners, members, employees, agents, representatives or advisors or (z) have resulted from any agreement governing any settlement referred to below by such Indemnitee that is effected without the Borrower's prior written consent (which consent shall not be unreasonably withheld or delayed), but if settled with the Borrower's written consent or if there is a final judgment in any such Proceeding, the Loan Parties agree to indemnify and hold harmless each Indemnitee from and against any and all losses, claims, damages, liabilities and expenses by reason of such settlement or judgment in accordance with, and to the extent required by, this Section 11.05. Each Indemnitee shall be obligated to refund and return any and all amounts paid by you (or on your behalf) under this Section 11.05 to such Indemnitee to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through SyndTrak, IntraLinks or other similar information transmission systems in connection with this Agreement, except to the extent resulting from the willful misconduct, gross negligence or material breach of the Loan Documents in bad faith of or by such Indemnitee as determined by the final non-appealable judgment of a court of competent jurisdiction, nor shall any Indemnitee or any Loan Party have any liability (whether direct or indirect, in contract or in tort or otherwise) for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date); *provided*, however, that the foregoing liability exclusion with respect to the Loan Parties shall not limit the indemnification obligations of the Loan Parties otherwise provided for above in respect of third party claims against the Indemnitees for which such Indemnitees are otherwise entitled to indemnification hereunder. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 11.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, shareholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this Section 11.05 shall be paid within thirty days of receipt by the Borrower of an invoice in reasonable detail. The agreements in this Section 11.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. Without limiting the provisions of Section 3.01, this Section 11.05 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc., arising from any non-Tax claim.

The Loan Parties shall not be liable for any settlement of any Proceeding (or any expenses related thereto) effected without the Borrower's written consent (which consent shall not be unreasonably withheld or delayed, it being understood that the withholding of consent due to non-satisfaction of any of the conditions described in clauses (i) and (ii) of the succeeding paragraph shall be deemed reasonable), but if settled with the Borrower's written consent or if there is a final and non-appealable judgment by a court of competent jurisdiction for the plaintiff in any such Proceeding, the Loan Parties agree to indemnify and hold harmless each Indemnitee from and against any and all Losses and reasonable and documented legal or other out-of-pocket expenses by reason of such settlement or judgment in accordance with and to the extent provided in the other provisions of this Section 11.05.

The Loan Parties shall not shall not, without the prior written consent of any Indemnitee (which consent shall not be unreasonably withheld or delayed, it being understood that the withholding of consent due to non-satisfaction of any of the conditions described in clauses (i) and (ii) of this sentence shall be deemed reasonable), effect any settlement of any pending or threatened Proceeding in respect of which indemnity could have been sought hereunder by such Indemnitee unless such settlement (i) includes an unconditional release of such Indemnitee in form and substance reasonably satisfactory to such Indemnitee from all liability or claims that are the subject matter of such Proceeding and (ii) does not include any statement as to or any admission of fault, culpability, wrongdoing or a failure to act by or on behalf of any Indemnitee.

In case any Proceeding is instituted involving any Indemnitee for which indemnification is to be sought hereunder by such Indemnitee, then such Indemnitee will promptly notify the Borrower of the commencement of any Proceeding; provided, however, that the failure to so notify the Borrower will not relieve the Borrower from any liability that it may have to such Indemnitee pursuant to this Section 11.05.

Section 11.06. *Payments Set Aside*. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then:

(a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and

(b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Federal Funds Rate from time to time in effect.

Section 11.07. *Assigns*. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 11.07(f) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Notwithstanding Section 11.07(a), the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender, except as provided in Section 7.04.

(c) Notwithstanding Section 11.07(a), no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 11.07(d), (ii) by way of participation in accordance with the provisions of Section 11.07(f), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Sections 11.07(h) and 11.07(j) or (iv) to an SPC in accordance with the provisions of Section 11.07(i) (and any other attempted assignment or transfer by any party hereto shall be null and void).

(d) Any Lender may at any time assign to one or more Eligible Assignees (which, for the avoidance of any doubt, shall not include any Disqualified Institutions to the extent the list of Disqualified Institutions has been provided to the Lenders) all or a portion of its rights and obligations under this Agreement; *provided* that

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or, in the case of an assignment to a Lender or an Affiliate of a Lender or, in the case of the Term Loan Facility, an Approved Fund, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the outstanding principal balance of the Loan of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent shall not be less than $5,000,000, in the case of any assignment in respect of the Revolving Credit Facility, or $1,000,000, in the case of any assignment in respect of any Term Loans, unless each of the Administrative Agent and, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis;

(iii) any assignment of a Term Loan or a Revolving Credit Commitment to an Eligible Assignee must be approved, if applicable, by the Persons specified for such assignment in the definition of Eligible Assignee; *provided* that solely in the case of assignments of Term Loans, the Borrower shall be deemed to have consented to any such assignment of Term Loans unless the Borrower has objected to such assignment by written notice to the Administrative Agent within 10 Business Days after having received written notice from the Administrative Agent requesting its consent to such assignment; *provided further* that, it is agreed that the Borrower may withhold its consent to an assignment to any person that is known by it to be an affiliate of a Disqualified Institution (regardless of whether it is readily identifiable as an Affiliate by virtue of the similarity of its name (other than, in the case of Disqualified Institutions under clause (ii) of the definition thereof, such Affiliates that are Bona Fide Lending Affiliates);

(iv) the parties (other than the Borrower unless its consent to such assignment is required hereunder) to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500 (which fee the Borrower shall have no obligation to pay except as required in Section 3.09 and 11.01(f)), the applicable IRS Form W-8 or IRS Form W-9 (or other applicable tax form) and all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act; and

(v) the assigning Lender shall deliver any Notes evidencing such Loans to the Borrower. Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 11.07(e), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.07, 11.04 and 11.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (d) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.07(f). The Administrative Agent, in its capacity as such, shall not be responsible or have any liability for, or have any duty to inquire into, monitor, or enforce, the provisions set forth in this Agreement relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent, in its capacity as such, shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

(e) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of the Administrative Agent's offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, L/C Obligations (specifying the Unreimbursed Amounts), L/C Borrowings and amounts due under Section 2.04 owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, each Agent and each Lender shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and any Lender, at any reasonable time and from time to time upon reasonable prior written notice. The parties intend that all extensions of credit to the Borrower and its Affiliates hereunder shall at all times be treated as being in registered form within the meaning of Sections 163(f), 871(h)(2), and 881(c)(2) of the Code (and any successor provisions) and the regulations thereunder and shall interpret the provisions herein regarding the Register consistent with such intent.

(f) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or solely to the extent the list of Disqualified Institutions is made available to the Lenders, a Disqualified Institution) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement; *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, each Agent and each other Lender shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in Section 11.01(a)(i) or 11.01(a)(ii) that directly affects such Participant. Subject to Section 11.07(g), each Participant shall be entitled to the benefits of Section 3.01, and Sections 3.04 through 3.07 (subject to the requirements and limitations therein, including the requirements under Section 3.01(e) (it being understood that the documentation required under Section 3.01(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.07(d). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.10 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.14 as though it were a Lender.

(g) A Participant shall not be entitled to receive any greater payment under Section 3.01 and Sections 3.04 through 3.07 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation and each Granting Lender shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and each applicable SPC and the principal amounts (and stated interest) of each Participant's or SPC's, as applicable, interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or SPC, or any information relating to a Participant's or SPC's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b)(1) of the proposed United States Treasury Regulations. The entries in the Participant Register shall be conclusive (absent manifest error) as to the identity of each Participant and each SPC and the amount of Loans and Commitments attributed to such Participant or SPC, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation or Loan granted to such SPC for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(h) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement under its Note, if any to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any central bank having jurisdiction over such Lender; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(i) Notwithstanding anything to the contrary contained herein:

(i) any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an "**SPC**") (which, for the avoidance of doubt, may not be a Disqualified Institution) identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that

(A) nothing herein shall constitute a commitment by any SPC to fund any Loan,

(B) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof, and

(C) each SPC that elects to exercise such option shall satisfy the requirements under Section 3.01(e) (it being understood that the documentation required under Section 3.01(e) shall be delivered to the applicable Granting Lender)

(ii) (A) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01 or 3.04 through 3.07), (B) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (C) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender.

(iii) any SPC may (A) with notice to, but without prior consent of the Borrower or the Administrative Agent and with the payment of a processing fee of $3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (B) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(j) Notwithstanding anything to the contrary contained herein, any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee (who may not be a Disqualified Institution) for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 11.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents, (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise (unless such trustee is an Eligible Assignee which has complied with the requirements of Section 11.07(d)).

(k) In case of an assignment to a Sponsor Affiliated Lender, (1) after giving effect to such assignment, together with all other assignments to Sponsor Affiliated Lenders, the aggregate principal amount of all Loans and Commitments then held by all Sponsor Affiliated Lenders (other than Affiliated Debt Funds) shall not exceed 25% of the aggregate unpaid principal amount of the Term Loans then outstanding (determined at the time of such purchase), (2) no Revolving Credit Loans or Revolving Credit Commitments shall be assigned to any Sponsor Affiliated Lender, (3) no proceeds of Revolving Credit Loans shall be used, directly or indirectly, to consummate such assignment, (4) any Loans assigned or contributed to Holdings or its Subsidiaries shall be automatically cancelled upon such assignment (it being agreed that documentation evidencing such cancellation, if necessary), may be entered promptly thereafter), (5) in the event that any proceeding under the Bankruptcy Code shall be instituted by or against the Borrower or any Guarantor, each Sponsor Affiliated Lender shall acknowledge and agree that they are each "insiders" under Section 101(31) of the Bankruptcy Code and, as such, the claims associated with the Loans and Commitments owned by it shall not be included in determining whether the applicable class of creditors holding such claims has voted to accept a proposed plan for purposes of Section 1129(a)(10) of the Bankruptcy Code, or, alternatively, to the extent that the foregoing designation is deemed unenforceable for any reason, each Sponsor Affiliated Lender shall vote in such proceedings in the same proportion as the allocation of voting with respect to such matter by those Lenders who are not Sponsor Affiliated Lenders, except to the extent that any plan of reorganization proposes to treat the Obligations held by such Sponsor Affiliated Lender in a manner that is less favorable in any material respect to such Sponsor Affiliated Lender than the proposed treatment of similar Obligations held by Lenders that are not Sponsor Affiliated Lenders; *provided* that this clause (5) shall not apply to Affiliated Debt Funds, (6) the assigning Lender and the Sponsor Affiliated Lender purchasing such Lender's Loans and/or Commitments shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit A-2 hereto (an "**Affiliated Lender Assignment and Assumption**"), (7) such Sponsor Affiliated Lender will not receive information provided solely to Lenders and will not be permitted to attend or participate in (or receive any notice of) Lender meetings or conference calls, will not be entitled to challenge the Administrative Agent's and the Lenders' attorney-client privilege as a result of their status as Sponsor Affiliated Lenders and, other than with respect to Affiliated Debt Funds, will not have any rights to bring any action against the Administrative Agent in its capacity as such, (8) notwithstanding anything to the contrary contained herein, any such Loans acquired by a Sponsor Affiliated Lender (other than Holdings or its Restricted Subsidiaries) may, with the consent of the Borrower, be contributed to the Borrower (whether through any of its direct or indirect parent entities or otherwise) and exchanged for debt or equity securities that are otherwise permitted to be issued at such time, (9) the portion of the Total Outstandings held or deemed held by any Lenders that are Sponsor Affiliated Lenders (other than Affiliated Debt Funds) shall be excluded for all purposes of making a determination of Required Lenders, (10) Affiliated Debt Funds may not, in the aggregate, account for more than 49.9% of the amount necessary to establish that the Required Lenders have consented to an action and the portion of the Total Outstandings held or deemed held by any Affiliated Debt Funds in excess of such amount shall be excluded for all purposes of making a determination of Required Lenders, (11) any purchases by Sponsor Affiliated Lenders shall require that such Sponsor Affiliated Lender clearly identify itself as a Sponsor Affiliated Lender in any Affiliated Lender Assignment and Assumption executed in connection with such purchases or sales, (12) each such Affiliated Lender Assignment and Assumption shall contain customary "big boy" representations but no requirement to make representations as to the absence of any material non-public information and (13) Holdings and its Subsidiaries may not purchase any Loans so long as any Default or Event of Default has occurred and is continuing.

(l) The Administrative Agent, in its capacity as such, may conclusively rely upon any list provided by the Borrower pursuant to Section 11.07(l) in connection with any amendment or waiver hereunder and shall not have any responsibility for monitoring any acquisition or disposition of Term Loans by any Sponsor Affiliated Lender or liability for any losses suffered by any Person as a result of any purported assignment to or from a Sponsor Affiliated Lender.

Section 11.08. *Successors*. Notwithstanding anything to the contrary contained herein, any or all of Nomura (or its designees) or any other L/C Issuer may, upon 30 days' notice to the Borrower and the Lenders, resign as L/C Issuer. In the event of any such resignation as L/C Issuer, the Borrower shall be entitled to appoint a successor L/C Issuer from among the Lenders willing to accept such appointment; provided that a failure by the Borrower to appoint any such successor shall not affect the resignation as L/C Issuer except as provided above. If an L/C Issuer resigns, it shall retain all the rights and obligations of the L/C Issuer with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.04(c)).

Section 11.09. *Confidentiality*. Each Agent and each Lender agrees to maintain the confidentiality of the Information, except that the Information may be disclosed (a) to its Affiliates, and its and their respective employees and agents, independent auditors, legal counsel and other advisors or experts who need to know such information solely in connection with the Facilities (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and who have agreed or are otherwise obligated to keep such Information confidential, and the applicable Agent or Lender shall be responsible for compliance by such Persons with such obligations); (b) to the extent requested by any regulatory authority having jurisdiction over the applicable Agent or Lender; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; *provided* that the Agent or Lender that discloses any Information pursuant to this clause (c) shall, to the extent practicable and permitted by law, provide the Borrower prompt notice of such disclosure; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions substantially the same as (or no less restrictive than) those of this Section 11.09 (or as may otherwise be reasonably acceptable to the Borrower), (x) to any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement or (y) to any direct, indirect, actual or prospective counterparty (and its advisor) to any swap, derivative or securitization transaction related to its obligations under this Agreement, in each case, other than a Disqualified Institution; *provided* that notwithstanding anything to the contrary in this Section 11.09, any Agent or any Lender may disclose the list of Disqualified Institutions to any prospective assignee, participant or counterparty who is not (i) a Disqualified Institution or (ii) readily identifiable as an Affiliate of a Disqualified Institution set forth on such list by virtue of the similarity of its name to such Disqualified Institution for the purpose of such prospective assignee, participant or counterparty representing and warranting to the such Agent or such Lender that such prospective assignee, participant or counterparty is not a Disqualified Institution; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 11.09; (h) to any state, Federal or foreign authority or examiner (including the National Association of Insurance Commissioners or any other similar organization) regulating any Lender; (i) to the extent such Information is independently developed by such Agent or Lender; (j) for purposes of establishing a "due diligence" defense; and (k) to the extent such Information is received from a third party that is not subject to any confidentiality obligations owed to the Borrower. In addition, any Agent and any Lender may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to any Agent and any Lender in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments, and the Credit Extensions. For the purposes of this Section 11.09, "**Information**" means all information received from or on the behalf of any Loan Party relating to any Loan Party or its business or Affiliates, other than any such information that is publicly available to any Agent or any Lender prior to disclosure by any Loan Party other than as a result of a breach of this Section 11.09.

Section 11.10. *Set-off*. In addition to any rights and remedies of each Lender provided by Law, upon the occurrence and during the continuance of any Event of Default, after obtaining the prior written consent of the Administrative Agent, each Lender is authorized at any time and from time to time, without prior notice to any Loan Party, any such notice being waived by the Borrower (on its own behalf and on behalf of each other Loan Party) to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, but not any deposits held in a custodial, trust or other fiduciary capacity), at any time held by, and other Indebtedness at any time owing by, such Lender to or for the credit or the account of the respective Loan Parties against any and all Obligations owing to such Lender hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent and each Lender under this Section 11.10 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent and such Lender may have.

Section 11.11. *Interest Rate Limitation*. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under any Loan Document shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 11.12. *Counterparts*. This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier be confirmed by a manually signed original thereof; *provided* that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier.

Section 11.13. *Integration*. This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of any Agent or any Lender in any other Loan Document shall not be deemed a conflict with this Agreement and subject, in the case of Letter of Credit Applications, to the last sentence of Section 2.04(b)(i). Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 11.14. *Survival of Representations and Warranties*. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Section 11.15. *Severability*. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 11.16. *Governing Law*. (a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK; PROVIDED, THAT (I) THE INTERPRETATION OF THE DEFINITION OF "CLOSING DATE MATERIAL ADVERSE EFFECT" AND THE DETERMINATION OF WHETHER A CLOSING DATE MATERIAL ADVERSE EFFECT HAS OCCURRED, (II) THE DETERMINATION OF THE ACCURACY OF ANY SPECIFIED ACQUISITION AGREEMENT REPRESENTATION AND WHETHER AS A RESULT OF ANY INACCURACY THEREOF MERGER SUB OR ITS APPLICABLE AFFILIATE HAS A RIGHT TO TERMINATE ITS OBLIGATIONS UNDER THE ACQUISITION AGREEMENT OR DECLINE TO CONSUMMATE THE ACQUISITION AND (III) THE DETERMINATION OF WHETHER THE ACQUISITION HAS BEEN CONSUMMATED IN ACCORDANCE WITH THE TERMS OF THE ACQUISITION AGREEMENT AND, IN ANY CASE, ANY CLAIM OR DISPUTE ARISING OUT OF ANY SUCH INTERPRETATION OR DETERMINATION OR ANY ASPECT THEREOF, SHALL IN EACH CASE BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE CITY OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH LOAN PARTY, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO (EXCEPT THAT, (X) IN THE CASE OF ANY MORTGAGE OR OTHER SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT IN THE STATE OR OTHER JURISDICTION IN WHICH THE RESPECTIVE MORTGAGED PROPERTY OR COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION AND (Y) IN THE CASE OF ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO THE ADMINISTRATIVE AGENT, ANY L/C ISSUER OR ANY OTHER LENDER, ACTIONS OR PROCEEDINGS RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN SUCH COURT HOLDING SUCH BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS).

Section 11.17. *Waiver of Right to Trial by Jury*. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 11.17 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 11.18. *Binding Effect*. This Agreement shall become effective when it shall have been executed by Holdings, Merger Sub, the Target and each other Loan Party and the Administrative Agent shall have been notified by each Lender and the L/C Issuer that each such Lender and the L/C Issuer has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent and each Lender and their respective successors and 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 Lenders.

Section 11.19. *No Implied Duties*. The Borrower acknowledges that (a) the sole role of the Arranger is to syndicate the Facilities and to arrange for future amendments and other modifications hereto and (b) no Agent has any duty other than as expressly provided herein. Without limiting the generality of the foregoing, the Borrower agrees that no Arranger, Agent or Lender shall in any event be subject to any fiduciary or other implied duties. Additionally, the Borrower acknowledges and agrees that the Arranger is not advising the Borrower as to any legal, Tax, investment, accounting or regulatory matters in any jurisdiction. The Borrower has consulted and will continue to consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby (including any amendments or other modifications hereto), and neither the Arranger nor any Secured Party shall have any responsibility or liability to the Borrower with respect thereto. Any review by the Arranger or Secured Party of the Borrower, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Arranger or such Secured Party and shall not be on behalf of the Borrower.

Section 11.20. *USA Patriot Act Notice*. Each Lender that is subject to the USA Patriot Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**USA Patriot Act**"), it is required to obtain, verify and record information that identifies the Borrower and each Guarantor, which information includes the name and address of the Borrower or Guarantor and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower or such Guarantor in accordance with the Act. The Borrower shall, reasonably promptly following a request by the Administrative Agent, provide all documentation and other information that the Administrative Agent requests in order to comply with ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act; provided that, no Default or Event of Default shall result from non-compliance by this Section 11.20.

Section 11.21. *Acknowledgement and Consent to Bail- In of EEA Financial Institutions*. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 11.22. *Lender Representations*. Each Lender as of the Closing Date represents and warrants (a) as of the Closing Date that such Lender is not and will not be (i) an employee benefit plan as defined in, and subject to Title I of ERISA, (ii) a plan as defined in, and subject to Section 4975 of the Code; (iii) an entity deemed to hold Plan Assets of any such plans ; or (iv) a "governmental plan" within the meaning of Section 3(32) of ERISA, and (b) no portion of the Loan shall be funded with Plan Assets.

Section 11.23. *No Advisory or Fiduciary Responsibility*. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), Holdings and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arranger, and the Lenders are arm's-length commercial transactions between Holdings, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Arranger, and the Lenders, on the other hand, (B) each of Holdings and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) Holdings and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Arranger and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Holdings, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, the Arranger nor any Lender has any obligation to Holdings, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arranger and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Holdings, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Arranger, nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Arranger or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 11.24. *Electronic Execution of Assignments and Certain Other Documents*. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided* that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

Section 11.25. *The Borrower as Loan Party Representative*. Each Loan Party (other than the Borrower) hereby designates the Borrower as its representative and agent for all purposes under the Loan Documents, including requests for Revolving Loans, designation of interest rates, delivery or receipt of communications, preparation and delivery of financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with the Administrative Agent or any Lender. The Borrower hereby accepts such appointment. The Administrative Agent and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any Loan Notice) delivered by Borrower Representative on behalf of any Borrower. The Administrative Agent, the Collateral Agent and the Lenders may give any notice or communication with a Borrower hereunder to Borrower Representative on behalf of such Borrower. Each of the Administrative Agent, the Collateral Agent and the Lenders shall have the right, in its discretion, to deal exclusively with Borrower Representative for any or all purposes under the Loan Documents. Each Borrower agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by Borrower Representative shall be binding upon and enforceable against it.

Section 11.26. *Judgment Currency*. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**BORROWER:**

**LATHAM PURCHASER, INC.,**
as Borrower

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: Chief Executive Officer, President and Secretary

*Immediately upon conummation of the Acquisition, the Person below shall be deemed to be the Borrower*

**LATHAM POOL PRODUCTS, INC.,**
as Borrower

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: Chief Executive Officer, President and Secretary

**HOLDINGS:**

**LATHAM INTERNATIONAL MANUFACTURING CORP.,**
as Holdings

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: Chief Executive Officer, President and Secretary

**SUBSIDIARY GUARANTOR:**

**POOL COVER SPECIALISTS, LLC,**
as Subsidiary Guarantor

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: President and Secretary

NOMURA CORPORATE FUNDING AMERICAS, LLC, as Administrative Agent, Lender and L/C Issuer

By: /s/ Garrett P. Carpenter
Name: Garrett P. Carpenter
Title: Managing Director

**EXHIBIT A-1**

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption Agreement (the "**Assignment**") is dated as of the Effective Date set forth below and is entered into by and between ***[Insert name of Assignor]*** (the "**Assignor**") and ***[Insert name of Assignee]*** (the "**Assignee**"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (including all exhibits and schedules thereto, as amended, restated, amended and restated, supplemented, extended, refinanced or otherwise modified in writing from time to time, the "**Credit Agreement**"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement (including its Register and Participant Register provisions), as of the Effective Date inserted by the Administrative Agent as contemplated below, the interest in and to all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto that represents the amount and percentage interest identified below of all of the Assignor's outstanding rights and obligations under the respective facilities identified below (including, to the extent included in any such facilities, Letters of Credit, Swing Loans and Guarantees) (the "**Assigned Interest**"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment, without representation or warranty by the Assignor.

| | | |
|---|---|---|
| 1. | Assignor: | _____ |
| 2. | Assignee : | _____<br>**[and is an Affiliate/Approved Fund[1] of [identify Lender]]** |
| 3. | Borrower: | Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**") and, prior to the consummation of the Acquisition, the Borrower, and Latham Pool Products, Inc., a Delaware corporation ("**LPP**") and immediately upon consummation of the Acquisition, Borrower. |
| 4. | Administrative Agent: | Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as administrative agent under the Credit Agreement. |
| 5. | Credit Agreement: | The Credit and Guaranty Agreement, dated as of December [__], 2018, among Purchaser, LPP, Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer. |

[1] Select as applicable.

6. Assigned Interest:

| Facility Assigned[2] | Aggregate Amount of Commitment/Loans for all Lenders | Amount of Commitment/Loans Assigned | Percentage Assigned of Commitment/Loans[3] |
|---|---|---|---|
| | $ | $ | % |
| | $ | $ | % |

Effective Date: _____, 20___ **[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]**

[Remainder of page intentionally left blank; signature pages follow]

[2] Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Credit Commitment", "Term Loans", etc.)

[3] Set forth, to at least 9 decimals, as a percentage of the Commitment Loans of all Lenders thereunder.

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR

**[NAME OF ASSIGNOR]**

By: _____
Name:
Title:

ASSIGNEE

**[NAME OF ASSIGNEE]**

By: _____
Name:
Title:

**[Consented to and[1] Accepted:**

**NOMURA CORPORATE FUNDING AMERICAS, LLC**,
as Administrative Agent

By: _____
Name:
Title:**]**

**[Consented to:[2]**

**LATHAM POOL PRODUCTS, INC.,** as Borrower

By: _____
Name: _____
Title: _____ ]

[1] To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

[2] To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

**ANNEX I**
**STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION AGREEMENT**

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with any Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement or any other Loan Document, or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it is not a Sponsor Affiliated Lender or a Disqualified Institution, (iii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iv) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement (including its Register and Participant Register provisions) and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (v) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and to purchase the Assigned Interest on the basis of which it has made such analysis and decision and (vi) attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment. This Assignment shall be governed by, and construed in accordance with, the law of the State of New York.

[Remainder of page intentionally left blank]

**EXHIBIT A-2**

FORM OF AFFILIATED LENDER ASSIGNMENT AND ASSUMPTION

Reference is made to the Credit and Guaranty Agreement, dated as of December [__], 2018 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**"), among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer. Unless otherwise defined herein, terms defined in the Credit Agreement and used in this Affiliated Lender Assignment and Assumption (this "**Assignment**") shall have the meanings given to them in the Credit Agreement.

The Assignor identified on Schedule I hereto (the "**Assignor**") and the Assignee identified on Schedule I hereto (the "**Assignee**") agree as follows:

1. The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor, as of the Effective Date (as defined below), the interest described in Schedule I hereto (the "**Assigned Interest"**) in and to the Assignor's rights and obligations as a Lender under the Credit Agreement with respect to those credit facilities contained in the Credit Agreement as are set forth on Schedule I hereto (individually, an "**Assigned Facility**"; collectively, the "**Assigned Facilities**"), in a principal amount for each Assigned Facility as set forth on Schedule I hereto.

2. The Assignor (a) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document or with respect to the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any other Loan Document or any other instrument or document furnished pursuant thereto, other than that the Assignor has not created any adverse claim upon the interest being assigned by it hereunder and that such interest is free and clear of any such adverse claim and (b) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower, any of its Affiliates or any other obligor under the Loan Documents or the performance or observance by the Borrower, any of its Affiliates or any other obligor under the Loan Documents of any of their respective obligations under the Credit Agreement or any other Loan Document or any other instrument or document furnished pursuant hereto or thereto. The Assignor acknowledges and agrees that (i) the Assignee may then have, and later may come into possession of confidential information, (ii) it has independently and, without reliance on the Assignee, the Administrative Agent or any of their respective Affiliates, made its own analysis and determination to participate in this Assignment, (iii) neither the Assignee that is a Sponsor Affiliated Lender or any of their Subsidiaries, the Administrative Agent or any of their respective Affiliates shall have any liability to the Assignor, and the Assignor hereby waives and releases, to the extent permitted by law, any claims the Assignor may have against any such Persons under applicable laws or otherwise, with respect to the nondisclosure of confidential information, and (iv) confidential information may not be available to the Assignor, Administrative Agent or the other Lenders.

3. The Assignee represents and warrants that (a) it is legally authorized to enter into this Assignment, (b) it is a Sponsor Affiliated Lender, (c) each of the conditions to this Assignment contained in Section 11.07(k) of the Credit Agreement has been satisfied, (d) the Assignor (i) may then have, and later may come into possession of confidential information, (ii) it has independently and, without reliance on the Assignor, the Administrative Agent, the Arrangers or any of their respective Affiliates, has made its own analysis and determination to participate in this Assignment notwithstanding the Assignee's lack of knowledge of the confidential information, (iii) neither the Assignor that is a Sponsor Affiliated Lender or any of their Subsidiaries, the Administrative Agent, the Arrangers or any of their respective Affiliates shall have any liability to the Assignee, and the Assignee hereby waives and releases, to the extent permitted by law, any claims the Assignee may have against any such Persons under applicable laws or otherwise, with respect to the nondisclosure of the confidential information, and (iv) the confidential information may not be available to the Assignee, Administrative Agent or the other Lenders and (e) it is not a Defaulting Lender.

4. The Assignee confirms that it has received a copy of the Credit Agreement, together with copies of the financial statements delivered pursuant to Section 6.01 thereof and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment; (a) agrees that it will, independently and without reliance upon the Assignor, the Administrative Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement, the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (b) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement, the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto; and (c) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender including its obligations pursuant to Section 11.09 of the Credit Agreement.

5. The effective date of this Assignment shall be the Effective Date of Assignment described in Schedule I hereto (the "Effective Date"). Following the execution of this Assignment, it will be delivered to the Administrative Agent for acceptance by it and recording by the Administrative Agent pursuant to the Credit Agreement, effective as of the Effective Date (which shall not, unless otherwise agreed to by the Administrative Agent, be earlier than five Business Days after the date of such acceptance and recording by the Administrative Agent).

6. Upon such acceptance and recording, from and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to the Effective Date and to the Assignee for amounts which have accrued subsequent to the Effective Date.

7. From and after the Effective Date, (a) the Assignee shall be a party to the Credit Agreement, to the extent provided in this Assignment, have the rights and obligations (including with respect to the Register and Participant Register) of a Lender under the Credit Agreement and under the other Loan Documents and shall be bound by the provisions thereof and (b) the Assignor shall, to the extent provided in this Assignment, relinquish its rights and be released from its obligations under the Credit Agreement.

8. This Assignment shall be governed by and construed in accordance with the laws of the State of New York.

[Remainder of page intentionally left blank; signature page follows]

**IN WITNESS WHEREOF,** the parties hereto have caused this Assignment to be executed as of the date first above written by their respective duly authorized officers on Schedule I hereto.

Accepted for recordation in the Register:

**NOMURA CORPORATE FUNDING AMERICAS, LLC**, as Administrative Agent

By: _____
Name:
Title:

**Schedule I**

1. Assignor: _____

2. Assignee: _____

3. Borrower: Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**") and, prior to the consummation of the Acquisition, the Borrower, and Latham Pool Products, Inc., a Delaware corporation ("**LPP**") and immediately upon consummation of the Acquisition, the Borrower.

4. Administrative Agent: Nomura Corporate Funding Americas, LLC, as administrative agent under the Credit Agreement.

5. Credit Agreement: The Credit and Guaranty Agreement, dated as of December [__], 2018, among Purchaser, LPP, Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC, as Administrative Agent and L/C Issuer.

6. Assigned Interest:

| Facility Assigned | Aggregate Amount of Term Loans for all Lenders | Amount of Term Loans Assigned | Percentage Assigned of Term Loans[1] |
|---|---|---|---|
| [Term Loans] [Incremental Term Loans][Incremental Equivalent Debt] | $ | $ | % |
| | $ | $ | % |

Effective Date: _____, 20__ **[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]**

[Remainder of page intentionally left blank; signature page follows]

[1] Set forth, to at least 9 decimals, as a percentage of the Loans of all Lenders thereunder.

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR

**[NAME OF ASSIGNOR]**

By: _____
Name:
Title:

ASSIGNEE

**[NAME OF ASSIGNEE]**

By: _____
Name:
Title:

**[Consented to:**

**LATHAM POOL PRODUCTS, INC.,**
as Borrower

By: _____
Name: _____
Title: _____]

**EXHIBIT B**

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: _____, ____

To: Nomura Corporate Funding Americas, LLC, as Administrative Agent

Ladies and Gentlemen:

Reference is made to the Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "**Agreement**"; the terms defined therein being used herein as therein defined), among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer.

The undersigned, a Responsible Officer of the Borrower, hereby certifies as of the date hereof that he/she is the _____ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Compliance Certificate to the Administrative Agent on behalf of the Borrower and its Restricted Subsidiaries, in such capacity and without any personal liability, and hereby certifies on behalf of the Borrower that as of the date hereof:

*[Use following paragraph 1 for fiscal year-end financial statements]*

1. Attached hereto as Schedule 1 are the year-end audited financial statements required by Section 6.01(a) of the Agreement for the fiscal year of [Holdings] and its Subsidiaries ended as of the above date, together with the report and opinion of the independent certified public accountant required by such Section. Also attached hereto as Schedule 1 are [(i)] a management discussion and analysis of financial results with respect to such financial statements [and (ii) the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements].

*[Use following paragraph 1 for fiscal quarter financial statements]*

1. Attached hereto as Schedule 1 are the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of [Holdings] ended as of the above date. Such financial statements fairly present in all material respects the financial condition, results of operations, shareholders' equity and cash flows of [Holdings] and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes. Also attached hereto as Schedule 1 are [(i)] a management discussion and analysis of financial results with respect to such financial statements [and (ii) the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements].

*[select one:]*

[2. To the knowledge of the undersigned Responsible Officer, no Default has occurred during such fiscal period and is continuing on the Financial Statement Date.]

*–or–*

[2. To the knowledge of the undersigned Responsible Officer, the following is a list of each Default (and its nature and status) that has occurred during such fiscal period and is continuing on the Financial Statement Date:]

*[select one:]*

[3. To the knowledge of the undersigned Responsible Officer and to the extent required by the Beneficial Ownership Regulation, no changes in beneficial ownership with respect to the Beneficial Ownership Certification delivered on or prior to the Closing Date (or the most recent update delivered to the Administrative Agent) has occurred during such fiscal period.]

*–or–*

[3. To the knowledge of the undersigned Responsible Officer and to the extent required by the Beneficial Ownership Regulation, the following is a list of changes in beneficial ownership with respect to the Beneficial Ownership Certification delivered on or prior to the Closing Date (or the most recent update delivered to the Administrative Agent) that has occurred during such fiscal period:]

4. Solely to the extent the Financial Covenant is required to be tested as of the date hereof, attached hereto as Schedule 2 are calculations in reasonable detail demonstrating compliance with the Financial Covenant.

*IN WITNESS WHEREOF*, the undersigned Responsible Officer has executed this Certificate on behalf of the Borrower as of the date first written above.

LATHAM POOL PRODUCTS, INC.

By: _____
Name:
Title:

SCHEDULE 1
to the Compliance Certificate

[Audited or unaudited financial statements required by Section 6.01(a) or (b) of the Agreement]

SCHEDULE 2
to the Compliance Certificate

[Required solely to the extent the Financial Covenant is required to be tested.]

**See Attached.**

**EXHIBIT C**

FORM OF INTERCOMPANY NOTE

New York, New York
Date: _____, 20[ ]

FOR VALUE RECEIVED, each of the undersigned and each Additional Party (as defined below), to the extent a borrower from time to time from any other entity listed on the signature page hereto (each, in such capacity, a "**Intercompany Borrower**"), hereby promises to pay on demand to such other entity listed below (each, in such capacity, a "**Intercompany Lender**"), in lawful money of the United States of America, or in such other lawful money as agreed to by such Intercompany Borrower and such Intercompany Lender, in immediately available funds, at the appropriate office of a Intercompany Lender as such Intercompany Lender shall from time to time designate, the unpaid principal amount of all loans and advances made by such Intercompany Lender to such Intercompany Borrower. Each Intercompany Borrower promises also to pay interest on the unpaid principal amount of all such loans and advances in like money at said location from the date of such loans and advances until paid at such rate per annum as shall be agreed upon from time to time by such Intercompany Borrower and such Intercompany Lender.

This note ("**Note**") is an intercompany note referred to in Section 7.03(e) of the Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**") among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer, and is subject to the terms thereof. Capitalized terms used herein without definition have the same meanings as in the Credit Agreement.

Anything in this Note to the contrary notwithstanding, the indebtedness of Intercompany Borrowers that are Loan Parties that are owed to Intercompany Lenders that are not Loan Parties and evidenced by this Note shall be subordinate and junior in right of payment, to the extent and in the manner hereinafter set forth, to all Secured Obligations of such Intercompany Borrower until the Termination Date shall have occurred; provided, that each such Intercompany Borrower that is a Loan Party may make payments to the applicable Intercompany Lender that is not a Loan Party unless an Event of Default shall have occurred and be continuing and such Intercompany Borrower shall have received notice from the Administrative Agent (provided, that no such notice shall be required to be given in the case of any Event of Default arising under Section 8.01(f) of the Credit Agreement) (such Secured Obligations and other indebtedness and obligations in connection with any renewal, refunding, restructuring or refinancing thereof, including interest thereon accruing after the commencement of any proceedings referred to in clause (i) below, whether or not such interest is an allowed claim in such proceeding, being hereinafter collectively referred to as "**Senior Indebtedness**"):

(i) in the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization or other similar proceedings in connection therewith, relative to any Intercompany Borrower or to its creditors, as such, or to its property, and in the event of any proceedings for voluntary liquidation, dissolution or other winding up of such Intercompany Borrower, whether or not involving insolvency or bankruptcy, then, if an Event of Default has occurred and is continuing, (x) the Termination Date shall have occurred before any Intercompany Lender that is not a Loan Party is entitled to receive (whether directly or indirectly), or make any demands for, any payment on account of this Note and (y) until the Termination Date shall have occurred, any payment or distribution to which such Intercompany Lender would otherwise be entitled (other than in the form of debt securities of such Intercompany Borrower that are subordinated, to at least the same extent as this Note, to the payment of all Senior Indebtedness then outstanding (such securities being hereinafter referred to as "**Restructured Debt Securities**")) shall be made to the holders of Senior Indebtedness;

(ii) if any Event of Default has occurred and is continuing and after notice from the Administrative Agent (provided that no such notice shall be required to be given in the case of any Event of Default arising under Section 8.01(f) of the Credit Agreement), then unless otherwise agreed by the Administrative Agent with respect to any Senior Indebtedness, no payment or distribution of any kind or character shall be made by or on behalf of any Intercompany Borrower that is a Loan Party or any other Person on its behalf with respect to this Note owed to any Intercompany Lender that is not a Loan Party until (x) the Termination Date shall have occurred or (y) such Event of Default shall have been cured or waived in accordance with the terms of the Credit Agreement; and

(iii) if any payment or distribution of any character, whether in cash, securities or other property (other than in the form of Restructured Debt Securities), in respect of this Note shall (despite these subordination provisions) be received by any Intercompany Lender that is not a Loan Party in violation of clause (i) or (ii) above before the Termination Date shall have occurred, such payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Indebtedness (or their representatives), ratably according to the respective aggregate amounts remaining unpaid thereon, to the extent necessary to pay all Senior Indebtedness in full in cash.

To the fullest extent permitted by law, no present or future holder of Senior Indebtedness shall be prejudiced in its right to enforce the subordination of this Note by any act or failure to act on the part of any Intercompany Borrower or by any act or failure to act on the part of such holder or any trustee or agent for such holder. Each Intercompany Lender and each Intercompany Borrower hereby agree that the subordination of this Note is for the benefit of the Administrative Agent, each L/C Issuer and the Lenders, and the Administrative Agent, each L/C Issuer and the Lenders are obligees under this Note to the same extent as if their names were written herein as such and the Administrative Agent may, on behalf of itself, each L/C Issuer and the Lenders, as applicable, proceed to enforce the subordination provisions herein.

Nothing contained in the subordination provisions set forth above is intended to or will impair, as between each Intercompany Borrower and each Intercompany Lender, the obligations of such Intercompany Borrower, which are absolute and unconditional, to pay to such Intercompany Lender the principal of and interest on this Note as and when due and payable in accordance with its terms, or is intended to or will affect the relative rights of such Intercompany Lender and other creditors of such Intercompany Borrower other than the holders of Senior Indebtedness.

Each Intercompany Lender is hereby authorized to record all loans and advances made by it to any Intercompany Borrower (all of which shall be evidenced by this Note), and all repayments or prepayments thereof, in its books and records, such books and records constituting prima facie evidence of the accuracy of the information contained therein.

Each Intercompany Borrower hereby waives (to the extent permitted by applicable law) presentment, demand, protest or notice of any kind in connection with this Note. All payments under this Note shall be made without offset, counterclaim or deduction of any kind.

This Note shall be binding upon each Intercompany Borrower and its successors and assigns, and the terms and provisions of this Note shall inure to the benefit of each Intercompany Lender and its successors and assigns, including subsequent holders hereof.

From time to time after the date hereof, additional subsidiaries of Holdings may become parties hereto (as Intercompany Borrower and/or Intercompany Lender, as the case may be) by executing a counterpart signature page to this Note (each additional subsidiary, an "**Additional Party**"). Upon delivery of such counterpart signature page to the Intercompany Lenders, notice of which is hereby waived by the other Intercompany Borrowers, and updating or supplementing Schedule A hereto by adding the name of each Additional Party, each Additional Party shall be a Intercompany Borrower and/or a Intercompany Lender, as the case may be, and shall be as fully a party hereto as if such Additional Party were an original signatory hereof. Each Intercompany Borrower expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Intercompany Borrower or Intercompany Lender hereunder. This Note shall be fully effective as to any Intercompany Borrower or Intercompany Lender that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Intercompany Borrower or Intercompany Lender hereunder.

Any subsidiary of Holdings that is a party to this Note, which ceases to be a subsidiary of Holdings (the "**Former Subsidiary**"), shall be automatically released from the rights and obligations under this Note, provided, that, at the time of such release, any existing balances between the Former Subsidiary and the remaining parties hereto have been paid in full or settled.

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

[Remainder of Page Intentionally Left Blank]

[_____],
as Intercompany Borrower

By: _____
Name:
Title:

[_____],
as Intercompany Lender

By: _____
Name:
Title:

**SCHEDULE A**

| NAME OF PAYOR/PAYEE | JURISDICTION OF ORGANIZATION |
|---|---|
| 1. [ ] | [ ] |
| 2. [ ] | [ ] |

**EXHIBIT D**

FORM OF LOAN NOTICE

Date: _____, _____

To: Nomura Corporate Funding Americas, LLC, as Administrative Agent

Ladies and Gentlemen:

Reference is made to the Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "**Agreement**"; the terms defined therein being used herein as therein defined), among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer.

The Borrower hereby requests (select one):

[ ] A Borrowing of Loans [ ] A conversion or continuation of Loans

1. On _____ (a Business Day) (the "**Borrowing Date**").

2. In the amount of _____.[1]

3. Comprised of _____.

[Class, Tranche and Type of Loan requested or to be converted]

4. For Eurodollar Rate Loans: with an Interest Period of __ months.

To be deposited in accordance with the following wire transfer instructions:

Bank: _____

ABA No.: _____

Account No.: _____

Account Name: _____

[1] Borrower to specify whether Loan to be advanced in Dollars or, in the case of Revolving Credit Loans or Letters of Credit, Canadian dollars, or, in each case, any other currency approved in accordance with Section 1.12 of the Agreement.

[The Borrower represents and warrants that as of the Borrowing Date, the conditions specified in Section[s] 4.02(a) [and 4.02(b)][2] of the Agreement have been satisfied.][3]

[The Borrower represents and warrants that as of the Borrowing Date, the Specified Representations are true and correct in all material respects [and that no Specified Event of Default has occurred or is continuing][4].][5]

[Signature Page Follows]

---

[2] Borrower may elect to test no default condition at the time of signing a Limited Condition Transaction.

[3] Include for each Request for Credit Extension (**other than** (i) a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans and (ii) a Loan Notice requesting proceeds of an Incremental Facility to fund a Limited Condition Transaction pursuant to Section 2.16(e) of the Agreement).

[4] Borrower may elect to test no default condition at the time of signing a Limited Condition Transaction.

[5] Include for each Loan Notice requesting proceeds of an Incremental Facility to fund a Limited Condition Transaction pursuant to Section 2.16(e) of the Agreement.

LATHAM POOL PRODUCTS, INC.

By: _____

Name:

Title:

**EXHIBIT E-1**

FORM OF REVOLVING CREDIT NOTE

$_____ _____

FOR VALUE RECEIVED, the undersigned (the "**Borrower**"), hereby promises to pay to _____ or registered assigns (the " **Revolving Credit Lender**"), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of $_____ or such lesser amount as is outstanding from time to time, on the dates and in the amounts set forth in that certain Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the " **Agreement**"; the terms defined therein being used herein as therein defined), among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer.

The Borrower promises to pay interest on the aggregate unpaid principal amount of each Revolving Credit Loan made from time to time by the Revolving Credit Lender to the Borrower under the Agreement from the date of such Revolving Credit Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Revolving Credit Lender in [Dollars] [insert applicable currency] and in immediately available funds. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Revolving Credit Note is one of the Revolving Credit Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and during the continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Revolving Credit Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. Revolving Credit Loans made by the Revolving Credit Lender shall be evidenced by one or more loan accounts or records maintained by the Revolving Credit Lender in the ordinary course of business. The Revolving Credit Lender may also attach schedules to this Revolving Credit Note and endorse thereon the date, amount and maturity of its Revolving Credit Loans and payments with respect thereto.

If any assignment by the Revolving Credit Lender holding this Revolving Credit Note occurs after the date of issuance hereof, the Revolving Credit Lender agrees that it shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender this Revolving Credit Note to the Administrative Agent for cancellation.

THE ASSIGNMENT OF THIS REVOLVING CREDIT NOTE AND ANY RIGHTS WITH RESPECT THERETO ARE SUBJECT TO THE PROVISIONS OF THE AGREEMENT, INCLUDING THE PROVISIONS GOVERNING THE REGISTER AND THE PARTICIPANT REGISTER.

The Borrower, for itself and its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Revolving Credit Note.

THIS REVOLVING CREDIT NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

[BORROWER]

By: _____
Name:
Title:

LOANS AND PAYMENTS WITH RESPECT THERETO

| Date | Type of Revolving Credit Loan Made | Amount of Revolving Credit Loan Made | End of Interest Period | Amount of Principal or Interest Paid This Date | Outstanding Principal Balance This Date | Notation Made By |
|---|---|---|---|---|---|---|

**EXHIBIT E-2**

FORM OF TERM NOTE

$_____ _____

FOR VALUE RECEIVED, the undersigned (the "**Borrower**"), hereby promises to pay to_____ or its registered assigns (the "**Term Lender**"), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of $_____ or such lesser amount as is outstanding from time to time, on the dates and in the amounts set forth in that certain Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "**Agreement**"; the terms defined therein being used herein as therein defined), among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer.

The Borrower promises to pay interest on the aggregate unpaid principal amount of each Term Loan made by the Term Lender to the Borrower under the Agreement from the date of such Term Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Term Lender in Dollars in immediately available funds. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Term Note is one of the Term Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and during the continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Term Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. Term Loans made by the Term Lender shall be evidenced by one or more loan accounts or records maintained by the Term Lender in the ordinary course of business. The Term Lender may also attach schedules to this Term Note and endorse thereon the date, amount and maturity of its Term Loans and payments with respect thereto.

If any assignment by the Term Lender holding this Term Note occurs after the date of issuance hereof, the Term Lender agrees that it shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender this Term Note to the Administrative Agent for cancellation.

THE ASSIGNMENT OF THIS TERM NOTE AND ANY RIGHTS WITH RESPECT THERETO ARE SUBJECT TO THE PROVISIONS OF THE AGREEMENT, INCLUDING THE PROVISIONS GOVERNING THE REGISTER AND THE PARTICIPANT REGISTER.

The Borrower, for itself and its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Term Note.

THIS TERM NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

[BORROWER]

By: _____
Name:
Title:

TERM LOANS AND PAYMENTS WITH RESPECT THERETO

| Date | Type of Term Loan Made | Amount of Term Loan Made | End of Interest Period | Amount of Principal or Interest Paid This Date | Outstanding Principal Balance This Date | Notation Made By |
|---|---|---|---|---|---|---|

**EXHIBIT F**

SECURITY AGREEMENT

[attached]

**SECURITY AGREEMENT**

THIS SECURITY AGREEMENT (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "**Security Agreement**") is entered into as of December 18, 2018 by and among LATHAM PURCHASER, INC., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), LATHAM POOL PRODUCTS, INC., a Delaware corporation ("**LPP**" and, immediately upon consummation of the Acquisition, the "**Borrower**"), LATHAM INTERNATIONAL MANUFACTURING CORP., a Delaware corporation ("**Holdings**"), the Subsidiary Guarantors (as defined below) from time to time party hereto (all of the foregoing, collectively, the "**Grantors**") and NOMURA CORPORATE FUNDING AMERICAS, LLC ("**Nomura**") as administrative agent and collateral agent for the Secured Parties (as defined below) (together with one or more sub-agents or designees, in such capacity, the "**Administrative Agent**").

PRELIMINARY STATEMENT

A. Reference is hereby made to that certain Credit and Guaranty Agreement dated as of December 18, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among the Purchaser, LPP, Holdings, the lenders from time to time party thereto (collectively, the "**Lenders**" and each a "**Lender**"), Nomura, as Administrative Agent and L/C Issuer and the other L/C Issuers party thereto.

B. The Grantors are entering into this Security Agreement in order to induce the Lenders to enter into and extend credit to the Borrower under the Credit Agreement and to secure the Secured Obligations (as defined below).

ACCORDINGLY, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Terms Defined in Credit Agreement*. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

Section 1.02. *Terms Defined in UCC*. Terms defined in the UCC that are not otherwise defined in this Security Agreement or the Credit Agreement are used herein as defined in Articles 8 or 9 of the UCC, as the context may require (including without limitation, as if such terms were capitalized in Article 8 or 9 of the UCC, as the context may require, the following terms: "**Account**," "**Chattel Paper**," "**Clearing Corporation**," "**Commercial Tort Claim**," "**Commodities Account**," "**Deposit Account**," "**Document**," "**Electronic Chattel Paper**," "**Equipment**," "**Fixture**," "**General Intangible**," "**Goods**," "**Instruments**," "**Inventory**," "**Investment Property**," "**Letter-of-Credit Right**," "**Securities Account**," "**Securities Entitlement**," "**Security**," "**Supporting Obligation**" and "**Tangible Chattel Paper**").

Section 1.03. *Definitions of Certain Terms Used Herein*. As used in this Security Agreement, in addition to the terms defined in the preamble and Preliminary Statement above and Sections 1.01 and 1.02, the following terms shall have the following meanings:

"**Administrative Agent**" has the meaning set forth in the preamble.

"**After-Acquired Intellectual Property**" has the meaning set forth in Section 4.03(c).

"**Article**" means a numbered article of this Security Agreement, unless another document is specifically referenced.

"**Borrower**" has the meaning specified in the preamble.

"**Collateral**" has the meaning set forth in Section 2.01(a).

"**Contract Rights**" means all rights of any Grantor under any Contract, including, without limitation, (i) any and all rights to receive and demand payments under such Contract, (ii) any and all rights to receive and compel performance under such Contract and (iii) any and all other rights, interests and claims now existing or in the future arising in connection with such Contract.

"**Contracts**" means all contracts between any Grantor and one or more additional parties (including, without limitation, any Hedge Agreement, licensing agreement and any partnership agreement, joint venture agreement and/or limited liability company agreement).

"**Control**" has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

"**Copyright**" means the following: (i) all United States copyrights, rights and interests in copyrights, works protectable by copyright whether published or unpublished, copyright registrations and copyright applications, (ii) all renewals of any of the foregoing, (iii) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements for any of the foregoing, (iv) the right to sue for past present and future infringement of any of the foregoing and (v) all rights corresponding to any of the foregoing.

"**Credit Agreement**" has the meaning set forth in the Preliminary Statement.

"**Domain Names**" means all Internet domain names and associated URL addresses in or to which any Grantor now or hereafter has any right, title or interest.

"**Exclusive Copyright License**" means any License granting to any Grantor an exclusive right to use, copy, reproduce, distribute, prepare derivative works, display or publish any materials on which a United States Copyright registered with the United States Copyright Office is in existence or may come into existence.

"**Exhibit**" refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced.

"**First Priority**" means, with respect to any Lien purported to be created in any Collateral pursuant to this Security Agreement, that such Lien is senior in priority to any other Lien to which such Collateral is subject, other than any Permitted Lien.

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

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

"**Intellectual Property Collateral**" means, collectively, all Copyrights, Patents, Trademarks, Trade Secrets, Domain Names, Licenses and Software.

"**Intellectual Property Filing**" means (i) with respect to any Patent or Trademark, the filing of the Intellectual Property Security Agreement with the United States Patent and Trademark Office, together with an appropriately completed recordation form and (ii) with respect to any Copyright or Exclusive Copyright License, the filing of the Intellectual Property Security Agreement with the United States Copyright Office, together with any appropriately completed recordation form, in each case sufficient to record the Lien granted to the Administrative Agent in such Intellectual Property.

"**Legal Reservations**" has the meaning assigned to such term in the Credit Agreement.

"**Licenses**" means, with respect to any Grantor, all of such Grantor's right, title, and interest in and to (i) any and all licensing agreements or similar arrangements, whether as licensor or licensee, in (1) Patents, (2) Copyrights, (3) Trademarks, (4) Trade Secrets or (5) Software, (ii) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future breaches thereof and (iii) all rights to sue for past, present, and future breaches thereof.

"**Money**" has the meaning set forth in Article 1 of the UCC.

"**Patent**" means the following: (i) any and all United States patents and patent applications; (ii) all inventions described and claimed therein, (iii) all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof, (iv) all income, royalties, damages, claims and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof, (v) all rights to sue for past, present and future infringements thereof, and (vi) all rights corresponding to any of the foregoing.

"**Perfection Certificate**" means the Perfection Certificate delivered pursuant to Section 4.01(a)(xi) or Section 6.13(b)(ii) of the Credit Agreement, in each case, substantially in the form of Exhibit B.

"**Permits**" shall mean, all licenses, permits, rights, orders, variances, franchises or authorizations of or from any Governmental Authority or agency.

"**Permitted Liens**" means any Liens on the Collateral permitted to be created or assumed or to exist pursuant to Section 7.01 of the Credit Agreement.

"**Pledged Collateral**" means all Pledged Debt and Pledged Equity, including all stock certificates, options or rights of any nature whatsoever in respect of the Pledged Equity that may be issued or granted to, or held by, any Grantor while this Security Agreement is in effect, all Instruments, Securities and other Investment Property owned by any Grantor, whether or not physically delivered to the Administrative Agent pursuant to this Security Agreement, whether now owned or hereafter acquired by such Grantor and any and all Proceeds thereof; *provided*, "Pledged Collateral" shall not include any Excluded Assets.

"**Pledged Debt**" means all of the indebtedness evidenced by promissory notes or other Instruments from time to time owed to any Grantor and listed opposite the name of such Grantor on Schedule 1, together with any other indebtedness evidenced by promissory notes or other instruments owed in the future to any Grantor and the promissory notes constituting Collateral pursuant to the terms hereof; *provided*, "Pledged Debt" shall not include any Excluded Assets.

" **Pledged Equity**" means, with respect to any Grantor, the Equity Interests described in Schedule 2 as held by such Grantor, together with any other Equity Interests constituting Collateral pursuant to the terms hereof; *provided*, "Pledged Equity" shall not include any Excluded Assets.

"**Proceeds**" has the meaning assigned in Article 9 of the UCC and, in any event, shall also include but not be limited to (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Administrative Agent or any Grantor from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to any Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any Person acting under color of governmental authority), (iii) any and all Stock Rights and (iv) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"**Receivables**" means any Account, Chattel Paper, Document, Investment Property, Instrument and/or any General Intangible, in each case, that is a right or claim to receive money (whether or not earned by performance).

"**Section**" means a numbered section of this Security Agreement, unless another document is specifically referenced.

"**Secured Obligations**" means the Obligations, the Secured Hedging Obligations (other than Excluded Swap Obligations) and the Cash Management Obligations; *provided,* that Secured Hedging Obligations and Cash Management Obligations shall cease to constitute Secured Obligations on and after the Termination Date.

"**Security Agreement**" has the meaning set forth in the preamble.

" **Security Agreement Supplement**" means a Security Agreement Supplement, substantially in the form of Exhibit A, signed and delivered to the Administrative Agent for the purpose of adding a Subsidiary as a party hereto pursuant to Section 7.10 and/or adding additional property to the Collateral.

"**Software**" means computer programs, source code, object code and supporting documentation including "software" as such term is defined in Article 9 of the UCC, as well as computer programs that may be construed as included in the definition of Goods.

"**Stock Rights**" means all dividends, instruments or other distributions and any other right or property which any Grantor shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any Equity Interest constituting Collateral, any right to receive any Equity Interest constituting Collateral and any right to receive earnings, in which such Grantor now has or hereafter acquires any right, issued by an issuer of such Equity Interest.

" **Trademark**" means, the following: (i) all United States trademarks (including service marks), common law marks, trade names, trade dress, and logos, slogans and other indicia of origin under the Laws of any jurisdiction in the world, and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing, (ii) all renewals of the foregoing, (iii) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof, (iv) all rights to sue for past, present and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing, and (v) all rights corresponding to any of the foregoing.

"**Trade Secrets**" means, with respect to any Grantor, all of such Grantor's right, title and interest in and to the following: (i) confidential and proprietary information, including unpatented inventions, invention disclosures, engineering or other data, information, production procedures, know-how, financial data, customer lists, supplier lists, business and marketing plans, processes, schematics, algorithms, techniques, analyses, proposals, source code, data, databases and data collections; (ii) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims and payments for past and future misappropriations or infringements thereof; (iii) all rights to sue for past, present and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (iv) all rights corresponding to any of the foregoing.

"**Subsidiary Guarantors**" means (a) the Subsidiaries party hereto on the Closing Date and (b) each Subsidiary that becomes a party to this Security Agreement after the date hereof in accordance with Section 7.10 hereof and Section 6.13 of the Credit Agreement.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

## ARTICLE 2
## GRANT OF SECURITY INTEREST

Section 2.01. *Grant of Security Interest.*

(a) As security for the prompt and complete payment or performance, as the case may be, in full of the Secured Obligations, each Grantor hereby pledges, collaterally assigns, mortgages, transfers and grants to the Administrative Agent, its successors and permitted assigns, on behalf of and for the ratable benefit of the Secured Parties, a continuing security interest in all of its right, title and interest in, all of the following personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Grantor, and regardless of where located (all of which are collectively referred to as the "**Collateral**"):

(i) all Accounts;

(ii) all Chattel Paper (including, without limitation, all Tangible Chattel Paper and all Electronic Chattel Paper);

(iii) all Documents;

(iv) all Equipment;

(v) all Fixtures;

(vi) all General Intangibles;

(vii) all Goods;

(viii) all Instruments;

(ix) all Intellectual Property Collateral;

(x) all Inventory; including goods that are returned, repossessed, stopped in transit or which are otherwise owned by any Grantor;

(xi) all Investment Property, Pledged Equity and other Pledged Collateral;

(xii) all Money, cash and cash equivalents;

(xiii) all letters of credit and Letter-of-Credit Rights;

(xiv) all Deposit Accounts, Securities Accounts, Commodities Accounts and all other demand, deposit, time, savings, cash management, passbook and similar accounts maintained by such Grantor with any bank or other financial institution and all monies, securities, Instruments and other investments deposited or required to be deposited in any of the foregoing;

(xv) all Securities Entitlements in any or all of the foregoing;

(xvi) all Commercial Tort Claims described on Schedule 3 (including any supplements to such Schedule 3 delivered pursuant to Section 7.10);

(xvii) all Permits;

(xviii) all recorded data of any kind or nature, regardless of the medium of recording;

(xix) all Contracts, together with all Contract Rights arising thereunder;

(xx) all other personal property not otherwise described in clauses (i) through (xix) above;

(xxi) all Supporting Obligations; and

(xxii) all accessions to, substitutions and replacements for and Proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

(b) Notwithstanding the foregoing, the term “Collateral” (and any component definition thereof) shall not include any Excluded Asset and the provisions of this Security Agreement shall be subject to the limitations set forth in Section 6.13 of the Credit Agreement. Notwithstanding anything to the contrary contained herein, immediately upon the ineffectiveness, lapse or termination of any restriction or condition set forth in the definition of “Excluded Assets” in the Credit Agreement, the Collateral shall include, and each relevant Grantor shall be deemed to have automatically granted a security interest in, all relevant previously restricted or conditioned rights, interests or other assets, as the case may be, as if such restriction or condition had never been in effect.

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES

The Grantors, jointly and severally, represent and warrant to the Administrative Agent as of the date hereof, and as and when required under the Credit Agreement, for the benefit of the Secured Parties, that:

Section 3.01. *Title, Perfection and Priority; Filing Collateral*. Each Grantor is the legal and beneficial owner of the Collateral of such Grantor, free and clear of any Lien except for (i) minor defects in title that do not materially interfere with its ability to conduct its business and (ii) Permitted Liens. Subject to the Legal Reservations, this Security Agreement is effective to create a legal, valid and enforceable Lien on and security interest in the Collateral in favor of the Administrative Agent for the benefit of the Secured Parties and the Administrative Agent will have a fully perfected First Priority Lien on such Collateral to the extent required hereby.

Section 3.02. *Intellectual Property*.

(a) Upon filing of appropriate financing statements with the Secretary of State (or equivalent office) of the state of organization of such Grantor and the filing of the Intellectual Property Security Agreement with the United States Copyright Office or the United States Patent and Trademark Office, as applicable, the Administrative Agent shall have a fully perfected First Priority Lien on the Collateral constituting United States issued, registered or applied for Patents, Trademarks, Copyrights and Exclusive Copyright Licenses under the UCC and the Laws of the United States for the ratable benefit of the Secured Parties, and such perfected security interests shall be enforceable as such as against any and all creditors of and purchasers from the Grantors, subject to the Legal Reservations.

(b) To the knowledge of the Borrower, the conduct of each Grantor does not infringe upon any intellectual property rights or other rights of any third person, except for such infringement, either individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect.

Section 3.03. *Pledged Collateral*. (i) All Pledged Equity has been duly authorized and validly issued (to the extent such concepts are relevant with respect to such Pledged Equity) by the issuer thereof and is fully paid and non-assessable, (ii) each Grantor is the direct owner, beneficially and of record, of the Pledged Equity described in Schedule 3 as held by such Grantor and (iii) each Grantor holds the Pledged Equity described in Schedule 3 as held by such Grantor free and clear of all Liens (other than Permitted Liens). None of such Pledged Equity is subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restrictions of any nature that might prohibit, impair, delay or otherwise affect in any manner material and adverse to the Secured Parties the pledge of such Pledged Equity hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Administrative Agent of rights and remedies hereunder. When each Grantor delivers the Pledged Collateral owned by it to the Administrative Agent, (i) the Lien on such Pledged Collateral will be perfected, subject to no prior Liens or rights of others, (ii) the Administrative Agent will have control of such Pledged Collateral and (iii) the Administrative Agent will be a protected purchaser (within the meaning of UCC Section 8-303) thereof. All certificated Pledged Collateral has been or will be delivered to the Administrative Agent in accordance herewith.

Section 3.04. *Perfection Certificate*. The Perfection Certificate has been duly prepared, completed and executed and the certifications set forth therein are true and correct in all material respects as of the date thereof.

Section 3.05. *Recourse*. Except as otherwise limited herein or in any other Loan Document, this Security Agreement is made with full recourse to each Grantor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of such Grantor contained herein, in the Loan Documents and otherwise in writing in connection herewith and therewith.

ARTICLE 4
COVENANTS

From the date hereof, and thereafter until the Termination Date:

Section 4.01. *General*.

(a) *Authorization to File Financing Statements; Ratification*. Each Grantor hereby (i) authorizes the Administrative Agent to file (A) all financing statements and amendments thereto with respect to the Collateral naming such Grantor as debtor and the Administrative Agent as secured party, in form appropriate for filing under the UCC of the relevant jurisdiction and (B) filings with the United States Patent and Trademark Office and the United States Copyright Office (including any Intellectual Property Security Agreement) for the purpose of perfecting, enforcing, maintaining or protecting the Lien of the Administrative Agent in United States issued, registered and applied for Patents, Trademarks, Copyrights and Exclusive Copyright Licenses and naming such Grantor as debtor and the Administrative Agent as secured party and (ii) subject to the terms of the Loan Documents, agrees to take such other actions, in each case as may from time to time be necessary or otherwise reasonably requested by the Administrative Agent (and authorizes the Administrative Agent to take any such other actions, which it has no obligation to take) in order to establish and maintain a First Priority, valid, enforceable (subject to the Legal Reservations) and perfected security interest in and subject, in the case of Pledged Collateral, to Section 4.02, Control of, the Collateral. Each Grantor (or the Borrower, in place of any Grantor) shall pay any applicable filing fees, recordation fees and related expenses relating to its Collateral in accordance with Section 11.04 of the Credit Agreement. Any financing statement filed by the Administrative Agent may be filed in any filing office in any applicable UCC jurisdiction and may (i) indicate the Collateral (A) as all assets of the applicable Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of such jurisdiction, or (B) by any other description which reasonably approximates the description contained in this Security Agreement and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including in each case to the extent applicable, whether the applicable Grantor is an organization and the type of organization. Each Grantor agrees to furnish any such information to the Administrative Agent promptly upon request.

(b) *Further Assurances*. Each Grantor agrees, at its own expense (or the expense of the Borrower), to take any and all actions reasonably necessary to defend title to the Collateral against all Persons (other than Persons holding Permitted Liens on such Collateral that have priority over the Administrative Agent's Lien) and to defend the security interest of the Administrative Agent in the Collateral and the priority thereof against any Lien that is not a Permitted Lien.

Section 4.02. *Pledged Collateral*.

(a) *Delivery of Certificated Securities, Tangible Chattel Paper and Instruments*. Subject to Section 4.01 of the Credit Agreement, each Grantor will, (i) on the Closing Date, deliver to the Administrative Agent for the benefit of the Secured Parties, the originals of all certificated Pledged Collateral, which in the case of Tangible Chattel Paper and Instruments has a face amount in excess of $3,000,000, in each case owned by such Grantor as of the Closing Date, accompanied by undated instruments of transfer or assignment duly executed in blank, (ii) after the Closing Date, hold in trust for the Administrative Agent upon receipt and, on or before the date that is 60 days after the end of the fiscal quarter in which the event giving rise to the obligations under this Section 4.02(a) occurs (or such longer period as the Administrative Agent may reasonably agree), deliver to the Administrative Agent for the benefit of the Secured Parties any certificated Pledged Collateral, which in the case of Tangible Chattel Paper and Instruments has an outstanding balance in excess of $3,000,000, in each case constituting Collateral received after the date hereof, accompanied by undated instruments of transfer or assignment duly executed in blank and (iii) at any time when an Event of Default then exists and upon the Administrative Agent's request, deliver to the Administrative Agent, and prior to such delivery, hold in trust for the Administrative Agent upon receipt, any other Document evidencing or constituting such Collateral.

(b) *Uncertificated Securities and Pledged Collateral*. With respect to any partnership interest or limited liability company interest owned by any Grantor which is required to be pledged to the Administrative Agent pursuant to the terms hereof (other than a partnership interest or limited liability company interest held by a Clearing Corporation, Securities Intermediary or other financial intermediary of any kind) which is not represented by a certificate and which is not a Security for purposes of the UCC, such Grantor shall not permit any issuer of such partnership interest or limited liability company interest to (i) enter into any agreement with any Person, other than the Administrative Agent or any holder of a Permitted Lien, whereby such issuer effectively delivers Control of such partnership interest or limited liability company interest (as applicable) to such Person, or (ii) allow such partnership interest or limited liability company interest (as applicable) to become a Security unless such Grantor complies with the procedures set forth in Section 4.02(a) within the time period prescribed therein. Each Grantor which is an issuer of any uncertificated Pledged Collateral described in this Section 4.02(b) hereby agrees to comply with all instructions from the Administrative Agent without such Grantor's further consent, in each case subject to the notice requirements set forth in Section 5.01(a)(iv).

(c) *Registration in Nominee Name; Denominations*. The Administrative Agent, on behalf of the Secured Parties, shall hold certificated Securities constituting Pledged Collateral required to be delivered to the Administrative Agent under clause (a) above in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Administrative Agent, but at any time when an Event of Default exists and upon at least three Business Days' notice to the Borrower, the Administrative Agent shall have the right (in its sole and absolute discretion) to hold the Pledged Equity in its own name as pledgee, or in the name of its nominee (as pledgee or as sub-agent) and such Grantor will cause the issuer thereof either (i) to register the Administrative Agent as the registered owner of such Pledged Equity or (ii) to agree in an authenticated record with such Grantor and the Administrative Agent that such issuer will comply with instructions with respect to such Pledged Equity originated by the Administrative Agent without further consent of such Grantor, such authenticated record to be in form and substance reasonably satisfactory to the Administrative Agent. At any time when an Event of Default exists, the Administrative Agent shall have the right to exchange the certificates representing Pledged Equity for certificates of smaller or larger denominations for any purpose consistent with this Security Agreement.

(d) *Exercise of Rights in Pledged Collateral*. It is agreed that:

(i) without in any way limiting the foregoing and subject to clause (ii) below, each Grantor shall have the right to exercise all voting rights or other rights relating to the Pledged Equity for any purpose that does not violate this Security Agreement, the Credit Agreement or any other Loan Document;

(ii) each Grantor will permit the Administrative Agent or its nominee at any time when an Event of Default exists to exercise the rights and remedies provided under Section 5.01(a)(iv) (subject to the notice requirements set forth therein); and

(iii) subject to Section 5.01(a)(iv), each Grantor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Equity; *provided* that any non-cash dividends or other distributions that would constitute Pledged Equity, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interest of the issuer of any Pledged Equity or received in exchange for Pledged Equity or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall, to the extent constituting Collateral, be and become part of the Pledged Equity, and, if received by any Grantor, shall be delivered to the Administrative Agent as and to the extent required by clause (a) above.

(e) *Return of Pledged Collateral*. So long as no Event of Default then exists, the Administrative Agent shall promptly deliver to the applicable Grantor (without recourse and without any representation or warranty) any Pledged Collateral in its possession if requested to be delivered to the issuer or holder thereof in connection with any action or transaction (requiring delivery or possession of such Pledged Collateral) that is permitted or not restricted by the Credit Agreement in accordance with Section 9.10 of the Credit Agreement.

Section 4.03. *Intellectual Property*.

(a) At any time when an Event of Default exists and upon the written request of the Administrative Agent, each Grantor will (i) use its commercially reasonable efforts to obtain all consents and approvals necessary or appropriate for the assignment to or for the benefit of the Administrative Agent of any License held by such Grantor in the United States to enable the Administrative Agent to enforce the security interests granted hereunder and (ii) to the extent required pursuant to any material License in the United States under which such Grantor is the licensee, deliver to the licensor thereunder any notice of the grant of security interest hereunder or such other notices required to be delivered thereunder in order to permit the security interest created or permitted to be created hereunder pursuant to the terms of such License.

(b) Each Grantor shall notify the Administrative Agent promptly if it knows or reasonably expects that any application for or registration of any Patent, Trademark, Domain Name, or Copyright (now or hereafter existing) may become abandoned or dedicated to the public, or of any determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) abandoning such Grantor's ownership of any such Patent, Trademark or Copyright, its right to register the same, or to keep and maintain the same, except, in each case, to the extent the same is permitted or not restricted by the Credit Agreement or where the same, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(c) In the event that any Grantor files an application for the registration of any Patent, Trademark, Copyright or Exclusive Copyright License constituting Collateral with the United States Patent and Trademark Office or the United States Copyright Office, or acquires any such application or registration by purchase or assignment, in each case, after the Closing Date (and other than as a result of an application that is then included in the schedules to an Intellectual Property Security Agreement becoming registered) (collectively, " **After-Acquired Intellectual Property**"), it shall, before or concurrently with the delivery of each Compliance Certificate pursuant to Section 6.02(a) of the Credit Agreement (or such longer period as the Administrative Agent may reasonably agree), notify the Administrative Agent in writing thereof and execute and deliver to the Administrative Agent, at such Grantor's sole cost and expense, any Intellectual Property Security Agreement, or other instrument necessary to evidence the Administrative Agent's security interest in such registered Patent, Trademark, Copyright or Exclusive Copyright License (or application therefor), and the General Intangibles of such Grantor relating thereto or represented thereby.

(d) Each Grantor shall (and shall use commercially reasonable efforts to cause all its licensees to) take all actions necessary or reasonably requested by the Administrative Agent to (i) maintain and pursue each application and to obtain and maintain the registration of each Patent, Trademark, Domain Name and Copyright included in the Collateral (now or hereafter existing), including by filing applications for renewal, affidavits of use, affidavits of noncontestability and, if consistent with good business judgment, by initiating opposition and interference and cancellation proceedings against third parties, (ii) maintain and protect the secrecy or confidentiality of its Trade Secrets and (iii) otherwise protect and preserve such Grantor's rights in, and the validity or enforceability of, its Intellectual Property Collateral, in each case except where failure to do so (A) could not reasonably be expected to result in a Material Adverse Effect or (B) is otherwise permitted under the Credit Agreement.

(e) Each Grantor shall (i) promptly notify the Administrative Agent of any infringement, misappropriation or dilution of such Grantor's Patents, Trademarks, Copyrights, Domain Names or Trade Secrets of which it becomes aware and (ii) take such actions as are reasonable and appropriate under the circumstances to protect such Patent, Trademark, Copyright, Domain Name or Trade Secret (including, if such Grantor deems it necessary in its reasonable business judgment, promptly sue for infringement, misappropriation or dilution of such Patents, Trademarks, Copyrights, Domain Names or Trade Secrets and to recover any and all damages for such infringement, misappropriation or dilution), in each case, except where such infringement, misappropriation or dilution could not reasonably be expected to cause a Material Adverse Effect.

Section 4.04. *Commercial Tort Claims*. After the Closing Date, on or before the date that is 60 days after the end of the fiscal quarter in which the event giving rise to the obligations under this Section 4.04 occurs (or such longer period as the Administrative Agent may reasonably agree), each relevant Grantor shall notify the Administrative Agent of any Commercial Tort Claim with an individual value (as reasonably estimated by the Borrower) in excess of $3,000,000 acquired by it, together with an update to Schedule 3 containing a summary description thereof, and such Commercial Tort Claim (and the Proceeds thereof) shall automatically constitute Collateral, all upon the terms of this Security Agreement.

Section 4.05. *Insurance*. Except to the extent otherwise permitted to be retained by any Grantor or applied by any Grantor pursuant to the terms of the Loan Documents, the Administrative Agent shall, at the time any proceeds of any insurance are distributed to the Secured Parties, apply such proceeds in accordance with Section 5.04.

Section 4.06. *Grantors Remain Liable.*

(a) Each Grantor (rather than the Administrative Agent or any Secured Party) shall remain liable (as between itself and any relevant counterparty) to observe and perform all the conditions and obligations to be observed and performed by it under any Contract or other agreement or instrument relating to the Collateral, all in accordance with the terms and conditions thereof. Neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any Contract by reason of or arising out of this Security Agreement or the receipt by the Administrative Agent or any other Secured Party of any payment relating to such Contract pursuant hereto, nor shall the Administrative Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or sufficiency of any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times.

(b) Each Grantor assumes all liability and responsibility in connection with the Collateral acquired by it, and the liability of such Grantor to pay the Secured Obligations shall in no way be affected or diminished by reason of the fact that such Collateral may be lost, destroyed, stolen, damaged or for any reason whatsoever unavailable to such Grantor.

(c) Notwithstanding anything herein to the contrary, each Grantor (rather than the Administrative Agent or any Secured Party) shall remain liable under each of the Accounts to observe and perform all of the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to such Accounts. Neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any Account (or any agreement giving rise thereto) by reason of or arising out of this Security Agreement or the receipt by the Administrative Agent or any other Secured Party of any payment relating to such Account pursuant hereto, nor shall the Administrative Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Account (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by them or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times.

Section 4.07. *Change of Name, etc.; Collateral Verification.* Each Grantor will provide prompt (and, in any event, within the earlier of (i) 60 days of the relevant change and (ii) 15 days prior to the date on which the perfection of the liens under the Collateral Documents would lapse, in whole or in part, by reason of such change) notice of any change (i) to the legal name or type of organization of such Grantor or (ii) in the jurisdiction of organization of such Grantor, in each case, to the extent such information is necessary to enable the Administrative Agent to perfect or maintain the perfection and priority of its security interest in the Collateral of the relevant Grantor.

ARTICLE 5
REMEDIES

Section 5.01. *Remedies*.

(a) Each Grantor agrees that, at any time when an Event of Default exists, the Administrative Agent may exercise any or all of the following rights and remedies (in addition to the rights and remedies existing under applicable Laws):

(i) the rights and remedies provided in this Security Agreement, the Credit Agreement, or any other Loan Document; *provided* that this Section 5.01(a) shall not limit any rights available to the Administrative Agent prior to an Event of Default;

(ii) the rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable Laws (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' Lien) when a debtor is in default under a security agreement;

(iii) without notice (except as specifically provided in Section 7.01 or elsewhere herein), demand or advertisement of any kind to any Grantor or any other Person, personally, or by agents or attorneys, enter the premises of any Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at one or more public or private sales (which sales may be adjourned or continued from time to time with or without notice and may take place at such Grantor's premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit risk, and upon such other terms as the Administrative Agent may deem commercially reasonable;

(iv) upon at least three Business Days' written notice to the Borrower, transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, to exercise the voting and all other rights as a holder with respect thereto (whereupon the voting and other rights of such Grantor described in Section 4.02(d)(i) above shall immediately cease such that the Administrative Agent shall have the sole right to exercise such voting and other rights while the relevant Event of Default exists), to collect and receive all cash dividends, interest, principal and other distributions made thereon (it being understood that all Stock Rights received by any Grantor while the relevant Event of Default exists shall be received in trust for the benefit of the Administrative Agent and forthwith paid over to the Administrative Agent in the same form as so received (with any necessary endorsements)) and to otherwise act with respect to the Pledged Collateral as though the Administrative Agent was the outright owner thereof; and

(v) to take possession of the Collateral or any part thereof, by directing such Grantor in writing to deliver the same to the Administrative Agent at any reasonable place or places designated by the Administrative Agent, in which event such Grantor shall at its own expense:

(1) forthwith cause the same to be moved to the place or places so designated by the Administrative Agent and there delivered to the Administrative Agent;

(2) store and keep any Collateral so delivered to the Administrative Agent at such place or places pending further action by the Administrative Agent; and

(3) while the Collateral shall be so stored and kept, provide such security and maintenance services as shall be reasonably necessary to protect the same and to
preserve and maintain it in good condition.

(b) Each Grantor acknowledges and agrees that compliance by the Administrative Agent, on behalf of the Secured Parties, with any applicable state or federal Laws in connection with a disposition of the Collateral will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(c) The Administrative Agent shall have the right in any public sale and, to the extent permitted by applicable Laws, in any private sale, to purchase for the benefit of the Administrative Agent and the Secured Parties, all or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption each Grantor hereby expressly releases.

(d) Until the Administrative Agent is able to effect a sale, lease, transfer or other disposition of any particular Collateral under this Section 5.01, the Administrative Agent shall have the right to hold or use such Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving such Collateral or the value of such Collateral, or for any other purpose deemed reasonably appropriate by the Administrative Agent. At any time when an Event of Default exists, the Administrative Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of the Administrative Agent's remedies (for the benefit of the Administrative Agent and Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(e) Notwithstanding the foregoing, the Administrative Agent shall not be required to (i) make any demand upon, or pursue or exhaust any of their rights or remedies against, the Grantors, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof, (ii) marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, or (iii) effect a public sale of any Collateral.

(f) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof. Each Grantor also acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that no such private sale shall be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit any Grantor or the issuer of any Pledged Collateral to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities Laws, even if any Grantor and the issuer would agree to do so.

Section 5.02. *Grantors' Obligations Upon Default*. Upon the request of the Administrative Agent at any time when an Event of Default exists, each Grantor will:

(a) at its own cost and expense (i) assemble and make available to the Administrative Agent, the Collateral and all books and records relating thereto at any place or places reasonably specified by the Administrative Agent, whether at such Grantor's premises or elsewhere, (ii) deliver all tangible evidence of its Accounts and Contract Rights (including, without limitation, all documents evidencing the Accounts and all Contracts) and such books and records to the Administrative Agent or to its representatives (copies of which evidence and books and records may be retained by such Grantor) and (iii) if the Administrative Agent so directs and in a form and in a manner reasonably satisfactory to the Administrative Agent, legend the Accounts and the Contracts, as well as books, records and documents (if any) of such Grantor evidencing or pertaining to such Accounts and Contracts with an appropriate reference to the fact that such Accounts and Contracts have been assigned to the Administrative Agent and that the Administrative Agent has a security interest therein; and

(b) permit the Administrative Agent and/or its representatives and/or agents, to enter, occupy and use any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral or the books and records relating thereto, or both, to remove all or any part of the Collateral or the books and records relating thereto, or both, and to conduct sales of the Collateral, without any obligation to pay any Grantor for such use and occupancy.

Section 5.03. *Intellectual Property Remedies*.

(a) For the purpose of enabling the Administrative Agent to exercise the rights and remedies under this Article 5 at any time when an Event of Default exists and at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Administrative Agent a power of attorney to sign any document which may be required by the United States Patent and Trademark Office, the United States Copyright Office, domain name registrar or similar registrar in order to effect an absolute assignment of all right, title and interest in each registered Patent, Trademark, Domain Name and Copyright and each application for any such registration, and record the same. At any time when an Event of Default exists, the Administrative Agent may (i) declare the entire right, title and interest of such Grantor in and to each item of Intellectual Property Collateral to be vested in the Administrative Agent for the benefit of the Secured Parties, in which event such right, title and interest shall immediately vest in the Administrative Agent for the benefit of the Secured Parties, and the Administrative Agent shall be entitled to exercise the power of attorney referred to in this Section 5.03 to execute, cause to be acknowledged and notarized and record such absolute assignment with the applicable agency or registrar; (ii) sell any Grantor's Inventory directly to any Person, including without limitation Persons who have previously purchased any Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Administrative Agent's rights under this Security Agreement and subject to any restrictions contained in applicable third party licenses entered into by such Grantor, sell Inventory which bears any Trademark owned by or licensed to any Grantor and any Inventory that is covered by any Intellectual Property Collateral owned by or licensed to any Grantor, and the Administrative Agent may finish any work in process and affix any relevant Trademark owned by or licensed to such Grantor and sell such Inventory as provided herein; (iii) direct such Grantor to refrain, in which event such Grantor shall refrain, from using any Intellectual Property Collateral in any manner whatsoever, directly or indirectly; and (iv) assign or sell any Patent, Trademark, Copyright, Domain Name, and/or Trade Secret, as well as the goodwill of such Grantor's business symbolized by any such Trademark and the right to carry on the business and use the assets of such Grantor in connection with which any such Trademark or Domain Name has been used.

(b) Each Grantor hereby grants to the Administrative Agent an irrevocable (until the Termination Date), nonexclusive, royalty-free, worldwide license to its right to use, license or sublicense any Intellectual Property Collateral subject, in the case of Trademarks, to such rights of quality control which are reasonably necessary under applicable Laws to maintain the validity and enforceability of such Trademarks, now owned or hereafter acquired by such Grantor, wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and (to the extent not prohibited by any applicable license) to all computer software and programs used for compilation or printout thereof. The use of the license granted to the Administrative Agent pursuant to the preceding sentence may be exercised, at the option of the Administrative Agent, only when an Event of Default exists and shall be exercised only for the purposes of marketing the Intellectual Property Collateral in connection with the exercise of Lenders' remedies hereunder; *provided* that, any license, sublicense or other transaction entered into by the Administrative Agent in accordance with this clause (b) shall be binding upon each Grantor notwithstanding any subsequent cure of the relevant Event of Default.

Section 5.04. *Application of Proceeds*.

(a) The Administrative Agent shall apply the proceeds of any collection, sale, foreclosure or other realization of any Collateral, as well as any Collateral consisting of Cash, as set forth in Section 8.03 of the Credit Agreement

(b) Except as otherwise provided herein or in any other Loan Document, the Administrative Agent shall have absolute discretion as to the time of application of any such proceeds, money or balance in accordance with this Security Agreement. Upon any sale of Collateral by the Administrative Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), a receipt by the Administrative Agent or of the officer making the sale of such proceeds, moneys or balances shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Administrative Agent or such officer or be answerable in any way for the misapplication thereof. It is understood that the Grantors shall remain jointly and severally liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations.

## ARTICLE 6
## ACCOUNT VERIFICATION; ATTORNEY IN FACT; PROXY

Section 6.01. *Account Verification*. The Administrative Agent may at any time and from time to time when an Event of Default exists, in the Administrative Agent's own name, in the name of a nominee of the Administrative Agent, or in the name of any Grantor, communicate (by mail, telephone, facsimile or otherwise) with the Account debtors of such Grantor, parties to Contracts with such Grantor and obligors in respect of Instruments of such Grantor to verify with such Persons, to the Administrative Agent's reasonable satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts, Contracts, Instruments, Chattel Paper, payment intangibles and/or other Receivables that constitute Collateral.

Section 6.02. *Authorization for the Administrative Agent to Take Certain Action*. (a) Each Grantor hereby irrevocably authorizes the Administrative Agent and appoints the Administrative Agent (and all officers, employees or agents designated by the Administrative Agent) as its true and lawful attorney in fact (i) at any time and from time to time in its sole discretion (A) to execute (to the extent necessary under the Laws of the applicable jurisdiction) on behalf of such Grantor as debtor and to file financing statements necessary or desirable in the Administrative Agent's reasonable discretion to perfect and to maintain the perfection and priority of the Administrative Agent's security interest in the Collateral, (B) to file a carbon, photographic or other reproduction of this Security Agreement as a financing statement and to file any other financing statement or amendment of a financing statement with respect to the Collateral (which would not add new collateral or add a debtor, except as otherwise provided for herein or in any other Loan Document) in such offices as the Administrative Agent in its reasonable discretion deems necessary or desirable to perfect and to maintain the perfection and priority of the Administrative Agent's security interest in the Collateral, and (C) with the consent of the Borrower (other than when an Event of Default exists), to contact and enter into one or more agreements with the issuers of uncertificated securities that constitute Pledged Equity or with securities intermediaries holding Pledged Equity as may be necessary or advisable to give the Administrative Agent Control over such Pledged Equity in accordance with the terms hereof; (ii) at any time when an Event of Default exists, in the sole discretion of the Administrative Agent (in the name of such Grantor or otherwise), (A) to endorse and collect any cash proceeds of the Collateral and to apply the proceeds of any Collateral received by the Administrative Agent to the Secured Obligations as provided herein or in the Credit Agreement or any other Loan Document, (B) to demand payment or enforce payment of any Receivable in the name of the Administrative Agent or such Grantor and to endorse any check, draft and/or any other instrument for the payment of money relating to any such Receivable, (C) to sign such Grantor's name on any invoice or bill of lading relating to any Receivable, any draft against any Account debtor of such Grantor, and/or any assignment and/or verification of any Receivable, (D) to exercise all of any Grantor's rights and remedies with respect to the collection of any Receivable and any other Collateral, (E) to settle, adjust, compromise, extend or renew any Receivable, (F) to settle, adjust or compromise any legal proceedings brought to collect any Receivable, (G) to prepare, file and sign such Grantor's name on a proof of claim in bankruptcy or similar document against any Account debtor of such Grantor, (H) to prepare, file and sign such Grantor's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with any Receivable, (I) to change the address for delivery of mail addressed to such Grantor to such address as the Administrative Agent may designate and to receive, open and dispose of all mail addressed to such Grantor (provided copies of such mail are provided to such Grantor), (J) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for Permitted Liens), (K) to make, settle and adjust claims in respect of Collateral under policies of insurance and endorse the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance, (L) to make all determinations and decisions with respect thereto and (M) to obtain or maintain the policies of insurance of the types referred to in Section 6.07 of the Credit Agreement or to pay any premium in whole or in part relating thereto; and (iii) to do all other acts and things or institute any proceedings which the Administrative Agent may reasonably deem to be necessary or advisable (pursuant to this Security Agreement and the other Loan Documents and in accordance with applicable law) to carry out the terms of this Security Agreement and to protect the interests of the Secured Parties; and, when and to the extent required pursuant to Section 11.04 of the Credit Agreement, such Grantor agrees to reimburse the Administrative Agent for any payment made in connection with this paragraph or any expense (including attorneys' fees, court costs and expenses) and other charges related thereto incurred by the Administrative Agent in connection with any of the foregoing (it being understood that any such sums shall constitute additional Secured Obligations); *provided* that, this authorization shall not relieve such Grantor of any of its obligations under this Security Agreement or under the Credit Agreement.

(b) All acts of such attorney or designee are hereby ratified and approved by each Grantor. The powers conferred on the Administrative Agent, for the benefit of the Administrative Agent and Secured Parties, under this Section 6.02 are solely to protect the Administrative Agent's interests in the Collateral and shall not impose any duty upon the Administrative Agent or any Secured Party to exercise any such powers.

Section 6.03. *PROXY*. EACH GRANTOR HEREBY IRREVOCABLY (UNTIL THE TERMINATION DATE) CONSTITUTES AND APPOINTS THE ADMINISTRATIVE AGENT AS ITS PROXY AND ATTORNEY-IN-FACT (AS SET FORTH IN SECTION 6.02 ABOVE) WITH RESPECT TO THE PLEDGED EQUITY, INCLUDING THE RIGHT TO VOTE SUCH PLEDGED EQUITY, WITH FULL POWER OF SUBSTITUTION TO DO SO. IN ADDITION TO THE RIGHT TO VOTE ANY SUCH PLEDGED EQUITY, THE APPOINTMENT OF THE ADMINISTRATIVE AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF SUCH PLEDGED EQUITY WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS). SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY SUCH PLEDGED EQUITY ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF SUCH PLEDGED EQUITY OR ANY OFFICER OR AGENT THEREOF), IN EACH CASE ONLY WHEN AN EVENT OF DEFAULT EXISTS AND UPON THREE BUSINESS DAYS' PRIOR WRITTEN NOTICE TO THE BORROWER.

Section 6.04. *NATURE OF APPOINTMENT; LIMITATION OF DUTY*. THE APPOINTMENT OF THE ADMINISTRATIVE AGENT AS PROXY AND ATTORNEY-IN-FACT IN THIS ARTICLE 6 IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE TERMINATION DATE. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, NEITHER THE ADMINISTRATIVE AGENT, NOR ANY SECURED PARTY, NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO, EXCEPT TO THE EXTENT SUCH DAMAGES ARE ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH PERSON AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL AND NON-APPEALABLE DECISION SUBJECT TO SECTION 7.19; *PROVIDED*, THAT THE FOREGOING EXCEPTION SHALL NOT BE CONSTRUED TO OBLIGATE THE ADMINISTRATIVE AGENT TO TAKE OR REFRAIN FROM TAKING ANY ACTION WITH RESPECT TO THE COLLATERAL.

## ARTICLE 7
## GENERAL PROVISIONS

Section 7.01. *Waivers*. To the maximum extent permitted by applicable Laws, each Grantor hereby waives notice of the time and place of any judicial hearing in connection with the Administrative Agent's taking possession of the Collateral or of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made, including without limitation, any and all prior notice and hearing for any prejudgment remedy or remedies. To the extent such notice may not be waived under applicable Laws, any notice made shall be deemed reasonable if sent to any Grantor, addressed as set forth in Article 8, at least 10 days prior to (a) the date of any such public sale or (b) the time after which any such private disposition may be made. To the maximum extent permitted by applicable Laws, each Grantor waives all claims, damages, and demands against the Administrative Agent arising out of the repossession, retention or sale of the Collateral, except those arising out of the gross negligence or willful misconduct of the Administrative Agent as determined by a court of competent jurisdiction in a final and non-appealable judgment. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Administrative Agent, any valuation, stay (other than an automatic stay under any applicable Debtor Relief Law), appraisal, extension, moratorium, redemption or similar law and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise. Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest, any notice (to the maximum extent permitted by applicable Laws) of any kind or all other requirements as to the time, place and terms of sale in connection with this Security Agreement or any Collateral.

Section 7.02. *Limitation on Administrative Agent's Duty with Respect to the Collateral*. The Administrative Agent shall not have any obligation to clean or otherwise prepare the Collateral for sale. The Administrative Agent shall use reasonable care with respect to the Collateral in its possession; *provided* that the Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to which it accords its own property. The Administrative Agent shall not have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Administrative Agent, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable Laws impose duties on the Administrative Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it would be commercially reasonable for the Administrative Agent (a) to elect not to incur expenses to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (b) to elect not to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to elect not to exercise collection remedies against Account debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (d) to exercise collection remedies against Account debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other Persons, whether or not in the same business as any Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (h) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (k) to purchase insurance or credit enhancements to insure the Administrative Agent against risks of loss in connection with any collection or disposition of Collateral or to provide to the Administrative Agent a guaranteed return from the collection or disposition of Collateral or (l) to the extent deemed appropriate by the Administrative Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Administrative Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 7.02 is to provide non-exhaustive indications of what actions or omissions by the Administrative Agent would be commercially reasonable in the Administrative Agent's exercise of remedies with respect to the Collateral and that other actions or omissions by the Administrative Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 7.02. Without limitation upon the foregoing, nothing contained in this Section 7.02 shall be construed to grant any rights to any Grantor or to impose any duties on the Administrative Agent that would not have been granted or imposed by this Security Agreement or by applicable Laws in the absence of this Section 7.02.

Section 7.03. *Compromises and Collection of Collateral*. Each Grantor and the Administrative Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to any Receivable. In view of the foregoing, each Grantor agrees that the Administrative Agent may at any time and from time to time, if an Event of Default exists, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Administrative Agent in its sole discretion shall determine or abandon any Receivable, and any such action by the Administrative Agent shall be commercially reasonable so long as the Administrative Agent acts in good faith based on information known to it at the time it takes any such action.

Section 7.04. *Administrative Agent Performance of Debtor Obligations*. Without having any obligation to do so, the Administrative Agent may, at any time when an Event of Default exists and upon prior notice to the Borrower, perform or pay any obligation which any Grantor has agreed to perform or pay under this Security Agreement and which obligation is due and unpaid and not being contested by such Grantor in good faith, and such Grantor shall reimburse the Administrative Agent for any amounts paid by the Administrative Agent pursuant to this Section 7.04 as a Secured Obligation payable in accordance with Section 11.04 of the Credit Agreement.

Section 7.05. *No Waiver; Amendments; Cumulative Remedies*. No delay or omission of the Administrative Agent to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Default or an acquiescence therein, and no single or partial exercise of any such right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by the Grantors and the Administrative Agent with the concurrence or at the direction of the Lenders to the extent required under Sections 11.01 and 11.03 of the Credit Agreement and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or afforded by law shall be cumulative and all shall be available to the Administrative Agent until the Termination Date.

Section 7.06. *Limitation by Law; Severability of Provisions*. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable Laws, and all of the provisions of this Security Agreement are intended to be subject to all applicable mandatory Laws that may be controlling and to be limited to the extent necessary so that such provisions do not render this Security Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. To the extent permitted by applicable Laws, any provision of this Security Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions of this Security Agreement; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 7.07. *Security Interest Absolute*. All rights of the Administrative Agent hereunder, the security interests granted hereunder and all obligations of each Grantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument relating to the foregoing, (c) any exchange, release or nonperfection of any Lien on any Collateral, or any release or amendment or waiver of or consent under or departure from any guaranty, securing or guaranteeing all or any of the Secured Obligations, (d) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Grantor, (e) any exercise or non-exercise, or any waiver of, any right, remedy, power or privilege under or in respect of this Security Agreement or any other Loan Document or (f) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Security Agreement (other than a termination of any Lien contemplated by Section 7.12 or the occurrence of the Termination Date).

Section 7.08. *Benefit of Security Agreement*. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of each Grantor, the Administrative Agent and the Secured Parties and their respective successors and permitted assigns (including all Persons who become bound as a debtor to this Security Agreement). No sale of participations, assignments, transfers, or other dispositions of any agreement governing the Secured Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to the Administrative Agent hereunder for the benefit of the Administrative Agent and the Secured Parties.

Section 7.09. *Survival of Representations*. All representations and warranties of each Grantor contained in this Security Agreement shall survive the execution and delivery of this Security Agreement until the Termination Date.

Section 7.10. *Additional Subsidiaries*. Upon the execution and delivery by any Restricted Subsidiary that is a U.S. Subsidiary of an instrument in the form of Exhibit A in accordance with, and to the extent required by, Section 6.13 of the Credit Agreement, such U.S. Subsidiary shall become a Subsidiary Guarantor hereunder with the same force and effect as if such U.S. Subsidiary was originally named as a Subsidiary Guarantor herein. The execution and delivery of any such instrument shall not require the consent of any other Grantor or any other Person. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Security Agreement.

Section 7.11. *Headings*. The titles of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

Section 7.12. *Termination or Release*.

(a) This Security Agreement shall continue in effect until the Termination Date, and the Liens granted hereunder shall automatically be released in the circumstances described in Sections 9.10 or 10.08 of the Credit Agreement.

(b) In connection with any termination or release pursuant to paragraph (a) above, the Administrative Agent shall promptly execute (if applicable) and deliver to any Grantor, at such Grantor's expense, all UCC termination statements and similar documents that such Grantor shall reasonably request to evidence and/or effectuate such termination or release. Any execution and delivery of documents pursuant to this Section 7.12 shall be without recourse to or representation or warranty by the Administrative Agent or any Secured Party. The Borrower shall reimburse the Administrative Agent for all costs and expenses, including any fees and expenses of counsel, incurred by it in connection with any action contemplated by this Section 7.12 pursuant to and to the extent required by Section 11.04 of the Credit Agreement.

(c) At any time that a Grantor desires that the Administrative Agent take any action to acknowledge or give effect to any release of Collateral pursuant to Section 7.12(a), such Grantor or the Borrower shall deliver to the Administrative Agent a certificate signed by a Responsible Officer of such Grantor stating that the release of the respective Collateral is permitted pursuant to Section 7.12(a) and the terms of the Credit Agreement.

(d) The Administrative Agent shall have no liability whatsoever to any other Secured Party as the result of any release of Collateral or any Grantor by it in accordance with (or which the Administrative Agent in good faith believes to be in accordance with) the terms of this Section 7.12.

Section 7.13. *Entire Agreement*. This Security Agreement, together with the other Loan Documents, embodies the entire agreement and understanding between each Grantor and the Administrative Agent relating to the Collateral and supersedes all prior agreements and understandings between any Grantor and the Administrative Agent relating to the Collateral.

Section 7.14. *CHOICE OF LAW*. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 7.15. *CONSENT TO JURISDICTION; CONSENT TO SERVICE OF PROCESS*. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS SECURITY AGREEMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE CITY OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS SECURITY AGREEMENT, THE GRANTORS AND THE ADMINISTRATIVE AGENT CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. THE GRANTORS AND THE ADMINISTRATIVE AGENT IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THE SECURITY AGREEMENT OR OTHER DOCUMENT RELATED THERETO (EXCEPT THAT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT IN THE STATE IN WHICH THE COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION.

Section 7.16. *WAIVER OF JURY TRIAL*. EACH PARTY TO THIS SECURITY AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS SECURITY AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS SECURITY AGREEMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 7.16 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 7.17. *Indemnity*. Each Grantor hereby agrees to indemnify the Indemnitees, as, and to the extent, set forth in Section 11.05 of the Credit Agreement.

Section 7.18. *Counterparts*. This Security Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Security Agreement by facsimile or by email as a ".pdf" or ".tiff" attachment or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Security Agreement.

Section 7.19. *Waiver of Consequential Damages, Etc*. To the extent permitted by applicable Laws, none of the Grantors or Secured Parties shall assert, and each hereby waives, any claim against each other, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Security Agreement or any agreement or instrument contemplated hereby, except, in the case of any claim by any Indemnitee against any of the Grantors, to the extent such damages would otherwise be subject to indemnification pursuant to the terms of Section 7.17.

Section 7.20. *Mortgages*. In the case of a conflict between this Security Agreement and any Mortgage with respect to any Material Real Property that is also subject to a valid and enforceable Lien under the terms of such Mortgage (including Fixtures), the terms of such Mortgage shall govern.

Section 7.21. *Successors and Assigns.* Whenever in this Security Agreement any party hereto is referred to, such reference shall be deemed to include the successors and permitted assigns of such party; and all covenants, promises and agreements by or on behalf of any Grantor or the Administrative Agent in this Security Agreement shall bind and inure to the benefit of their respective successors and permitted assigns. Except in a transaction expressly permitted under the Credit Agreement, no Grantor may assign any of its rights or obligations hereunder without the written consent of the Administrative Agent.

Section 7.22. *Survival of Agreement.* Without limiting any provision of the Credit Agreement or Section 7.17 hereof, all covenants, agreements, indemnities, representations and warranties made by the Grantors in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Security Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such Lender or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect until the Termination Date, or with respect to any individual Grantor until such Grantor is otherwise released from its obligations under this Security Agreement in accordance with the terms hereof.

Section 7.23. *Reinstatement* . This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable Laws, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 7.24. *Conflicts*. Notwithstanding anything contrary contained herein, in the event of any conflict or inconsistency between this Security Agreement and the Credit Agreement or any Acceptable Intercreditor Agreement, the terms of the Credit Agreement and/or such Acceptable Intercreditor Agreement shall govern and control (except that in the case of any conflict between the Credit Agreement and an Acceptable Intercreditor Agreement, such Acceptable Intercreditor Agreement with respect to the applicable Collateral shall control).

## ARTICLE 8
## NOTICES

Section 8.01. *Sending Notices*. Any notice required or permitted to be given under this Security Agreement shall be delivered in accordance with Section 11.02 of the Credit Agreement (it being understood and agreed that references in such Section to "herein", "hereunder" and other similar terms shall be deemed to be references to this Security Agreement).

## ARTICLE 9
## THE ADMINISTRATIVE AGENT

Nomura, together with one or more sub-agents or designees has been appointed Administrative Agent for the Lenders hereunder pursuant to Article 9 of the Credit Agreement. It is expressly understood and agreed by the parties to this Security Agreement that any authority conferred upon the Administrative Agent hereunder is subject to the terms of the delegation of authority made by the Lenders to the Administrative Agent pursuant to the Credit Agreement, and that the Administrative Agent has agreed to act (and any successor Administrative Agent shall act) as such hereunder only on the express conditions contained in such Article 9. Any successor Administrative Agent appointed pursuant to Article 9 of the Credit Agreement shall be entitled to all the rights, interests and benefits of the Administrative Agent hereunder.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each Grantor and the Administrative Agent have executed this Security Agreement as of the date first above written.

LATHAM PURCHASER, INC.

By: _____
Name:
Title:

LATHAM POOL PRODUCTS, INC.

By: _____
Name:
Title:

LATHAM INTERNATIONAL MANUFACTURING CORP.

By: _____
Name:
Title:

POOL COVER SPECIALISTS, LLC

By: _____
Name:
Title:

NOMURA CORPORATE FUNDING AMERICAS, LLC, as the Administrative Agent

By: _____
Name:
Title:

**EXHIBIT A**

**[FORM OF] SECURITY AGREEMENT SUPPLEMENT**

A. SUPPLEMENT NO. [●] dated as of [●] (this " Supplement"), to the Security Agreement dated as of December 18, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), by and among LATHAM PURCHASER, INC., a Delaware corporation ("Purchaser" and, prior to the consummation of the Acquisition, the "Borrower"), LATHAM POOL PRODUCTS, INC., a Delaware corporation (the "LPP" and, immediately upon consummation of the Acquisition, the "Borrower"), LATHAM INTERNATIONAL MANUFACTURING CORP., a Delaware corporation (" Holdings"), the Subsidiary Guarantors, the Subsidiary Guarantors from time to time party thereto (the foregoing, collectively, the "Grantors") and NOMURA CORPORATE FUNDING AMERICAS, LLC ("Nomura") as administrative agent and collateral agent for the Secured Parties (as defined below) (together with one or more sub-agents or designees, in such capacity, the "Administrative Agent").

B. Reference is made to the Credit and Guaranty Agreement dated as of December 18, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Purchaser, LPP, Holdings, the lenders from time to time party thereto (collectively, the "Lenders" and each a "Lender"), Nomura, as Administrative Agent, and L/C Issuer and the other L/C Issuers party thereto.

C. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement or the Security Agreement, as applicable.

D. The Grantors have entered into the Security Agreement in order to induce the Lenders to make Loans. Section 7.10 of the Security Agreement and Section 6.13 of the Credit Agreement provide that additional U.S. Subsidiaries of the Borrower may become Subsidiary Guarantors under the Security Agreement by executing and delivering an instrument in the form of this Supplement. [The] [Each] undersigned Restricted Subsidiary that is a U.S. Subsidiary (the "**New Subsidiary**") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Subsidiary Guarantor under the Security Agreement in order to induce the Lenders to make additional Loans and as consideration for Loans previously made and to secure the Secured Obligations.

Accordingly, the Administrative Agent and [the] [each] New Subsidiary agree as follows:

SECTION 1. In accordance with Section 7.10 of the Security Agreement, [the] [each] New Subsidiary by its signature below becomes a Subsidiary Guarantor and a Grantor under the Security Agreement with the same force and effect as if originally named therein as a Subsidiary Guarantor, and [the] [each] New Subsidiary hereby (a) agrees to all the terms and provisions of the Security Agreement applicable to it as a Subsidiary Guarantor and Grantor thereunder and (b) makes the representations and warranties applicable to it as a Grantor under the Security Agreement[, subject to Schedule A hereto,] on and as of the date hereof; it being understood and agreed that any representation or warranty that expressly relates to an earlier date shall be deemed to refer to the date hereof. In furtherance of the foregoing, [the] [each] New Subsidiary, as security for the payment and performance in full of the Secured Obligations, does hereby create and grant to the Administrative Agent, its successors and permitted assigns, for the benefit of the Secured Parties, their successors and permitted assigns, a security interest in and Lien on all of [the] [each] New Subsidiary's right, title and interest in and to the Collateral of [the] [each] New Subsidiary. Each reference to a "Grantor" and "Subsidiary Guarantor" in the Security Agreement shall be deemed to include [the] [each] New Subsidiary. The Security Agreement is hereby incorporated herein by reference.

SECTION 2. [The] [Each] New Subsidiary represents and warrants to the Administrative Agent and the other Secured Parties that (i) it has the power and authority to enter into this Supplement and (ii) this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to the Legal Reservations.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Administrative Agent shall have received a counterpart of this Supplement that bears the signature of [the] [each] New Subsidiary. Delivery of an executed signature page to this Supplement by facsimile transmission or by email as a ".pdf" or ".tiff" attachment shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. Attached hereto is a duly prepared, completed and executed Perfection Certificate with respect to [the] [each] New Subsidiary, and [the] [each] New Subsidiary hereby represents and warrants that the information set forth therein is correct and complete in all material respects as of the date hereof.

SECTION 5. Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect.

SECTION 6. **THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

SECTION 7. In case any one or more of the provisions contained in this Supplement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Security Agreement shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The Borrower and the Administrative Agent shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8. All communications and notices hereunder shall be in writing and given as provided in Section 8.01 of the Security Agreement.

SECTION 9. [The] [Each] New Subsidiary agrees to reimburse the Administrative Agent for its expenses in connection with this Supplement, including the fees, other charges and disbursements of counsel in accordance with Section 11.04 of the Credit Agreement.

SECTION 10. This Supplement shall constitute a Loan Document, under and as defined in, the Credit Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, [each] [the] New Subsidiary has duly executed this Supplement to the Security Agreement as of the day and year first above written.

[NAME OF NEW SUBSIDIARY]

By: _____

Name:

Title:

**[SCHEDULE A**
**CERTAIN EXCEPTIONS]**

**EXHIBIT B**

**[FORM OF] PERFECTION CERTIFICATE**

[ ], 20[ ]

Reference is made to the Credit and Guaranty Agreement, dated as of December 18, 2018 (as modified and supplemented and in effect on the date hereof, the "Credit Agreement"; together with the various instruments, documents and other agreements executed in connection therewith, the "Loan Documents") among Latham Purchaser, Inc., a Delaware corporation, as initial borrower, Latham Pool Products, Inc., a Delaware corporation, as borrower (collectively, the "Borrowers") certain subsidiaries of the Borrowers from time to time party thereto as guarantors (collectively with the Borrowers, the "Obligors"), the several lenders from time to time party thereto as Lenders and Nomura Corporate Funding Americas, LLC (acting through such of its affiliates as it deems appropriate, "NCFA"), together with one or more sub-agents or designees, as administrative agent (in such capacity, as well as in its capacity as collateral agent, the "Administrative Agent"). Except as otherwise provided herein, terms defined in the Credit Agreement, and in the Security Agreement referred to therein, are used herein as defined therein.

The undersigned hereby certify to each Lender and the Administrative Agent as follows:

(1) Names and Identifying Information. Set forth in Schedule I are (a) the full and correct legal name of each of the Obligors as its name appears in its certificate of incorporation, operating agreement, agreement of partnership or other similar instrument of organization, (b) the type of organization of each of the Obligors, (c) each other legal name that any of the Obligors has had since its organization together with the date of the relevant change, (d) any change in the identity or corporate structure of any of the Obligors in any way within the past five years, (e) the jurisdiction of organization of each of the Obligors, (f) the organizational identification number of each of the Obligors, (g) the mailing address of each Obligors and (h) for any Obligor that is not a registered organization or is not organized under any state of the United States, the place of business of each Obligor or, if such Obligor has more than one place of business, the location of the chief executive office of such Obligor, or if such Obligor is an individual, the principal residence of such Obligor. Also set forth in Schedule I is a description of all the occasions in which any of the Obligors has acquired the equity interests of another entity or substantially all the assets of another entity within the past five years (including the exact legal name and jurisdiction of organization of such entity).

(2) New Debtor Events. Set forth in Schedule II is a description of all the occasions in which any of the Obligors has become a "new debtor" (as defined in Section 9-102(a)(56) of the Uniform Commercial Code) with respect to a currently effective security agreement previously entered into by any other Person.

(3) Locations of Collateral. Set forth in Schedule III are (i) all locations where each Obligor maintains any Inventory, (ii) all locations where each Obligor maintains any Equipment or other Collateral, and (iii) all locations where such Obligor maintains any books or records relating to the Collateral (with each location at which chattel paper, if any, is kept being indicated by an "*") (in each case, other than locations referred to in Schedule I).

(4) Third-Party Collateral Sites. Set forth in Schedule IV are the names and addresses of all persons other than the Obligors that have possession of any of the Collateral of any Obligor with an aggregate value exceeding $2,500,000, excluding any leased site identified in Schedule V.

(5) Real Property Interests. Set forth in Schedule V is a complete and correct list of real property interests held by each Obligor at which the value of personal property of any Obligor held at such real property exceeds $5,300,000 indicating (i) whether the respective property is owned or leased, (ii) the identity of the owner or lessee and the location of the respective property, (iii) the use to which such real property is employed by such Obligor.

(6) Intellectual Property. Set forth in Schedule VI is a complete and correct list of all Intellectual Property of each Obligor.

(7) Stock Ownership. Attached hereto as Schedule VII is a complete and correct list of all the duly authorized, issued and outstanding shares of common and preferred stock of, or partnership and other ownership interest in, each Obligor and each of its Subsidiaries and the record and beneficial owners of such shares of common and preferred stock, or partnership and other ownership interests and denoting (x) whether such shares or partnership or other ownership interests are certificated and (y) whether such shares or partnership or other ownership interests constitute "margin stock" (as defined in Regulation U of the Board of Governors of the Federal Reserve System of the United States). Also set forth on Schedule VII is each equity investment of each Obligor that represents 50% or less of the equity of the entity in which such investment is made, indicating the information specified in the preceding sentence.

(8) Promissory Notes, Instruments, Certificated Securities and Tangible Chattel Paper. Attached hereto as Schedule VIII is a complete and correct list of all promissory notes, instruments (other than checks to be deposited in the ordinary course of business), tangible chattel paper in an amount exceeding $2,500,000 held by each Obligor, certificated securities and intercompany notes (regardless of amount).

(9) Deposit, Securities and Commodity Accounts. Attached hereto as Schedule IX is a complete and correct list of all Deposit Accounts, Securities Accounts and Commodity Accounts of each Obligor.

(10) Commercial Tort Claims. Attached hereto as Schedule X is a complete and correct list of all Commercial Tort Claims held by each Obligor, including a reasonably detailed description thereof.

(11) Insurance. Attached hereto as Schedule XI is a complete and correct list of all property and casualty insurance, comprehensive general liability insurance, product liability insurance, business interruption insurance and all other insurance maintained by each Obligor.

(12) Letter-of-Credit Rights. Attached hereto as Schedule XII is a true and correct list of all Letters of Credit issued in favor of each Obligor, as beneficiary thereunder, stating if letter-of-credit rights with respect to such Letters of Credit are required to be subject to a control arrangement pursuant to the Security Agreement.

IN WITNESS WHEREOF, the undersigned has duly executed this certificate on this ___ day of _____, 2018.

**LATHAM POOL PRODUCTS, INC.**

By _____
Name:
Title:

**NAMES AND IDENTIFYING INFORMATION**

| Legal Name of Obligor | Type of Organization | Other legal names and dates of change | Changes in identity or corporate structure in past five years | Jurisdiction of Organization | Organizational Identification Number | Place(s) of Business |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |

**ACQUISITION OF EQUITY INTERESTS OR ASSETS OF AN ENTITY**

| Date of Acquisition | Legal Name of Entity | Entity Type of Organization | Entity Jurisdiction of Organization | Entity Organizational Identification Number |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

**"NEW DEBTOR" EVENTS**

| **Description of Event** | **Date of Event** |
|---|---|
| | |

**LOCATION OF COLLATERAL**

| **Obligor** | **Collateral/Books and Records Relating to Collateral** | **Location of Collateral** |
|---|---|---|
| | [Inventory]<br>[Equipment]<br>[Books and Records Relating to Collateral] | |

**THIRD-PARTY COLLATERAL SITES**

| Obligor | Collateral | Location of Collateral |
|---|---|---|

SCHEDULE V

**REAL PROPERTY INTERESTS**

| Obligor | Location of Real Property | Owned/Leased | Identity of Owner/Lessee | Use of Real Property |
|---|---|---|---|---|

**INTELLECTUAL PROPERTY**

**COPYRIGHTS, COPYRIGHT REGISTRATIONS AND APPLICATIONS FOR COPYRIGHT REGISTRATIONS**

[To be completed]

**PATENTS AND PATENT APPLICATIONS**

[To be completed]

TRADE NAMES, TRADEMARKS, SERVICES MARKS, TRADEMARK AND SERVICE MARK REGISTRATIONS AND APPLICATIONS FOR TRADEMARK AND SERVICE MARK REGISTRATIONS

[To be completed]

**DOMAIN NAME REGISTRATIONS**

[To be completed]

**STOCK OWNERSHIP**

| Grantor | Share Issuer | Class of Shares | Certificated (Y/N) | Share Certificate No. | Par Value | No. of Pledged Share | Percentage of Outstanding Share of the Issuer | Margin Stock (Y/N) |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| | | | | | | | | |

**PROMISSORY NOTES, INSTRUMENTS AND TANGIBLE CHATTEL PAPER**

Promissory Notes

| **Entity** | **Principal Amount** | **Date of Issuance** | **Interest Rate** | **Maturity Date** | **Pledged [Yes/No]** |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |

Chattel Paper

| **Description** | **Pledged [Yes/No]** |
|---|---|
| | |
| | |

SCHEDULE IX

**DEPOSIT, SECURITIES AND COMMODITY ACCOUNTS**

Deposit Accounts

| Grantor | Name of Depositary Bank | Account Number | Account Name |
|---|---|---|---|
| | | | |
| | | | |

Securities Accounts

| Grantor | Name of Intermediary | Account Number | Account Name |
|---|---|---|---|
| | | | |
| | | | |

Commodity Accounts

| Grantor | Name of Intermediary | Account Number | Account Name |
|---|---|---|---|
| | | | |
| | | | |

SCHEDULE X

**COMMERCIAL TORT CLAIMS**

[To be completed]

**INSURANCE**

[To be completed]

SCHEDULE XII

**LETTER-OF-CREDIT RIGHTS**

[To be completed]

**EXHIBIT G**

FORM OF GUARANTY SUPPLEMENT
(this **"Guaranty Supplement"**)

_____ __, ____

Nomura Corporate Funding Americas, LLC, as Administrative Agent [insert address]

Attention: _____

Re: Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**"; the terms defined therein being used herein as therein defined), among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer.

Ladies and Gentlemen:

Reference is made to the Credit Agreement. The capitalized terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

Section 1. *Guaranty; Limitation of Liability*. (a) The undersigned hereby, jointly and severally with the other Guarantors, absolutely, unconditionally and irrevocably guarantees the punctual payment when due, whether at scheduled maturity or by acceleration, demand or otherwise, of all of its Guaranteed Obligations. Without limiting the generality of the foregoing, but, subject to Section 10.15 of the Credit Agreement, the undersigned's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Loan Party to any Secured Party under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party.

(b) The undersigned, hereby confirms that it is the intention of such Person that this Guaranty Supplement, the Guaranty and the Guaranteed Obligations of the undersigned hereunder not constitute a fraudulent transfer or conveyance for purposes of Debtor Relief Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Guaranty Supplement and the Guaranteed Obligations of the undersigned. To effectuate the foregoing intention, the Administrative Agent, the other Secured Parties and the undersigned hereby irrevocably agree that the Guaranteed Obligations of the undersigned Guarantor under this Guaranty Supplement and the Guaranty at any time shall be limited to the maximum amount as will result in the Guaranteed Obligations of the undersigned under this Guaranty Supplement and the Guaranty not constituting a fraudulent transfer or conveyance under Debtor Relief Law or any comparable provision of applicable Law.

(c) Subject to Section 10.03 of the Credit Agreement, the undersigned hereby unconditionally agrees that in the event any payment shall be required to be made to any Secured Party under this Guaranty Supplement, the Guaranty or any other guaranty, the undersigned will contribute, to the maximum extent permitted by applicable Law, such amounts to each other Guarantor so as to maximize the aggregate amount paid to the Secured Parties under or in respect of the Loan Documents.

(d) The undersigned hereby agrees that any Indebtedness owed by it to another Loan Party shall be subordinated to the Guaranteed Obligations of the undersigned and that any Indebtedness owed to it by another Loan Party shall be subordinated to the Guaranteed Obligations of such other Loan Party, it being understood that the undersigned or such other Loan Party, as the case may be, may make payments on such intercompany Indebtedness unless an Event of Default has occurred and is continuing.

Section 2. *Guaranteed Obligations Under the Guaranty*. The undersigned hereby agrees, as of the date first above written, to be bound as a Guarantor by all of the terms and conditions of the Guaranty to the same extent as each of the other Guarantors thereunder. The undersigned further agrees, as of the date first above written, that each reference in the Guaranty to an "**Additional Guarantor**" or a "**Guarantor**" shall also mean and be a reference to the undersigned, and each reference in any other Loan Document to a "**Guarantor**" or a "**Loan Party**" shall also mean and be a reference to the undersigned.

Section 3. *Delivery by Telecopier*. This Guaranty Supplement may be executed in any number of counterparts and by different parties thereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Guaranty Supplement by telecopier or electronic mail shall be effective as delivery of an original executed counterpart of this Guaranty Supplement.

Section 4. *GOVERNING LAW; JURISDICTION; WAIVER OF JURY TRIAL, ETC.* (a) THIS GUARANTY SUPPLEMENT, AND ANY CLAIM OR CONTROVERSY ARISING OUT OF THIS GUARANTY SUPPLEMENT, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS GUARANTY SUPPLEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE CITY OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS GUARANTY SUPPLEMENT, EACH PARTY HERETO CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH PARTY HERETO IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO (EXCEPT THAT, (X) IN THE CASE OF ANY MORTGAGE OR OTHER SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT IN THE STATE IN WHICH THE RESPECTIVE MORTGAGED PROPERTY OR COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION AND (Y) IN THE CASE OF ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO THE ADMINISTRATIVE AGENT, ANY L/C ISSUER OR ANY OTHER LENDER, ACTIONS OR PROCEEDINGS RELATED TO THIS GUARANTY SUPPLEMENT AND THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN SUCH COURT HOLDING SUCH BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS).

(c) EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS GUARANTY SUPPLEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 4 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

[Signature Page Follows]

Very truly yours,

[NAME OF ADDITIONAL SUBSIDIARY GUARANTOR]

By: _____
Name:
Title:

**EXHIBIT H**

[RESERVED]

**EXHIBIT I-1**

FORM OF DISCOUNTED PREPAYMENT OPTION NOTICE

Date: _____, 201_

To: Nomura Corporate Funding Americas, LLC, as Administrative Agent

Ladies and Gentlemen:

This Discounted Prepayment Option Notice is delivered to you pursuant to Section 2.06(d)(ii) of that certain Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**") among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Credit Agreement.

Pursuant to Section 2.06(d)(ii) of the Credit Agreement, the Borrower hereby offers to make a Discounted Voluntary Prepayment to each Term Lender [and to each Lender of the [●, 20●][12] tranche[s] of Term Loans] on the following terms:

1. This Borrower's offer of Discounted Voluntary Prepayment is available only to each Term Lender [and to each Lender of the [●, 20●][13] tranche[s] of Term Loans].

2. The maximum aggregate outstanding amount of the Discounted Voluntary Prepayment that will be made in connection with this offer shall not exceed $[●] of Term Loans [and $[●] of the [●, 20●][14] tranche[(s)] of Term Loans] (the "**Discounted Prepayment Amount**").[15]

3. [The percentage discount to par value at which such Discounted Voluntary Prepayment will be made is [●]% in respect of the Term Loans [and [●]% in respect of the [●, 20●][16] tranche[(s)] of Term Loans] (the "**Specified Discount**").][17]

12 List multiple tranches if applicable.

13 List multiple tranches if applicable.

14 List multiple tranches if applicable.

15 Minimum of $2.5 million (or, the same numerical number with respect to the applicable Alternate Currency in the case of any Loans denominated in an Alternate Currency).

16 List multiple tranches if applicable.

17 Included if the Discount Range is a single percentage.

4. [The Borrower is willing to make such Discount Voluntary Prepayment at a percentage discount to par value greater than or equal to [●]% but less than or equal to [●]% in respect of the Term Loans [and greater than or equal to [●]% but less than or equal to [●]% in respect of the [●, 20●][18] tranche[(s)] of Term Loans] (the "**Discount Range**").][19]

To accept this offer, you are required to submit to the Administrative Agent a Lender Participation Notice on or before 5:00 p.m. New York time on the date that is three (3) Business Days following the date of delivery of this notice pursuant to Section 2.06(d)(iii) of the Credit Agreement.

The Borrower hereby represents and warrants to the Administrative Agent [and the Term Lenders][, the Term Lenders and each Lender of the [●, 20●][20] tranche[s] of Term Loans] as follows:

1. The Borrower will not use proceeds from Revolving Credit Loans to fund the Discounted Voluntary Prepayment.

2. No Specified Event of Default has occurred and is continuing or would result from the Discounted Voluntary Prepayment.

3. Each of the conditions to such Discounted Voluntary Prepayment contained in Section 2.06(d) of the Credit Agreement has been satisfied.

The Borrower acknowledges that the Administrative Agent and the relevant Term Lenders are relying on the truth and accuracy of the foregoing representations and warranties in connection with their decision whether or not to accept the offer set forth in this Discounted Prepayment Option Notice and the acceptance of any prepayment made in connection with this Discounted Prepayment Option Notice.

The Borrower requests that the Administrative Agent promptly notify each of the relevant Term Lenders party to the Credit Agreement of this Discounted Prepayment Option Notice.

[Remainder of Page Intentionally Left Blank]

[18] List multiple tranches if applicable.

[19] Included if the Discount Range is not a single percentage.

[20] List multiple tranches if applicable.

IN WITNESS WHEREOF, the undersigned has executed this Discounted Prepayment Option Notice as of the date first above written.

[BORROWER]

By: _____
Name:
Title:

Enclosure: Form of Lender Participation Notice

**EXHIBIT I-2**

FORM OF LENDER PARTICIPATION NOTICE

Date: _____, 201_

To: Nomura Corporate Funding Americas, LLC, as Administrative Agent

Ladies and Gentlemen:

Reference is made to (a) that certain Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**") among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer, and (b) that certain Discounted Prepayment Option Notice, dated _____, 20__, from the Borrower (the "**Discounted Prepayment Option Notice**"). Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Discounted Prepayment Option Notice or, to the extent not defined therein, in the Credit Agreement.

The undersigned [Term Lender] [Lender] hereby gives you irrevocable notice, pursuant to Section 2.06(d)(iii) of the Credit Agreement, that it is willing to accept a prepayment of the following [tranches of] Term Loans held by such [Term Lender] [Lender] at [the Specified Discount][21] [a maximum discount to par of [●]% within the Discount Range][22] in an aggregate outstanding amount as follows:

[Term Loans - $[●]]

[[●, 20●][23] tranche[s] of Term Loans - $[●]]

The undersigned [Term Lender] [Lender] hereby expressly consents and agrees to a prepayment of its [Term Loans][[ ● , 20 ● ][24] tranche[s]] pursuant to Section 2.06(d)(iii) of the Credit Agreement at a price equal to the Applicable Discount in the aggregate outstanding amount not to exceed the amount set forth above, as such amount may be reduced in accordance with Section 2.06(d)(iv) of the Credit Agreement, and as otherwise determined in accordance with, and subject to the requirements of, the Credit Agreement.

[Remainder of Page Intentionally Left Blank]

[21] Included if the Discount Range is a single percentage.

[22] Included if the Discount Range is not a single percentage

[23] List multiple tranches if applicable.

[24] List multiple tranches if applicable.

IN WITNESS WHEREOF, the undersigned has executed this Lender Participation Notice as of the date first above written.

[LENDER] [TERM LENDER]

By: _____
Name
Title:

By: _____
Name
Title:

**EXHIBIT I-3**

FORM OF DISCOUNTED VOLUNTARY PREPAYMENT NOTICE

Date: _____, 201_

To: Nomura Corporate Funding Americas, LLC, as Administrative Agent

Ladies and Gentlemen:

This Discounted Voluntary Prepayment Notice is delivered to you pursuant to Section 2.06(d)(v) of that certain Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**") among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Credit Agreement.

Pursuant to Section 2.06(d)(v) of the Credit Agreement, the Borrower hereby irrevocably notifies you that it accepts offers delivered in response to the Discounted Prepayment Option Notice having an Applicable Discount equal to or greater than [●]% in respect of the Term Loans [and [●]% in respect of the [●, 20●][25] tranche[(s)] of Term Loans] (the "**Discount**") in an aggregate amount not to exceed $[●] (the "**Discounted Prepayment Amount**").

The Borrower expressly agrees that this Discounted Voluntary Prepayment Notice shall be irrevocable and is subject to the provisions of Sections 2.06(d)(v) and 2.06(d)(vii) of the Credit Agreement.

The Borrower hereby represents and warrants to the Administrative Agent [and the Term Lenders][and the Term Lenders and each Lender of the [●, 20●][26] tranche[s] of Term Loans] as follows:

1. The Borrower will not use proceeds from Revolving Credit Loans to fund this Discounted Prepayment Amount or to make the Discounted Voluntary Prepayment.

2. No Specified Event of Default has occurred and is continuing or would result from the Discounted Voluntary Prepayment.

3. Each of the conditions to such Discounted Voluntary Prepayment contained in Section 2.06(d) of the Credit Agreement has been satisfied.

[25] List multiple tranches if applicable.

[26] List multiple tranches if applicable.

The Borrower acknowledges that the Administrative Agent and the relevant Term Lenders are relying on the truth and accuracy of the foregoing representations and warranties in connection with the acceptance of any prepayment made in connection with a Discounted Prepayment Option Notice.

The Borrower requests that the Administrative Agent promptly notify each of the relevant Term Lenders party to the Credit Agreement of this Discounted Voluntary Prepayment Notice.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has executed this Discounted Voluntary Prepayment Notice as of the date first above written.

[BORROWER]

By: _____
Name:
Title:

**EXHIBIT J-1**

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(for Foreign Lenders That Are Not Partnerships for U.S. Federal Income Tax Purposes)

Reference is made to the Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**"), among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "Borrower"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer.

Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:
Date: _____ __, 20[ ]

**EXHIBIT J-2**

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(for Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)

Reference is made to the Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**"), among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "Borrower"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer.

Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

**EXHIBIT J-3**

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(for Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)

Reference is made to the Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**"), among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "Borrower"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer.

Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

**EXHIBIT J-4**

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(for Foreign Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)

Reference is made to the Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**"), among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "Borrower"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer.

Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

**EXHIBIT K**

LETTER OF CREDIT REPORT

To: Nomura Corporate Funding Americas, LLC, as Administrative Agent

Re: Credit and Guaranty Agreement dated as of December [__], 2018 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement), among Latham Purchaser, Inc., a Delaware corporation ("**Purchaser**" and, prior to the consummation of the Acquisition, the "**Borrower**"), Latham Pool Products, Inc., a Delaware corporation ("**LPP**" and immediately upon consummation of the Acquisition, the "**Borrower**"), Latham International Manufacturing Corp., a Delaware corporation ("**Holdings**"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer.

Date: _____, ___

The undersigned [insert name of L/C Issuer] (the "**L/C Issuer**") hereby delivers this report to the Administrative Agent, pursuant to the terms of Section 2.04(n) of the Credit Agreement.

The L/C Issuer plans to issue, amend, renew, increase or extend the following Letter(s) of Credit on [insert date].

| L/C No. | Current Face Amount | Currency | Beneficiary Name | Issuance Date | Expiry Date | Auto Renewal | Date of Amendment | Amount of Amendment | Maximum Face Amount after Amendment |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

Set forth in the table below is a description of each Letter of Credit under which the L/C Issuer has made a payment [which the Borrower has failed to reimburse] by the undersigned and outstanding on the date hereof.

| L/C No. | Current Face Amount | Currency | Beneficiary Name | Issuance Date | Expiry Date | Amount of Payment | Date of Payment | Amount to reimburse | Date of failure to reimburse |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

Set forth in the table below is a description of each Letter of Credit issued by the undersigned and outstanding on the date hereof.

| L/C No. | Maximum Face Amount | Current Face Amount | Currency | Beneficiary Name | Issuance Date | Expiry Date | Auto Renewal | Date of Amendment | Amount of Amendment |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This Letter of Credit Report is executed as of the date set forth above.

[L/C ISSUER],
as L/C Issuer

By: _____
Name:
Title:

**EXHIBIT L**

FORM OF SOLVENCY CERTIFICATE

[●], 20[●]

To the Administrative Agent and each of the Lenders party to the Credit Agreement referred to below:

I, the undersigned, the [Chief Financial Officer] of Latham Purchaser, Inc., a Delaware corporation )"***Purchaser***" and prior to the consummation of the Acquisition, the "***Borrower***"), in that capacity only and not in my individual capacity (and without personal liability), do hereby certify as of the date hereof, and based upon facts and circumstances as they exist as of the date hereof (and disclaiming any responsibility for changes in such fact and circumstances after the date hereof), that:

This certificate is furnished to the Administrative Agent and the Lenders pursuant to Section 4.01(a)(viii) of the Credit and Guaranty Agreement dated as of December [__], 2018, among Borrower, Latham Pool Products, Inc., a Delaware corporation ("***LPP***" and, immediately upon the consummation of the Acquisition, the "***Borrower***"), Latham International Manufacturing Corp., a Delaware corporation ("***Holdings***"), the other Subsidiaries of Holdings from time to time party thereto, the Lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC (together with one or more sub-agents or designees), as Administrative Agent and L/C Issuer (the "***Credit Agreement***"). Unless otherwise defined herein, capitalized terms used in this certificate shall have the meanings set forth in the Credit Agreement.

For purposes of this certificate, the terms below shall have the following definitions:

"Fair Value"

The amount at which the assets (both tangible and intangible), in their entirety, of the Borrower and its Restricted Subsidiaries taken as a whole would change hands between a willing buyer and a willing seller, within a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, with neither being under any compulsion to act.

"Present Fair Salable Value"

The amount that could be obtained by an independent willing seller from an independent willing buyer if the assets (both tangible and intangible) of the Borrower and its Restricted Subsidiaries taken as a whole are sold on a going concern basis with reasonable promptness in an arm's-length transaction under present conditions for the sale of comparable business enterprises insofar as such conditions can be reasonably evaluated.

"Stated Liabilities"

The recorded liabilities (including contingent liabilities that would be recorded in accordance with GAAP) of the Borrower and its Restricted Subsidiaries taken as a whole, as of the date hereof after giving effect to the consummation of the Transactions, determined in accordance with GAAP consistently applied.

"Identified Contingent Liabilities"

The maximum estimated amount of liabilities reasonably likely to result from pending litigation and other contingent liabilities of the Borrower and its Restricted Subsidiaries taken as a whole after giving effect to the Transactions (including all fees and expenses related thereto but exclusive of such contingent liabilities to the extent reflected in Stated Liabilities), as identified and explained in terms of their nature and estimated magnitude by Responsible Officers of the Borrower.

"Can pay their Stated Liabilities and Identified Contingent Liabilities as they mature"

Borrower and its Restricted Subsidiaries taken as a whole after giving effect to the Transactions have sufficient assets and cash flow to pay their respective Stated Liabilities and Identified Contingent Liabilities as those liabilities mature or (in the case of contingent liabilities) otherwise become payable. For the purposes hereof, it is assumed that the indebtedness and other obligations incurred on the date hereof will come due on their respective stated maturities.

"Do not have Unreasonably Small Capital"

Borrower and its Restricted Subsidiaries taken as a whole after giving effect to the Transactions have sufficient capital to ensure that it is a going concern.

Based on and subject to the foregoing, I hereby certify on behalf of Borrower that after giving effect to the consummation of the Transactions, it is my opinion that (i) each of the Fair Value and the Present Fair Salable Value of the assets of Borrower and its Restricted Subsidiaries taken as a whole exceed their Stated Liabilities and Identified Contingent Liabilities; (ii) Borrower and its Restricted Subsidiaries taken as a whole do not have Unreasonably Small Capital; and (iii) Borrower and its Restricted Subsidiaries taken as a whole can pay their Stated Liabilities and Identified Contingent Liabilities as they mature.

* * *

IN WITNESS WHEREOF, Borrower has caused this certificate to be executed on its behalf by its [Chief Financial Officer] as of the date first written above.

] [

By: _____
Name:
Title: [Chief Financial Officer]

**Exhibit 10.2**

***Execution Version***

FIRST INCREMENTAL FACILITY AMENDMENT

FIRST INCREMENTAL FACILITY AMENDMENT, dated as of May 29, 2019 (this "**Amendment**"), by and among LATHAM POOL PRODUCTS, INC., a Delaware corporation (the "**Borrower**"), LATHAM INTERNATIONAL MANUFACTURING CORP., a Delaware corporation ("**Holdings**"), the First Amendment Incremental Term Loan Lenders (as defined below), and NOMURA CORPORATE FUNDING AMERICAS, LLC, as administrative agent (acting through one or more sub-agents or designees, in such capacity, the "**Administrative Agent**").

WITNESSETH

WHEREAS, pursuant to that certain Credit and Guaranty Agreement, dated as of December 18, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, Holdings, each other subsidiary of Holdings from time to time party thereto, each lender from time to time party thereto (the "**Lenders**"), the Administrative Agent and the other parties thereto, the Lenders have agreed to make, and have made, certain loans and other extensions of credit to the Borrower;

WHEREAS, pursuant to and in accordance with Section 2.16 of the Credit Agreement, the Borrower may request the establishment of an Incremental Facility by entering into one or more Incremental Joinders with the additional Lenders party thereto, and may, without the consent of any other Lenders, effect such amendments to any Loan Documents as may be necessary or appropriate, as reasonably determined by the Administrative Agent and the Borrower, to effect the provisions of Section 2.16 of the Credit Agreement;

WHEREAS, the Borrower has requested incremental term loans in an aggregate principal amount of $23,000,000 (the "**First Amendment Incremental Term Loans**"), which shall be made a part of the existing tranche of Initial Term Loans, and the proceeds of which shall be used, together with cash on hand (i) to pay the purchase price, fees, costs and expenses incurred in connection with the transactions contemplated by that certain Share Purchase Agreement in relation to shares in The Narellan Pools group of companies, dated as of May 17, 2019, by and among the Borrower, Christopher Michael Myer, Chris Meyer Investments Pty Ltd ACN 130 610 758, as trustee for the Chris Meyer Family Trust, and Narellan Group Pty Ltd ACN 633 456 149 (the "**First Amendment Purchase Agreement**", and the transactions contemplated under the First Amendment Purchase Agreement are hereinafter referred to as the "**First Amendment Acquisition**"), (ii) to pay fees and expenses incurred in connection with the First Amendment Incremental Term Loans and this Amendment (the "**First Amendment Fees and Expenses**"; the purchase price, fees, costs and expenses in connection with the First Amendment Acquisition and the First Amendment Fees and Expenses, the "**Narellan Costs and Expenses**") and (iii) with any remaining proceeds, after giving effect to payments made pursuant to clauses (i) and (ii), for working capital and other general corporate purposes;

WHEREAS, each financial institution that agrees, on the terms and conditions set forth herein and in the Credit Agreement, to provide a First Amendment Incremental Term Loan on the First Amendment Effective Date (as defined below) (each such financial institution, a "**First Amendment Incremental Term Loan Lender**" and, collectively, the "**First Amendment Incremental Term Loan Lenders**") shall execute and deliver a signature page to this Amendment (a "**Lender Addendum**") in the form attached hereto as Exhibit I in its capacity as a First Amendment Incremental Term Loan Lender;

WHEREAS, Holdings, the Borrower, the Administrative Agent and the Lenders party hereto have agreed, upon the terms and subject to the conditions set forth herein, to give effect to the First Amendment Incremental Term Loans and consent to amend the Credit Agreement as set forth herein; and

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree as follows:

SECTION 1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

SECTION 2. First Amendment Incremental Term Loans. Subject to the satisfaction or waiver of the conditions set forth in Section 3 hereof, on the First Amendment Effective Date:

(a) Each First Amendment Incremental Term Loan Lender, by its execution of its Lender Addendum, agrees to make a First Amendment Incremental Term Loan to the Borrower on the First Amendment Effective Date in a principal amount not to exceed the amount set forth under the heading "First Amendment Incremental Term Loan Commitment" opposite such First Amendment Incremental Term Loan Lender's name in its Lender Addendum (such commitment, its "**First Amendment Incremental Term Loan Commitment**").

(b) From and after the First Amendment Effective Date, each party hereto agrees that, for all purposes of the Credit Agreement and the other Loan Documents, (i) each First Amendment Incremental Term Loan Lender shall be deemed to be a Term Lender and a Lender if not already a Term Lender and a Lender under the Credit Agreement, and each First Amendment Incremental Term Loan Lender shall be a party to the Credit Agreement and shall have the rights and obligations of a Lender under the Credit Agreement if not already a Lender thereunder and (ii) each First Amendment Incremental Term Loan, when funded, shall be made a part of the existing tranche of Initial Term Loans and shall be deemed to be an Initial Term Loan, a Term Loan and a Loan for all purposes under the Credit Agreement (as amended by this Amendment) and the other Loan Documents, including, but not limited to, the fact that the First Amendment Incremental Term Loans shall bear interest as provided in the Credit Agreement in respect of Initial Term Loans. All First Amendment Incremental Term Loans incurred pursuant to this Amendment will be allocated ratably to each outstanding borrowing of Term Loans that are Eurocurrency Rate Loans under the Credit Agreement for purposes of determining the initial interest rate thereon and Interest Period therefor.

(c) Any portion of the First Amendment Incremental Term Loans not used to pay the Narellan Costs and Expenses within five (5) Business Days (or such later date as may be agreed to by the First Incremental Term Loan Lenders in their sole discretion) after the funding thereof shall be applied to repay the First Amendment Incremental Term Loans in an aggregate amount equal to such portion of the First Amendment Incremental Term Loans, without any premium or penalty (including, for the avoidance of doubt, Section 2.06(a)(vi) of the Credit Agreement) (which, solely for purposes of this Section 2(c) shall be treated as a separate Class of Initial Term Loans), with such repayment applied pro rata to all scheduled installments thereof, ratably among First Amendment Incremental Term Loan Lenders in accordance with their First Amendment Incremental Term Loan Commitments as set forth in the Credit Agreement, and, solely to the extent the First Amendment Acquisition is not consummated, the First Amendment Incremental Term Loan Lenders shall promptly (and in any event within two (2) Business Days upon receipt of such repayment) reimburse the Borrower for all fees paid in connection therewith (including for the avoidance of doubt any Upfront Fees (as defined in the First Incremental Facility Amendment)).

(d) Section 1.01 of the Credit Agreement is hereby amended by:

(i) amending and restated the definition of "Applicable Amortization Percentage" as follows:

"**Applicable Amortization Percentage**" means:

| Applicable Fiscal Quarter | Quarterly Amortization Percentage |
|---|---|
| From the fiscal quarter ended June 30,2019 through and including the fiscal quarter ended December 31, 2020 | 0.62893% |
| From the fiscal quarter ended March 31, 2021 through the Initial Term Loan Maturity Date | 1.25786% |

(ii) amending and restating the definition of "Initial Term Loans" as follows:

"**Initial Term Loans**" means (i) prior to the First Amendment Effective Date, a Term Loan made by an Initial Term Lender pursuant to its Initial Term Commitment and (ii) on and after the First Amendment Effective Date, (x) the Term Loans made on the Closing Date by each Initial Term Loan Lender pursuant to its Initial Term Commitment and (y) the First Amendment Incremental Term Loans made on the First Amendment Effective Date pursuant to the First Incremental Facility Amendment.

(iii) inserting the following definitions in appropriate alphabetical order:

"**First Amendment Effective Date**" has the meaning provided in the First Incremental Facility Amendment.

"**First Amendment Incremental Term Loan Commitments**" means, as to each First Amendment Incremental Term Loan Lender, its obligation to make First Amendment Incremental Term Loans on the First Amendment Effective Date in an amount set forth on such First Amendment Incremental Term Loan Lender's Lender Addendum to the First Incremental Facility Amendment, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate principal amount of the First Amendment Incremental Term Loan Commitments as of the First Amendment Effective Date is $23,000,000.

"**First Amendment Incremental Term Loan Lenders**" has the meaning provided in the First Incremental Facility Amendment.

"**First Amendment Incremental Term Loans**" has the meaning provided in the First Incremental Facility Amendment.

"**First Incremental Facility Amendment**" means the First Incremental Facility Amendment, dated as of May 29, 2019, by and among Holdings, the Borrower, certain Lenders party thereto and the Administrative Agent.

(e) Section 2.01(a) of the Credit Agreement is hereby amended and restated in its entirety as follows:

"Section 2.01(a) *The Initial Borrowings*. (a) *The Initial Term Borrowings*. (i) Subject to the terms and express conditions set forth herein, each Initial Term Lender made, on the Closing Date, a single loan in Dollars in an aggregate principal amount equal to its Initial Term Commitment and (ii) subject to the terms and express conditions set forth herein and in the First Incremental Facility Amendment, each First Amendment Incremental Term Loan Lender with a First Amendment Incremental Term Loan Commitment as of the First Amendment Effective Date severally agrees to make a First Amendment Incremental Term Loan to the Borrower on the First Amendment Effective Date in Dollars in an aggregate principal amount equal to such First Amendment Incremental Term Loan Lender's First Amendment Incremental Term Loan Commitment. The aggregate principal amount of the First Amendment Incremental Term Loans made on the First Amendment Effective Date shall be $23,000,000. For the avoidance of doubt, on and after the First Amendment Effective Date the terms of the First Amendment Incremental Term Loans to be made hereunder shall, except to the extent of any upfront fees or original issue discount, which shall be as set forth herein, be the same as the terms of the Initial Term Loans immediately prior to the First Amendment Effective Date, and the First Amendment Incremental Term Loans made on the First Amendment Effective Date and the Initial Term Loans immediately prior to the First Amendment Effective Date shall collectively be the Initial Term Loans hereunder. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Initial Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(f) Paragraph (b) of Section 2.08 of the Credit Agreement is hereby amended and restated in its entirety as follows:

(b) *Initial Term Loans*. The Borrower shall repay to the Administrative Agent for the ratable account of the Initial Term Lenders: (A) on or prior to the last Business Day of each March, June, September and December that occurs prior to the Initial Term Loan Maturity Date, an aggregate amount equal to the Applicable Amortization Percentage of the initial aggregate principal amount of all Initial Term Loans made after giving effect to the First Incremental Facility Amendment on the First Amendment Effective Date and (B) on the Initial Term Loan Maturity Date, an aggregate amount equal to the aggregate principal amount of all Initial Term Loans outstanding on such date.

SECTION 3. Conditions to Effectiveness. The effectiveness of the First Amendment Incremental Term Loan Commitments, the funding of the First Amendment Incremental Term Loans and the effectiveness of the amendments to the Credit Agreement set forth herein are each subject to the satisfaction (or waiver by the First Amendment Incremental Term Loan Lenders) of each of the following conditions (the date on which such conditions shall have been so satisfied or waived, the "**First Amendment Effective Date**"):

(a) the Administrative Agent shall have received a counterpart of this Amendment, executed and delivered by the Borrower, Holdings, the Administrative Agent and each First Amendment Incremental Term Loan Lender;

(b) on and as of the First Amendment Effective Date, the representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as so qualified), in each case on and as of the First Amendment Effective Date and after giving effect to the First Amendment Incremental Term Loans and the amendments made pursuant to this Amendment on the First Amendment Effective Date (except in the case of any representation and warranty which specifically refers to an earlier date, such representation and warranty shall have been true and correct in all material respects as of such earlier date);

(c) the Borrower shall have paid all fees and expenses required to be paid by the Borrower to the Administrative Agent and the First Amendment Incremental Term Loan Lenders on or before the First Amendment Effective Date, including the reasonable and documented out-of-pocket expenses of the First Amendment Incremental Term Loan Lenders (limited in the case of legal fees of the First Amendment Incremental Term Loan Lenders to the documented out-of-pocket expenses of a single primary firm of counsel to the First Amendment Incremental Term Loan Lenders) (which fees in respect of the First Amendment Incremental Term Loans may be offset against the loan proceeds funded on the First Amendment Effective Date) (and in the case of expenses, to the extent invoiced at least three (3) Business Days prior to the First Amendment Effective Date (except as otherwise reasonably agreed by the Borrower));

(d) the Administrative Agent shall have received a certificate dated as of the First Amendment Effective Date and executed by a Responsible Officer of each of the Loan Parties, certifying that attached thereto is a true and complete copy of resolutions or written consents of its board of directors or other relevant governing body or Person, as the case may be, authorizing the execution, delivery and performance of this Amendment and any other Loan Document to which it is a party to be entered into as of the First Amendment Effective Date, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect without amendment, modification or rescission;

(e) the Administrative Agent shall have received a certificate from the chief financial officer, chief accounting officer or other Responsible Officer of the Borrower attesting to the Solvency of the Borrower and its Restricted Subsidiaries on a consolidated basis after giving effect to this Amendment on the First Amendment Effective Date, substantially in the form of Exhibit L to the Credit Agreement;

(f) no Default or Event of Default shall have occurred and be continuing on the First Amendment Effective Date or after giving effect to this Amendment and the First Amendment Incremental Term Loans requested to be made on the First Amendment Effective Date;

(g) the Administrative Agent shall have received an officer's certificate from a Responsible Officer of Holdings and dated as of the First Amendment Effective Date, certifying that (i) each condition set forth in Sections 3(b) and 3(f) hereof have been satisfied on and as of the First Amendment Effective Date and (ii) the First Amendment Incremental Term Loans comply with the provisions of Section 2.16 of the Credit Agreement (including by stating with specificity whether the First Amendment Incremental Term Loans are being incurred pursuant to clause (a) or clause (e) (or a combination thereof) of the definition of "Incremental Cap");

(h) the Administrative Agent shall have received the legal opinion of Goodwin Procter LLP, acting as New York counsel for the Borrower and each other Loan Party, addressed to the Administrative Agent and each Lender and reasonably satisfactory to the Administrative Agent; and

(i) the Administrative Agent shall have received a Loan Notice relating to the Borrowing of the First Amendment Incremental Term Loans on the First Amendment Effective Date.

SECTION 4. Fees. The Borrower agrees to pay (or cause to be paid) on the First Amendment Effective Date to each First Amendment Incremental Term Loan Lender, as fee compensation for the funding of such First Amendment Incremental Term Loan Lender's First Amendment Incremental Term Loan on the First Amendment Effective Date, an upfront fee (or original issue discount) (the "**Upfront Fee**") in an amount equal to 3.00% of the stated principal amount of such First Amendment Incremental Term Loan Lender's First Amendment Incremental Term Loan funded on the First Amendment Effective Date. Such Upfront Fee (i) will be in all respects (x) fully earned, due and payable on, and subject to, the First Amendment Effective Date and (y) non-refundable and non-creditable thereafter and (ii) shall be netted against the First Amendment Incremental Term Loan made by such First Amendment Incremental Term Loan Lender to the Borrower.

SECTION 5. Reaffirmation of the Loan Parties. Each Loan Party hereby consents to the amendment of the Credit Agreement effected hereby and confirms and agrees that, notwithstanding the effectiveness of this Amendment, each Loan Document to which such Loan Party is a party is, and the obligations of such Loan Party contained in the Credit Agreement, this Amendment or in any other Loan Document to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case as amended by this Amendment. For greater certainty and without limiting the foregoing, each Loan Party hereby confirms that the existing security interests granted by such Loan Party in favor of the Secured Parties pursuant to the Loan Documents in the Collateral described therein shall continue to secure the obligations of the Loan Parties, including the First Amendment Incremental Term Loans, under the Credit Agreement and the other Loan Documents as and to the extent provided in the Loan Documents.

SECTION 6. Continuing Effect; No Novation.

(a) Except as expressly provided herein, all of the terms and provisions of the Credit Agreement and the other Loan Documents are and shall remain in full force and effect. The amendments provided for herein are limited to the specific subsections of the Credit Agreement specified herein and shall not constitute a consent, waiver or amendment of, or an indication of the Administrative Agent's or the Lenders' willingness to consent to any action requiring consent under any other provisions of the Credit Agreement or any other Loan Document or the same subsection for any other date or time period. Upon the effectiveness of the amendments set forth herein, on and after the First Amendment Effective Date, each reference in the Credit Agreement to "this Agreement", "the Agreement", "hereunder", "hereof" or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to "Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as amended hereby on the First Amendment Effective Date. This Amendment shall not constitute a novation of the Credit Agreement or any of the Loan Documents.

(b) The Borrower and the other parties hereto acknowledge and agree that this Amendment shall constitute a Loan Document and an Incremental Joinder.

SECTION 7. Deemed Notice. It is understood and agreed that on and after the First Amendment Effective Date, execution and delivery of this Amendment shall be deemed to satisfy the requirements of Section 2.16 with respect to notice in respect of this Incremental Facility.

SECTION 8. Amendments; Execution in Counterparts. This Amendment, or any of the terms hereof, may not be amended, supplemented or modified, nor may any provision hereof be waived, except pursuant to a writing signed by Holdings, the Borrower, the Administrative Agent and the First Amendment Incremental Term Loan Lenders. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or electronic transmission (including Adobe pdf file) shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION 9. GOVERNING LAW; WAIVER OF JURY TRIAL. (a) THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE CITY OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AMENDMENT, EACH LOAN PARTY, THE ADMINISTRATIVE AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH LOAN PARTY, THE ADMINISTRATIVE AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO (EXCEPT THAT, (X) IN THE CASE OF ANY MORTGAGE OR OTHER SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT IN THE STATE OR OTHER JURISDICTION IN WHICH THE RESPECTIVE MORTGAGED PROPERTY OR COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION AND (Y) IN THE CASE OF ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO THE ADMINISTRATIVE AGENT, ANY L/C ISSUER OR ANY OTHER LENDER, ACTIONS OR PROCEEDINGS RELATED TO THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN SUCH COURT HOLDING SUCH BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS.

SECTION 10. WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AMENDMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AMENDMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective proper and duly authorized officers as of the day and year first above written.

**LATHAM POOL PRODUCTS, INC.,** as the Borrower

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: Chief Executive Officer, President and Secretary

**LATHAM INTERNATIONAL MANUFACTURING CORP.,** as Holdings

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: Chief Executive Officer, President and Secretary

**POOL COVER SPECIALISTS, LLC,** as a Subsidiary Guarantor

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: President and Secretary

**NOMURA CORPORATE FUNDING AMERICAS, LLC,** as Administrative Agent

By: /s/ Garrett P. Carpenter
Name: Garrett P. Carpenter
Title: Managing Director

**Exhibit 10.3**

***Execution Version***

SECOND INCREMENTAL FACILITY AMENDMENT

SECOND INCREMENTAL FACILITY AMENDMENT, dated as of October 14, 2020 (this "**Amendment**"), by and among LATHAM POOL PRODUCTS, INC., a Delaware corporation (the "**Borrower**"), LATHAM INTERNATIONAL MANUFACTURING CORP., a Delaware corporation ("**Holdings**"), the Subsidiary Guarantors party hereto, the Second Amendment Incremental Term Loan Lender (as defined below), and NOMURA CORPORATE FUNDING AMERICAS, LLC, as administrative agent (acting through one or more sub-agents or designees, in such capacity, the "**Administrative Agent**").

WITNESSETH

WHEREAS, pursuant to that certain Credit and Guaranty Agreement, dated as of December 18, 2018 (as amended by that certain First Incremental Facility Amendment, dated as of May 29, 2019, the "**Credit Agreement**" and, as amended by this Amendment and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Amended Credit Agreement**"), by and among the Borrower, Holdings, each other subsidiary of Holdings from time to time party thereto, each lender from time to time party thereto (the "**Lenders**"), the Administrative Agent and the other parties thereto, the Lenders have agreed to make, and have made, certain loans and other extensions of credit to the Borrower;

WHEREAS, pursuant to and in accordance with Section 2.16 of the Credit Agreement, the Borrower may request the establishment of an Incremental Facility by entering into one or more Incremental Joinders with the additional Lenders party thereto, and may, without the consent of any other Lenders, effect such amendments to any Loan Documents as may be necessary or appropriate, as reasonably determined by the Administrative Agent and the Borrower, to effect the provisions of Section 2.16 of the Credit Agreement;

WHEREAS, the Borrower has requested Incremental Term Loans in an aggregate principal amount of $20,000,000 (the "**Second Amendment Incremental Term Loans**"), which shall be made a part of the existing tranche of Initial Term Loans, and the proceeds of which shall be used (i) to pay fees and expenses incurred in connection with the Second Amendment Incremental Term Loans and this Amendment and (ii) for working capital and other general corporate purposes, including for permitted acquisitions and other permitted Investments;

WHEREAS, the financial institution party hereto agrees, on the terms and conditions set forth herein and in the Credit Agreement, to provide the Second Amendment Incremental Term Loans on the Second Amendment Effective Date (as defined below) (the "**Second Amendment Incremental Term Loan Lender**") and has executed and delivered a signature page to this Amendment in the form attached hereto as Exhibit I (the "**Lender Addendum**") in its capacity as a Second Amendment Incremental Term Loan Lender; and

WHEREAS, Holdings, the Borrower, the Administrative Agent and the Second Amendment Incremental Term Loan Lender have agreed, upon the terms and subject to the conditions set forth herein, to give effect to the Second Amendment Incremental Term Loans and consent to amend the Credit Agreement as set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree as follows:

SECTION 1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

SECTION 2. Second Amendment Incremental Term Loans. Subject to the satisfaction or waiver of the conditions set forth in Section 3 hereof, on the Second Amendment Effective Date:

(a) The Second Amendment Incremental Term Loan Lender, by its execution of the Lender Addendum, agrees to make the Second Amendment Incremental Term Loans to the Borrower on the Second Amendment Effective Date in an aggregate principal amount set forth under the heading "Second Amendment Incremental Term Loan Commitment" opposite the Second Amendment Incremental Term Loan Lender's name in the Lender Addendum (such commitment, the "**Second Amendment Incremental Term Loan Commitment**").

(b) From and after the Second Amendment Effective Date, each party hereto agrees that, for all purposes of the Amended Credit Agreement and the other Loan Documents, (i) the Second Amendment Incremental Term Loan Lender shall be deemed to be a Term Lender and a Lender under the Amended Credit Agreement, and the Second Amendment Incremental Term Loan Lender shall be a party to the Amended Credit Agreement and shall have the rights and obligations of a Lender under the Amended Credit Agreement and (ii) the Second Amendment Incremental Term Loans, when funded, shall be made a part of the existing tranche of Initial Term Loans and shall be deemed to be an Initial Term Loan, a Term Loan and a Loan for all purposes under the Amended Credit Agreement and the other Loan Documents, including, but not limited to, the fact that the Second Amendment Incremental Term Loans shall bear interest as provided in the Amended Credit Agreement in respect of Initial Term Loans. All Second Amendment Incremental Term Loans incurred pursuant to this Amendment will be allocated ratably to each outstanding borrowing of Initial Term Loans that are Eurocurrency Rate Loans under the Credit Agreement for purposes of determining the initial interest rate thereon and Interest Period therefor.

(c) Section 1.01 of the Credit Agreement is hereby amended by:

(i) deleting the definition of "Applicable Amortization Percentage" in its entirety:

(ii) amending and restating the definition of "Initial Term Loans" as follows:

"**Initial Term Loans**" means (i) prior to the First Amendment Effective Date, the Term Loans made by the Initial Term Lender pursuant to its Initial Term Commitment (the "**Closing Date Initial Term Loans**"), (ii) on and after the First Amendment Effective Date, (x) the Closing Date Initial Term Loans and (y) the First Amendment Incremental Term Loans and (iii) on and after the Second Amendment Effective Date, (x) the Closing Date Initial Term Loans, (y) the First Amendment Incremental Term Loans and
(z) the Second Amendment Incremental Term Loans.

(iii) inserting the following definitions in appropriate alphabetical order:

"**Second Amendment Effective Date**" has the meaning provided in the Second Incremental Facility Amendment.

"**Second Amendment Incremental Term Loan Commitment**" means, as to the Second Amendment Incremental Term Loan Lender, its obligation to make Second Amendment Incremental Term Loans on the Second Amendment Effective Date in an aggregate principal amount of $20,000,000.

"**Second Amendment Incremental Term Loan Lender**" has the meaning provided in the Second Incremental Facility Amendment.

"**Second Amendment Incremental Term Loans**" has the meaning provided in the Second Incremental Facility Amendment.

"**Second Incremental Facility Amendment**" means the Second Incremental Facility Amendment, dated as of October 14, 2020, by and among Holdings, the Borrower, the Second Amendment Incremental Term Loan Lender and the Administrative Agent.

(d) Section 2.01(a) of the Credit Agreement is hereby amended and restated in its entirety as follows:

"Section 2.01(a) *The Initial Borrowings*. (a) *The Initial Term Borrowings*. (i) Subject to the terms and express conditions set forth herein, each Initial Term Lender made, on the Closing Date, a single loan in Dollars in an aggregate principal amount equal to its Initial Term Commitment, (ii) subject to the terms and express conditions set forth herein and in the First Incremental Facility Amendment, each First Amendment Incremental Term Loan Lender with a First Amendment Incremental Term Loan Commitment as of the First Amendment Effective Date made a First Amendment Incremental Term Loan to the Borrower on the First Amendment Effective Date in Dollars in an aggregate principal amount equal to such First Amendment Incremental Term Loan Lender's First Amendment Incremental Term Loan Commitment and (iii) subject to the terms and express conditions set forth herein and in the Second Incremental Facility Amendment, the Second Amendment Incremental Term Loan Lender made the Second Amendment Incremental Term Loans to the Borrower on the Second Amendment Effective Date in Dollars in an aggregate principal amount equal to the Second Amendment Incremental Term Loan Commitment. The aggregate principal amount of the First Amendment Incremental Term Loans made on the First Amendment Effective Date was $23,000,000. The aggregate principal amount of the Second Amendment Incremental Term Loans made on the Second Amendment Effective Date was $20,000,000. For the avoidance of doubt, on and after the First Amendment Effective Date the terms of the First Amendment Incremental Term Loans to be made hereunder shall, except to the extent of any upfront fees or original issue discount, which shall be as set forth herein, be the same as the terms of the Initial Term Loans immediately prior to the First Amendment Effective Date, and the First Amendment Incremental Term Loans made on the First Amendment Effective Date and the Initial Term Loans immediately prior to the First Amendment Effective Date shall collectively be the Initial Term Loans hereunder. For the avoidance of doubt, on and after the Second Amendment Effective Date the terms of the Second Amendment Incremental Term Loans shall, except to the extent of any original issue discount or upfront fees which shall not be applicable to the Second Amendment Incremental Term Loans, be the same as the terms of the Initial Term Loans immediately prior to the Second Amendment Effective Date, and the Second Amendment Incremental Term Loans made on the Second Amendment Effective Date and the Initial Term Loans immediately prior to the Second Amendment Effective Date shall collectively be the Initial Term Loans hereunder. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Initial Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(e) Clause (ii) of Section 2.02(a) of the Credit Agreement is hereby amended and restated in its entirety as follow:

(ii) 12:00 p.m. three Business Days prior to the requested date of any Borrowing of Eurocurrency Rate Term Loans, continuation of Eurocurrency Rate Term Loans or any conversion of Base Rate Term Loans to Eurocurrency Rate Term Loans denominated in Dollars (*provided* that, if such Borrowing is an initial Credit Extension to be made on the Closing Date, notice must be received by the Administrative Agent not later than, in the case of Initial Term Loans, 1:00 p.m. one Business Day prior to the Closing Date; *provided*, *further*, that, with respect to the Borrowing of Second Amendment Incremental Term Loans made on the Second Amendment Effective Date, notice must be received on the Second Amendment Effective Date),

(f) Clause (b) of Section 2.08 of the Credit Agreement is hereby amended and restated in its entirety as follows:

(b) *Initial Term Loans*. The Borrower shall repay to the Administrative Agent for the ratable account of the Initial Term Lenders: (A) on or prior to the last Business Day of each March, June, September and December that occurs prior to the Initial Term Loan Maturity Date, an aggregate amount equal to (i) for the fiscal quarter ended December 31, 2020, $1,630,307.39 and (ii) from the fiscal quarter ended March 31, 2021 through the Initial Term Loan Maturity Date, $3,260,610.54 and (B) on the Initial Term Loan Maturity Date, an aggregate amount equal to the aggregate principal amount of all Initial Term Loans outstanding on such date.

SECTION 3. Conditions to Effectiveness. The effectiveness of the Second Amendment Incremental Term Loan Commitment, the funding of the Second Amendment Incremental Term Loans and the effectiveness of the amendments to the Credit Agreement set forth herein are each subject to the satisfaction (or waiver by the Second Amendment Incremental Term Loan Lender) of each of the following conditions (the date on which such conditions shall have been so satisfied or waived, the "**Second Amendment Effective Date**"):

(a) the Administrative Agent shall have executed a counterpart of this Amendment and received (i) a counterpart to this Amendment executed and delivered by the Borrower and Holdings and (ii) the executed Lender Addendum by the Second Amendment Incremental Term Loan Lender;

(b) on and as of the Second Amendment Effective Date, the representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as so qualified), in each case, on and as of the Second Amendment Effective Date and after giving effect to the Second Amendment Incremental Term Loans and the amendments made pursuant to this Amendment on the Second Amendment Effective Date (except in the case of any representation and warranty which specifically refers to an earlier date, such representation and warranty shall have been true and correct in all material respects as of such earlier date);

(c) the Borrower shall have paid all expenses required to be paid by the Borrower to the Administrative Agent and the Second Amendment Incremental Term Loan Lender on or before the Second Amendment Effective Date, including the reasonable and documented out-of-pocket expenses of Milbank LLP, counsel to the Administrative Agent (which fees may be offset against the proceeds of the Second Amendment Incremental Term Loans funded on the Second Amendment Effective Date), in each case, to the extent invoiced at least two (2) Business Days prior to the Second Amendment Effective Date (except as otherwise reasonably agreed by the Borrower);

(d) the Administrative Agent shall have received a certificate dated the Second Amendment Effective Date and executed by a Responsible Officer of each of the Loan Parties, certifying that attached thereto is a true and complete copy of resolutions or written consents of its board of directors or other relevant governing body or Person, as the case may be, authorizing the execution, delivery and performance of this Amendment and any other Loan Document to which it is a party to be entered into as of the Second Amendment Effective Date, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect without amendment, modification or rescission;

(e) the Administrative Agent shall have received a certificate from the chief financial officer, chief accounting officer or other Responsible Officer of the Borrower attesting to the Solvency of the Borrower and its Restricted Subsidiaries on a consolidated basis after giving effect to this Amendment on the Second Amendment Effective Date, substantially in the form of Exhibit L to the Credit Agreement;

(f) no Default or Event of Default shall have occurred and be continuing on the Second Amendment Effective Date after giving effect to this Amendment and the Second Amendment Incremental Term Loans on the Second Amendment Effective Date;

(g) the Administrative Agent shall have received an officer's certificate from a Responsible Officer of Holdings and dated the Second Amendment Effective Date, certifying that (i) each condition set forth in Sections 3(b) and 3(f) hereof have been satisfied on and as of the Second Amendment Effective Date and (ii) the Second Amendment Incremental Term Loans comply with the provisions of Section 2.16 of the Credit Agreement (including by stating with specificity whether the Second Amendment Incremental Term Loans are being incurred pursuant to clause (a) or clause (e) (or a combination thereof) of the definition of "Incremental Cap");

(h) the Administrative Agent shall have received the legal opinion of Skadden, Arps, Slate, Meagher & Flom LLP, acting as New York counsel for the Borrower and each other Loan Party, addressed to the Administrative Agent and the Second Amendment Incremental Term Loan Lender and reasonably satisfactory to the Administrative Agent; and

(i) the Administrative Agent shall have received a Loan Notice relating to the Borrowing of the Second Amendment Incremental Term Loans on the Second Amendment Effective Date.

SECTION 4. Reserved.

SECTION 5. Reaffirmation of the Loan Parties. Each Loan Party hereby consents to the amendments to the Credit Agreement effected hereby and confirms and agrees that, notwithstanding the effectiveness of this Amendment, each Loan Document to which such Loan Party is a party is, and the obligations of such Loan Party contained in the Credit Agreement, this Amendment or in any other Loan Document to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case, as amended by this Amendment. For greater certainty and without limiting the foregoing, each Loan Party hereby confirms that the existing security interests granted by such Loan Party in favor of the Secured Parties pursuant to the Loan Documents in the Collateral described therein shall continue to secure the obligations of the Loan Parties, including the Second Amendment Incremental Term Loans, under the Amended Credit Agreement and the other Loan Documents as and to the extent provided in the Loan Documents.

SECTION 6. Continuing Effect; No Novation.

(a) Except as expressly provided herein, all of the terms and provisions of the Credit Agreement and the other Loan Documents are and shall remain in full force and effect. The amendments provided for herein are limited to the specific subsections of the Credit Agreement specified herein and shall not constitute a consent, waiver or amendment of, or an indication of the Administrative Agent's or the Lenders' willingness to consent to any action requiring consent under any other provisions of the Credit Agreement or any other Loan Document or the same subsection for any other date or time period. Upon the effectiveness of the amendments set forth herein, on and after the Second Amendment Effective Date, each reference in the Credit Agreement to "this Agreement", "the Agreement", "hereunder", "hereof" or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to "Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement, shall mean and be a reference to the Amended Credit Agreement. This Amendment shall not constitute a novation of the Credit Agreement or any of the Loan Documents.

(b) The Borrower and the other parties hereto acknowledge and agree that this Amendment shall constitute a Loan Document and an Incremental Joinder.

SECTION 7. Deemed Notice. It is understood and agreed that on and after the Second Amendment Effective Date, execution and delivery of this Amendment shall be deemed to satisfy the requirements of Section 2.16 with respect to notice in respect of this Incremental Facility.

SECTION 8. Amendments; Execution in Counterparts. This Amendment, or any of the terms hereof, may not be amended, supplemented or modified, nor may any provision hereof be waived, except pursuant to a writing signed by Holdings, the Borrower, the Administrative Agent and the Second Amendment Incremental Term Loan Lender. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Any signature to this Amendment and the other documents delivered in connection herewith may be delivered by facsimile, electronic mail (including pdf) or any electronic signature complying with the U.S. federal ESIGN Act of 2000 or the New York Electronic Signature and Records Act or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes to the fullest extent permitted by applicable law.

SECTION 9. GOVERNING LAW. (a) THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE CITY OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AMENDMENT, EACH LOAN PARTY, THE ADMINISTRATIVE AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH LOAN PARTY, THE ADMINISTRATIVE AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO (EXCEPT THAT, (X) IN THE CASE OF ANY MORTGAGE OR OTHER SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT IN THE STATE OR OTHER JURISDICTION IN WHICH THE RESPECTIVE MORTGAGED PROPERTY OR COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION AND (Y) IN THE CASE OF ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO THE ADMINISTRATIVE AGENT, ANY L/C ISSUER OR ANY OTHER LENDER, ACTIONS OR PROCEEDINGS RELATED TO THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN SUCH COURT HOLDING SUCH BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS

SECTION 10. **WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AMENDMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AMENDMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.**

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective proper and duly authorized officers as of the day and year first above written.

**LATHAM POOL PRODUCTS, INC.,** as the Borrower

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: Chief Executive Officer, President and Secretary

**LATHAM INTERNATIONAL MANUFACTURING CORP.,** as Holdings

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: Chief Executive Officer, President and Secretary

**POOL COVER SPECIALISTS, LLC,** as a Subsidiary Guarantor

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: President and Secretary

**LPP US, LLC**, as a Subsidiary Guarantor

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: President

**NOMURA CORPORATE FUNDING AMERICAS, LLC,** as Administrative Agent

By: /s/ G. Andrew Keith
Name: G. Andrew Keith
Title: Executive Director

LENDER ADDENDUM TO THE SECOND INCREMENTAL FACILITY AMENDMENT DATED AS OF October 14, 2020

**SECOND AMENDMENT INCREMENTAL TERM LOAN LENDER**

This Lender Addendum (this "**Lender Addendum**") is referred to in, and is a signature page to, the Second Incremental Facility Amendment, dated as of the date hereof (the "**Amendment**"), by and among LATHAM POOL PRODUCTS, INC., a Delaware corporation (the "**Borrower**"), LATHAM INTERNATIONAL MANUFACTURING CORP., a Delaware corporation ("**Holdings**"), the Second Amendment Incremental Term Loan Lender, and NOMURA CORPORATE FUNDING AMERICAS, LLC, as administrative agent (acting through one or more sub-agents or designees, in such capacity, the "**Administrative Agent**"), which amends that certain Credit and Guaranty Agreement, dated as of December 18, 2018 (as amended by that certain First Incremental Facility Amendment, dated as of May 29, 2019, and the Amendment, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, Holdings, each other subsidiary of Holdings from time to time party thereto, each lender from time to time party thereto, the Administrative Agent and the other parties thereto. Capitalized terms used but not defined in this Lender Addendum have the meanings assigned to such terms in the Amendment.

By executing this Lender Addendum as a Second Amendment Incremental Term Loan Lender, the undersigned institution agrees, on the terms and conditions set forth in the Amendment and in the Credit Agreement, to make a Second Amendment Incremental Term Loan to the Borrower on the Second Amendment Effective Date in an aggregate principal amount equal to the amount set forth under the heading "Second Amendment Incremental Term Loan Commitment" opposite its name below.

| Second Amendment Incremental Term Loan Lender | Second Amendment Incremental Term Loan Commitment |
|---|---|
| Piney Lake Opportunities ECI Master Fund LP | $20,000,000 |

**Piney Lake Opportunities ECI Master Fund LP,**
a Cayman Islands exempted limited partnership

By: Piney Lake Capital Management LP, as Advisor

By: /s/ Michael B. Lazar
Name: Michael B. Lazar
Title: President

**EXHIBIT I**

LENDER ADDENDUM TO THE SECOND INCREMENTAL FACILITY AMENDMENT DATED AS OF October 14, 2020

**SECOND AMENDMENT INCREMENTAL TERM LOAN LENDER**

This Lender Addendum (this "**Lender Addendum**") is referred to in, and is a signature page to, the Second Incremental Facility Amendment, dated as of the date hereof (the "**Amendment**"), by and among LATHAM POOL PRODUCTS, INC., a Delaware corporation (the "**Borrower**"), LATHAM INTERNATIONAL MANUFACTURING CORP., a Delaware corporation ("**Holdings**"), the Second Amendment Incremental Term Loan Lender, and NOMURA CORPORATE FUNDING AMERICAS, LLC, as administrative agent (acting through one or more sub-agents or designees, in such capacity, the "**Administrative Agent**"), which amends that certain Credit and Guaranty Agreement, dated as of December 18, 2018 (as amended by that certain First Incremental Facility Amendment, dated as of May 29, 2019, and the Amendment, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, Holdings, each other subsidiary of Holdings from time to time party thereto, each lender from time to time party thereto, the Administrative Agent and the other parties thereto. Capitalized terms used but not defined in this Lender Addendum have the meanings assigned to such terms in the Amendment.

By executing this Lender Addendum as a Second Amendment Incremental Term Loan Lender, the undersigned institution agrees, on the terms and conditions set forth in the Amendment and in the Credit Agreement, to make a Second Amendment Incremental Term Loan to the Borrower on the Second Amendment Effective Date in an aggregate principal amount equal to the amount set forth under the heading "Second Amendment Incremental Term Loan Commitment" opposite its name below.

| Second Amendment Incremental Term Loan Lender | Second Amendment Incremental Term Loan Commitment |
|---|---|
| Piney Lake Opportunities ECI Master Fund LP | $20,000,000 |

**Piney Lake Opportunities ECI Master Fund LP,**
a Cayman Islands exempted limited partnership

By: Piney Lake Capital Management LP, as Advisor

By: _____
Name: Michael B. Lazar
Title: President

**Exhibit 10.4**

**EXECUTION VERSION**

**THIRD INCREMENTAL FACILITY AMENDMENT**

THIRD INCREMENTAL FACILITY AMENDMENT, dated as of January 25, 2021 (this "**Amendment**"), by and among LATHAM POOL PRODUCTS, INC., a Delaware corporation (the "**Borrower**"), LATHAM INTERNATIONAL MANUFACTURING CORP., a Delaware corporation ("**Holdings**"), the Subsidiary Guarantors party hereto, the Third Amendment Incremental Term Loan Lenders (as defined below), each lender party hereto as a consenting lender (collectively, the "**Consenting Lenders**") and NOMURA CORPORATE FUNDING AMERICAS, LLC, as administrative agent (acting through one or more sub-agents or designees, in such capacity, the "**Administrative Agent**").

WITNESSETH

WHEREAS, pursuant to that certain Credit and Guaranty Agreement, dated as of December 18, 2018 (as amended by that certain First Incremental Facility Amendment, dated as of May 29, 2019 and that certain Second Incremental Facility Amendment, dated as of October 14, 2020, the "**Credit Agreement**" and, as amended by Section 2 of this Amendment, the "**Interim Amended Credit Agreement**" and as otherwise amended by this Amendment and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Amended Credit Agreement**"), by and among the Borrower, Holdings, each other subsidiary of Holdings from time to time party thereto, each lender from time to time party thereto (the "**Lenders**"), the Administrative Agent and the other parties thereto, the Lenders have agreed to make, and have made, certain loans and other extensions of credit to the Borrower;

WHEREAS, pursuant to and in accordance with Section 11.01 of the Credit Agreement, the Borrower has requested certain amendments to the Credit Agreement to permit the Borrower to obtain the Third Amendment Incremental Term Loans (as defined below) and to use the proceeds of thereof to make one or more loans or advances to Holdings or any direct or indirect holders of Holdings' Equity Interests on or following the Third Amendment Effective Date, in an aggregate principal amount not to exceed $ 175,000,000 (each, a "**Special Payment**") and the Consenting Lenders, which constitute the Required Lenders, have agreed to such amendments in accordance with the terms and conditions set forth herein;

WHEREAS, pursuant to and in accordance with Section 2.16 of the Interim Amended Credit Agreement, the Borrower may request the establishment of an Incremental Facility by entering into one or more Incremental Joinders with the additional Lenders party thereto, and may, without the consent of any other Lenders, effect such amendments to any Loan Documents as may be necessary or appropriate, as reasonably determined by the Administrative Agent and the Borrower, to effect the provisions of Section 2.16 of the Interim Amended Credit Agreement;

WHEREAS, the Borrower has requested Incremental Term Loans in an aggregate principal amount of $175,000,000 (the "**Third Amendment Incremental Term Loans**"), which shall be made a part of the existing tranche of Initial Term Loans, and the proceeds of which shall be used (i) to pay fees and expenses incurred in connection with the Third Amendment Incremental Term Loans and this Amendment, (ii) to fund the Special Payment and (iii) for working capital and other general corporate purposes;

WHEREAS, the financial institutions party hereto that have executed and delivered a signature page to this Amendment in the form attached hereto as Exhibit I (the "**Lender Addendum**") agree, on the terms and conditions set forth herein and in the Amended Credit Agreement, to provide the Third Amendment Incremental Term Loans on the Third Amendment Effective Date (as defined below) (the "**Third Amendment Incremental Term Loan Lenders**"); and

WHEREAS, Holdings, the Borrower, the Administrative Agent, the Consenting Lenders, constituting the Required Lenders, and the Third Amendment Incremental Term Loan Lenders have agreed, upon the terms and subject to the conditions set forth herein, to give effect to the Third Amendment Incremental Term Loans and consent to amend the Credit Agreement as set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree as follows:

SECTION 1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

SECTION 2. Amendment to Credit Agreement. Subject to the satisfaction or waiver of the conditions set forth in Section 4 hereof, the Borrower, Holdings, the Administrative Agent and the Consenting Lenders, which constitute the Required Lenders, hereby agree that, on the Third Amendment Effective Date, the Credit Agreement is hereby amended as set forth in this Section 2.

(a) Section 1.01 of the Credit Agreement is hereby amended by:

(i) inserting the following definitions in appropriate alphabetical order:

"**Special Payment**" means the making of loans or advances to Holdings or any direct or indirect holders of Holdings' Equity Interests in an aggregate principal amount not to exceed $175,000,000.

"**Third Amendment Effective Date**" has the meaning provided in the Third Amendment.

"**Third Amendment**" means the Third Incremental Facility Amendment, dated as of January 25, 2021, by and among Holdings, the Borrower, the lenders party thereto and the Administrative Agent.

(ii) amending the definition of "Incremental Cap" by replacing clause (b) of such definition with the following:

"(b) $175,000,000 available for the Incremental Term Loans to be incurred on the Third Amendment Effective Date, plus"

(iii) amending the definition of "Incremental Cap" by replacing clause (c) of such definition with the following:

"(c) $30,000,000 available for Incremental Revolving Credit Commitments from and after the Third Amendment Effective Date, plus"

(iv) deleting the definition of "Junior Indebtedness" in its entirety and inserting the following in lieu thereof:

"**Junior Indebtedness**" means any Indebtedness that is unsecured or contractually junior to the Liens on the Collateral securing the Obligations and/or contractually subordinated in right of payment to the Obligations."

(v) deleting the definition of "Specified Event of Default" in its entirety and inserting the following in lieu thereof:

"**Specified Event of Default**" means an Event of Default resulting from Section 8.01(a) and Section 8.01(f)."

(b) Section 7.02 of the Credit Agreement is hereby amended by replacing clause (c) with the following:

"(c) so long as no Default shall occur and be continuing or would result therefrom, the Borrower may make one or more Special Payments within 15 Business Days following the Third Amendment Effective Date;"

(c) Section 7.03 of the Credit Agreement is hereby amended by deleting clause (ff) in its entirety and inserting the following in lieu thereof:

"(ff) [reserved];"

(d) Section 7.06 of the Credit Agreement is hereby amended by replacing clause (l) with the following:

"(l) distributions or other Restricted Payments of the notes or receivables arising from Investments made pursuant to Section 7.02(c);"

(e) Section 10.08 of the Credit Agreement is hereby amended by deleting such section in its entirety and inserting the following in lieu thereof:

"*Release of Subsidiary Guarantors.* A Subsidiary Guarantor shall automatically be released from this Article 10 and its obligations hereunder upon consummation of any transaction or designation permitted by this Agreement as a result of which such Subsidiary Guarantor (i) ceases to be a Restricted Subsidiary, (ii) ceases to be a Subsidiary or (iii) becomes an Excluded Subsidiary, in each case, as a result of a transaction or designation permitted hereunder; *provided* that no such release shall occur if such Subsidiary Guarantor is a guarantor in respect of any Junior Indebtedness with a principal amount in excess of the Threshold Amount; *provided, further*, the release of a Subsidiary Guarantor as a result of such Subsidiary Guarantor being a non-wholly-owned Subsidiary shall only be permitted if such Subsidiary Guarantor became a non-wholly owned Subsidiary as a result of the sale of a minority interest in such Subsidiary Guarantor to an unaffiliated third party in a bona fide sale for fair market value. The Administrative Agent will, at the Borrower's expense, promptly execute and deliver to such Subsidiary Guarantor such documents as the Borrower shall reasonably request to evidence the release of such Subsidiary Guarantor from its Guaranty hereunder pursuant to this Section 10.08; *provided* that the Borrower shall have delivered to the Administrative Agent a written request therefor and a certificate of the Borrower to the effect that the release of such Guarantor is in compliance with the Loan Documents. The Administrative Agent shall be authorized to rely on any such certificate without independent investigation."

SECTION 3. Third Amendment Incremental Term Loans. Subject to the satisfaction or waiver of the conditions set forth in Section 4 hereof and effective immediately after the effectiveness of Section 2 hereof, on the Third Amendment Effective Date:

(a) Each Third Amendment Incremental Term Loan Lender, by its execution of a Lender Addendum, agrees to make the Third Amendment Incremental Term Loans to the Borrower on the Third Amendment Effective Date in an aggregate principal amount set forth under the heading "Third Amendment Incremental Term Loan Commitment" opposite such Third Amendment Incremental Term Loan Lender's name in the Lender Addendum of such Third Amendment Incremental Term Loan Lender (such commitment, the "**Third Amendment Incremental Term Loan Commitment**").

(b) From and after the Third Amendment Effective Date, Holdings, the Borrower, the Administrative Agent and the Third Amendment Incremental Term Loan Lenders agree that, for all purposes of the Amended Credit Agreement and the other Loan Documents, (i) each Third Amendment Incremental Term Loan Lender shall be deemed to be a Term Lender and a Lender under the Amended Credit Agreement, and each Third Amendment Incremental Term Loan Lender shall be a party to the Amended Credit Agreement and shall have the rights and obligations of a Lender under the Amended Credit Agreement and (ii) the Third Amendment Incremental Term Loans, when funded, shall be made a part of the existing tranche of Initial Term Loans and shall be deemed to be an Initial Term Loan, a Term Loan and a Loan for all purposes under the Amended Credit Agreement and the other Loan Documents, including, but not limited to, the fact that the Third Amendment Incremental Term Loans shall bear interest as provided in the Amended Credit Agreement in respect of Initial Term Loans. All Third Amendment Incremental Term Loans incurred pursuant to this Amendment will be allocated ratably to each outstanding borrowing of Initial Term Loans that are Eurocurrency Rate Loans under the Credit Agreement for purposes of determining the initial interest rate thereon and Interest Period therefor.

(c) Section 1.01 of the Interim Amended Credit Agreement is hereby amended by:

(i) amending and restating the definition of "Initial Term Loans" as follows:

> "**Initial Term Loans**" means (i) prior to the First Amendment Effective Date, the Term Loans made by the Initial Term Lender pursuant to its Initial Term Commitment (the "**Closing Date Initial Term Loans**"), (ii) on and after the First Amendment Effective Date, (x) the Closing Date Initial Term Loans and (y) the First Amendment Incremental Term Loans, (iii) on and after the Second Amendment Effective Date, (x) the Closing Date Initial Term Loans, (y) the First Amendment Incremental Term Loans and (z) the Second Amendment Incremental Term Loans and (iv) on and after the Third Amendment Effective Date, (w) the Closing Date Initial Term Loans, (x) the First Amendment Incremental Term Loans, (y) the Second Amendment Incremental Term Loans and (z) the Third Amendment Incremental Term Loans.

(ii) inserting the following definitions in appropriate alphabetical order:

"**Third Amendment Incremental Term Loan Commitment**" means, as to the Third Amendment Incremental Term Loan Lenders, their obligation to make Third Amendment Incremental Term Loans on the Third Amendment Effective Date in an aggregate principal amount of $175,000,000.

"**Third Amendment Incremental Term Loan Lenders**" has the meaning provided in the Third Amendment.

"**Third Amendment Incremental Term Loans**" has the meaning provided in the Third Amendment.

(d) Section 2.01(a) of the Interim Amended Credit Agreement is hereby amended and restated in its entirety as follows:

"Section 2.01(a) *The Initial Borrowings*. (a) *The Initial Term Borrowings*. (i) Subject to the terms and express conditions set forth herein, each Initial Term Lender made, on the Closing Date, a single loan in Dollars in an aggregate principal amount equal to its Initial Term Commitment, (ii) subject to the terms and express conditions set forth herein and in the First Incremental Facility Amendment, each First Amendment Incremental Term Loan Lender with a First Amendment Incremental Term Loan Commitment as of the First Amendment Effective Date made a First Amendment Incremental Term Loan to the Borrower on the First Amendment Effective Date in Dollars in an aggregate principal amount equal to such First Amendment Incremental Term Loan Lender's First Amendment Incremental Term Loan Commitment, (iii) subject to the terms and express conditions set forth herein and in the Second Incremental Facility Amendment, the Second Amendment Incremental Term Loan Lender made the Second Amendment Incremental Term Loans to the Borrower on the Second Amendment Effective Date in Dollars in an aggregate principal amount equal to the Second Amendment Incremental Term Loan Commitment and (iv) subject to the terms and express conditions set forth herein and in the Third Amendment, the Third Amendment Incremental Term Loan Lenders made the Third Amendment Incremental Term Loans to the Borrower on the Third Amendment Effective Date in Dollars in an aggregate principal amount equal to the Third Amendment Incremental Term Loan Commitment. The aggregate principal amount of the First Amendment Incremental Term Loans made on the First Amendment Effective Date was $23,000,000. The aggregate principal amount of the Second Amendment Incremental Term Loans made on the Second Amendment Effective Date was $20,000,000. The aggregate principal amount of the Third Amendment Incremental Term Loans made on the Third Amendment Effective Date was $175,000,000. For the avoidance of doubt, on and after the First Amendment Effective Date the terms of the First Amendment Incremental Term Loans to be made hereunder shall, except to the extent of any upfront fees or original issue discount, which shall be as set forth herein, be the same as the terms of the Initial Term Loans immediately prior to the First Amendment Effective Date, and the First Amendment Incremental Term Loans made on the First Amendment Effective Date and the Initial Term Loans immediately prior to the First Amendment Effective Date shall collectively be the Initial Term Loans hereunder. For the avoidance of doubt, on and after the Second Amendment Effective Date the terms of the Second Amendment Incremental Term Loans shall, except to the extent of any original issue discount or upfront fees which shall not be applicable to the Second Amendment Incremental Term Loans, be the same as the terms of the Initial Term Loans immediately prior to the Second Amendment Effective Date, and the Second Amendment Incremental Term Loans made on the Second Amendment Effective Date and the Initial Term Loans immediately prior to the Second Amendment Effective Date shall collectively be the Initial Term Loans hereunder. For the avoidance of doubt, on and after the Third Amendment Effective Date the terms of the Third Amendment Incremental Term Loans shall, except to the extent of any original issue discount or upfront fees which shall not be applicable to the Third Amendment Incremental Term Loans, be the same as the terms of the Initial Term Loans immediately prior to the Third Amendment Effective Date, and the Third Amendment Incremental Term Loans made on the Third Amendment Effective Date and the Initial Term Loans immediately prior to the Third Amendment Effective Date shall collectively be the Initial Term Loans hereunder. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Initial Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(e) Clause (ii) of Section 2.02(a) of the Interim Amended Credit Agreement is hereby amended and restated in its entirety as follow:

(ii) 12:00 p.m. three Business Days prior to the requested date of any Borrowing of Eurocurrency Rate Term Loans, continuation of Eurocurrency Rate Term Loans or any conversion of Base Rate Term Loans to Eurocurrency Rate Term Loans denominated in Dollars (*provided* that, if such Borrowing is an initial Credit Extension to be made on the Closing Date, notice must be received by the Administrative Agent not later than, in the case of Initial Term Loans, 1:00 p.m. one Business Day prior to the Closing Date; *provided*, *further*, that, with respect to the Borrowing of Second Amendment Incremental Term Loans made on the Second Amendment Effective Date, notice must be received on the Second Amendment Effective Date; *provided*, *further*, that, with respect to the Borrowing of Third Amendment Incremental Term Loans made on the Third Amendment Effective Date, notice must be received on the Third Amendment Effective Date),

(f) Clause (b) of Section 2.08 of the Interim Amended Credit Agreement is hereby amended and restated in its entirety as follows:

(b) *Initial Term Loans*. The Borrower shall repay to the Administrative Agent for the ratable account of the Initial Term Lenders: (A) on or prior to the last Business Day of each March, June, September and December that occurs prior to the Initial Term Loan Maturity Date, an aggregate amount equal to $5,761,660.47 and (B) on the Initial Term Loan Maturity Date, an aggregate amount equal to the aggregate principal amount of all Initial Term Loans outstanding on such date.

SECTION 4. Conditions to Effectiveness. The effectiveness of the Third Amendment Incremental Term Loan Commitment, the funding of the Third Amendment Incremental Term Loans and the effectiveness of the amendments to the Credit Agreement set forth herein are each subject to the satisfaction (or waiver by (x) the Consenting Lenders in the case of Section 2 hereof and (y) the Third Amendment Incremental Term Loan Lenders in the case of Section 3 hereof) of each of the following conditions (the date on which such conditions shall have been so satisfied or waived, the "**Third Amendment Effective Date**"):

(a) the Administrative Agent shall have executed a counterpart of this Amendment and received (i) a counterpart to this Amendment executed and delivered by the Borrower and Holdings, (ii) a counterpart to this Amendment from existing Lenders sufficient to constitute Required Lenders (without giving effect to the Third Amendment Incremental Term Loans) and (ii) the executed Lender Addendum by the Third Amendment Incremental Term Loan Lenders;

(b) on and as of the Third Amendment Effective Date, the representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as so qualified), in each case, on and as of the Third Amendment Effective Date and after giving effect to the Third Amendment Incremental Term Loans and the amendments made pursuant to this Amendment on the Third Amendment Effective Date (except in the case of any representation and warranty which specifically refers to an earlier date, such representation and warranty shall have been true and correct in all material respects as of such earlier date);

(c) the Borrower shall have paid all expenses required to be paid by the Borrower to the Administrative Agent and the Third Amendment Incremental Term Loan Lenders on or before the Third Amendment Effective Date, including the reasonable and documented out-of-pocket expenses of Milbank LLP, counsel to the Administrative Agent (which fees may be offset against the proceeds of the Third Amendment Incremental Term Loans funded on the Third Amendment Effective Date), in each case, to the extent invoiced at least two (2) Business Days prior to the Third Amendment Effective Date (except as otherwise reasonably agreed by the Borrower);

(d) the Administrative Agent shall have received a certificate dated the Third Amendment Effective Date and executed by a Responsible Officer of each of the Loan Parties, certifying that attached thereto is a true and complete copy of resolutions or written consents of its board of directors or other relevant governing body or Person, as the case may be, authorizing the execution, delivery and performance of this Amendment and any other Loan Document to which it is a party to be entered into as of the Third Amendment Effective Date, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect without amendment, modification or rescission;

(e) the Administrative Agent shall have received a certificate from the chief financial officer, chief accounting officer or other Responsible Officer of the Borrower attesting to the Solvency of the Borrower and its Restricted Subsidiaries on a consolidated basis after giving effect to this Amendment on the Third Amendment Effective Date, substantially in the form of Exhibit L to the Credit Agreement;

(f) no Default or Event of Default shall have occurred and be continuing on the Third Amendment Effective Date after giving effect to this Amendment and the Third Amendment Incremental Term Loans on the Third Amendment Effective Date;

(g) the Administrative Agent shall have received an officer's certificate from a Responsible Officer of Holdings and dated the Third Amendment Effective Date, certifying that (i) each condition set forth in Sections 4(b) and 4(f) hereof have been satisfied on and as of the Third Amendment Effective Date and (ii) the Third Amendment Incremental Term Loans comply with the provisions of Section 2.16 of the Credit Agreement after giving effect to the amendments set forth in Section 2 hereof;

(h) the Administrative Agent shall have received the legal opinion of Skadden, Arps, Slate, Meagher & Flom LLP, acting as New York counsel for the Borrower and each other Loan Party, addressed to the Administrative Agent and the Third Amendment Incremental Term Loan Lenders and reasonably satisfactory to the Administrative Agent; and

(i) the Administrative Agent shall have received a Loan Notice relating to the Borrowing of the Third Amendment Incremental Term Loans on the Third Amendment Effective Date. Each Party to this Amendment hereby agrees that the amendments set forth in Section 2 hereof shall be effective immediately prior to the effectiveness of the amendments set forth in Section 3 hereof and the making of the Third Amendment Incremental Term Loans.

SECTION 5. Reaffirmation of the Loan Parties. Each Loan Party hereby consents to the amendments to the Credit Agreement effected hereby and confirms and agrees that, notwithstanding the effectiveness of this Amendment, each Loan Document to which such Loan Party is a party is, and the obligations of such Loan Party contained in the Credit Agreement, this Amendment or in any other Loan Document to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case, as amended by this Amendment. For greater certainty and without limiting the foregoing, each Loan Party hereby confirms that the existing security interests granted by such Loan Party in favor of the Secured Parties pursuant to the Loan Documents in the Collateral described therein shall continue to secure the obligations of the Loan Parties, including the Third Amendment Incremental Term Loans, under the Amended Credit Agreement and the other Loan Documents as and to the extent provided in the Loan Documents.

SECTION 6. Continuing Effect; No Novation.

(a) Except as expressly provided herein, all of the terms and provisions of the Credit Agreement and the other Loan Documents are and shall remain in full force and effect. The amendments provided for herein are limited to the specific subsections of the Credit Agreement specified herein and shall not constitute a consent, waiver or amendment of, or an indication of the Administrative Agent's or the Lenders' willingness to consent to any action requiring consent under any other provisions of the Credit Agreement or any other Loan Document or the same subsection for any other date or time period. Upon the effectiveness of the amendments set forth herein, on and after the Third Amendment Effective Date, each reference in the Credit Agreement to "this Agreement", "the Agreement", "hereunder", "hereof" or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to "Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement, shall mean and be a reference to the Amended Credit Agreement. This Amendment shall not constitute a novation of the Credit Agreement or any of the Loan Documents.

(b) The Borrower and the other parties hereto acknowledge and agree that this Amendment shall constitute a Loan Document and an Incremental Joinder.

SECTION 7. Deemed Notice. It is understood and agreed that on and after the Third Amendment Effective Date, execution and delivery of this Amendment shall be deemed to satisfy the requirements of Section 2.16 with respect to notice in respect of this Incremental Facility.

SECTION 8. Amendments; Execution in Counterparts. This Amendment, or any of the terms hereof, may not be amended, supplemented or modified, nor may any provision hereof be waived, except pursuant to a writing signed by Holdings, the Borrower, the Administrative Agent, the Required Lenders and the Third Amendment Incremental Term Loan Lenders. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Any signature to this Amendment and the other documents delivered in connection herewith may be delivered by facsimile, electronic mail (including pdf) or any electronic signature complying with the U.S. federal ESIGN Act of 2000 or the New York Electronic Signature and Records Act or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes to the fullest extent permitted by applicable law.

SECTION 9. GOVERNING LAW. (a) THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE CITY OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AMENDMENT, EACH LOAN PARTY, THE ADMINISTRATIVE AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH LOAN PARTY, THE ADMINISTRATIVE AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO (EXCEPT THAT, (X) IN THE CASE OF ANY MORTGAGE OR OTHER SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT IN THE STATE OR OTHER JURISDICTION IN WHICH THE RESPECTIVE MORTGAGED PROPERTY OR COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION AND (Y) IN THE CASE OF ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO THE ADMINISTRATIVE AGENT, ANY L/C ISSUER OR ANY OTHER LENDER, ACTIONS OR PROCEEDINGS RELATED TO THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN SUCH COURT HOLDING SUCH BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS

SECTION 10. **WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AMENDMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AMENDMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.**

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective proper and duly authorized officers as of the day and year first above written.

**LATHAM POOL PRODUCTS, INC.,** as the Borrower;

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: Chief Executive Officer, President and Secretary

**LATHAM INTERNATIONAL MANUFACTURING CORP.,** as Holdings;

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: Chief Executive Officer, President and Secretary

**POOL COVER SPECIALISTS, LLC,**

**LPP US, LLC,**

**GL INTERNATIONAL, LLC,** each as a Subsidiary Guarantor

By: /s/ Scott M. Rajeski
Name: Scott M. Rajeski
Title: President

**NOMURA CORPORATE FUNDING AMERICAS, LLC,** as Administrative Agent

By: /s/ G. Andrew Keith
Name: G. Andrew Keith
Title: Executive Director

**Exhibit 10.7**

**INDEMNIFICATION AGREEMENT**

**by and between**

**LATHAM GROUP, INC.**

**and**

**as Indemnitee**

Dated as of [●], 2021

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**INDEMNIFICATION AGREEMENT**

INDEMNIFICATION AGREEMENT, dated effective as of [●], 2021 (this "Agreement"), by and between Latham Group, Inc., a Delaware corporation (the "Company"), and **[•]** ("Indemnitee"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in Article 1.

WHEREAS, the Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve the Company;

WHEREAS, in order to induce Indemnitee to provide or continue to provide services to the Company, the Company wishes to provide for the indemnification of, and advancement of expenses to, Indemnitee to the fullest extent permitted by law;

WHEREAS, the Company and Indemnitee further recognize the substantial increase in corporate litigation in general, subjecting directors, officers, employees, agents and fiduciaries to expensive litigation risks at the same time as the availability and scope of coverage of liability insurance provide increasing challenges for the Company;

WHEREAS, the Company's Amended and Restated Bylaws (as the same may be amended and/or restated from time to time, the "Bylaws") require indemnification of the officers and directors of the Company, and Indemnitee may also be entitled to indemnification pursuant to applicable provisions of the Delaware General Corporation Law ("DGCL");

WHEREAS, the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts providing for indemnification may be entered into between the Company and members of the board of directors of the Company (the "Board"), executive officers and other key employees of the Company;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and any resolutions adopted pursuant thereto and shall not be deemed a substitute therefor nor to diminish or abrogate any rights of Indemnitee thereunder (regardless of, among other things, any amendment to or revocation of governing documents or any change in the composition of the Board or any Corporate Transaction); and

WHEREAS, Indemnitee will serve or continue to serve as a director, officer or key employee of the Company for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation or is otherwise terminated by the Company.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

**ARTICLE 1**

**DEFINITIONS**

As used in this Agreement:

1.1. "Affiliate" shall have the meaning set forth in Rule 405 under the Securities Act of 1933, as amended (as in effect on the date hereof).

1.2. "Agreement" shall have the meaning set forth in the preamble.

1.3. "Beneficial Owner" and "Beneficial Ownership" shall have the meaning set forth in Rule 13d-3 under the Exchange Act (as in effect on the date hereof).

1.4. "Board" shall have the meaning set forth in the recitals.

1.5. "Bylaws" shall have the meaning set forth in the recitals.

1.6. "Certificate of Incorporation" shall mean the Company's Amended and Restated Certificate of Incorporation (as the same may be amended and/or restated from time to time).

1.7. "Change in Control" shall mean, and shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(a) Acquisition of Stock by Third Party. Any Person other than a Permitted Holder is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding Voting Securities, unless (i) the change in the relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors or (ii) such acquisition was approved in advance by the Continuing Directors and such acquisition would not constitute a Change in Control under part (c) of this definition;

(b) Change in Board of Directors. Individuals who, as of the date hereof, constitute the Board, and any new director whose appointment or election by the Board or nomination for election by the Company's stockholders was approved or recommended by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose appointment, election or nomination for election was previously so approved or recommended by the directors referred to in this clause (b) (collectively, the "Continuing Directors"), cease for any reason to constitute at least a majority of the members of the Board;

(c) Corporate Transactions. The effective date of a reorganization, merger or consolidation of the Company (in each case, a "Corporate Transaction"), unless following such Corporate Transaction: (i) all or substantially all of the individuals and entities who were the Beneficial Owners of Voting Securities of the Company immediately prior to such Corporate Transaction beneficially own, directly or indirectly, more than 50% of the combined voting power of the then outstanding Voting Securities of the Company or other Person resulting from such Corporate Transaction (including, without limitation, a corporation or other Person that as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more Subsidiaries) in substantially the same proportions as their ownership of Voting Securities immediately prior to such Corporate Transaction; (ii) no Person (excluding any corporation resulting from such Corporate Transaction or the Permitted Holders) is the Beneficial Owner, directly or indirectly, of 50% or more of the combined voting power of the then outstanding Voting Securities of the Company or other Person resulting from such Corporate Transaction, except to the extent that such ownership existed prior to such Corporate Transaction; and (iii) at least a majority of the board of directors of the Company or other Person resulting from such Corporate Transaction were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board, providing for such Corporate Transaction; or

(d) Other Events. The approval by the stockholders of the Company of a plan of complete liquidation or dissolution of the Company or the consummation of an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Company of all or substantially all of the Company's assets, other than such sale or other disposition by the Company of all or substantially all of the Company's assets to a Person, at least 50% of the combined voting power of the Voting Securities of which are Beneficially Owned by (i) the stockholders of the Company immediately prior to such sale or (ii) the Permitted Holders.

1.8. "Company" shall have the meaning set forth in the preamble and shall also include, in addition to the resulting corporation or other entity, any constituent corporation (including, without limitation, any constituent of a constituent) absorbed in a consolidation or merger that, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, manager, managing member, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation or other entity as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

1.9. "Continuing Directors" shall have the meaning set forth in Section 1.7(b).

1.10. "Corporate Status" shall describe the status as such of a person who is or was a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of the Company or of any other Enterprise which such person is or was serving at the request of the Company.

1.11. "Corporate Transaction" shall have the meaning set forth in Section 1.7(c).

1.12. "Delaware Court" shall mean the Court of Chancery of the State of Delaware.

1.13. "DGCL" shall have the meaning set forth in the recitals.

1.14. "Disinterested Director" shall mean a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

1.15. "Enterprise" shall mean the Company and any other corporation, constituent corporation (including, without limitation, any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned Subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent.

1.16. "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

1.17. "Expenses" shall include all reasonable and documented costs, expenses and fees, including, but not limited to, attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settling or negotiating for the settlement of, responding to or objecting to a request to provide discovery in, or otherwise participating in, any Proceeding. Expenses also shall include expenses incurred in connection with any appeal resulting from any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments, fines or penalties against Indemnitee.

1.18. "Indemnification Arrangements" shall have the meaning set forth in Section 15.2.

1.19. "Indemnitee" shall have the meaning set forth in the preamble.

1.20. ["Indemnitee-Related Entities" shall mean any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Company, any other Enterprise controlled by the Company or the insurer under and pursuant to an insurance policy of the Company or any such controlled Enterprise) from whom an Indemnitee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Company or any other Enterprise controlled by the Company may also have an indemnification or advancement obligation.]

1.21. "Independent Counsel" shall mean a law firm, or a person admitted to practice law in any state of the United States or the District of Columbia who is a member of a law firm, that is of outstanding reputation, experienced in matters of corporation law and neither is as of the date of selection of such firm, nor has been during the period of three years immediately preceding the date of selection of such firm, retained to represent: (a) the Company or Indemnitee in any material matter (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements); or (b) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto. For purposes of this definition, a "material matter" shall mean any matter for which billings exceeded or are expected to exceed $100,000.

1.22. "Permitted Holder" shall mean Pamplona Capital Partners V, L.P., Wynnchurch Capital Partners IV, L.P., WC Partners Executive IV, L.P., and their respective Affiliates and Related Parties.

1.23. "Person" shall have the meaning set forth in Sections 13(d) and 14(d) of the Exchange Act (as in effect on the date hereof); provided, however, that the term "Person" shall exclude: (a) the Company; (b) any Subsidiaries of the Company; and (c) any employee benefit plan of the Company or a Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Subsidiary of the Company or of a corporation or other entity owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

1.24. "Proceeding" shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened, pending or completed proceeding, including, without limitation, any and all appeals, whether brought by or in the right of the Company or otherwise and whether of a civil (including, without limitation, intentional or unintentional tort claims), criminal, administrative or investigative nature, whether formal or informal, in which Indemnitee was, is, will or might be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer or key employee of the Company, by reason of any action taken by or omission by Indemnitee, or of any action or omission on Indemnitee's part while acting as a director or officer or key employee of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise; in each case whether or not acting or serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement or advancement of expenses can be provided under this Agreement or Section 145 of the DGCL; including any proceeding pending on or before the date of this Agreement but excluding any proceeding initiated by Indemnitee to enforce Indemnitee's rights under this Agreement or Section 145 of the DGCL.

1.25. "Related Party" shall mean, with respect to any Person, (a) any controlling stockholder, controlling member, general partner, Subsidiary, spouse or immediate family member (in the case of an individual) of such Person, (b) any estate, trust, corporation, partnership or other entity, the beneficiaries, stockholders, partners or owners of which consist solely of one or more Permitted Holders and/or such other Persons referred to in the immediately preceding clause (a), or (c) any executor, administrator, trustee, manager, director or other similar fiduciary of any Person referred to in the immediately preceding clause (b), acting solely in such capacity.

1.26. "Section 409A" shall have the meaning set forth in Section 17.2.

1.27. "Subsidiary" with respect to any Person, shall mean any corporation or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by that Person.

1.28. "Voting Securities" shall mean any securities of the Company (or a surviving entity as described in the definition of a "Change in Control") that vote generally in the election of directors (or similar body).

1.29. References to "fines" shall include any excise tax or penalty assessed on Indemnitee with respect to any employee benefit plan; references to "other enterprise" shall include employee benefit plans; references to "serving at the request of the Company" shall include, without limitation, any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

1.30. The phrase "to the fullest extent not prohibited by (and not merely to the extent affirmatively permitted by) applicable law" shall include, but not be limited to: (a) to the fullest extent authorized or permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL and (b) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

## ARTICLE 2

## INDEMNITY IN THIRD-PARTY PROCEEDINGS

Subject to Article 8, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Article 2 if Indemnitee is, was or is threatened to be made a party to or a participant (as a witness or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Subject to Article 8, to the fullest extent not prohibited by applicable law, Indemnitee shall be indemnified against all Expenses, judgments, fines, penalties and, subject to Section 10.3, amounts paid in settlement actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that such conduct was unlawful. No indemnification for Expenses shall be made under this Article 2 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged (and not subject to further appeal) by a court of competent jurisdiction to be liable to the Company, except to the extent that the Delaware Court or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

**ARTICLE 3**

**INDEMNITY IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY**

Subject to Article 8, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Article 3 if Indemnitee is, was or is threatened to be made a party to or a participant (as a witness or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in its favor. Subject to Article 8, to the fullest extent not prohibited by (and not merely to the extent affirmatively permitted by) applicable law, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Article 3 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged (and not subject to further appeal) by a court of competent jurisdiction to be liable to the Company, except to the extent that the Delaware Court or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

**ARTICLE 4**

**INDEMNIFICATION FOR EXPENSES OF A PARTY WHO IS WHOLLY OR PARTLY SUCCESSFUL**

Notwithstanding any other provisions of this Agreement, to the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith. For the avoidance of doubt, if Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, then the Company shall indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each resolved claim, issue or matter, whether or not Indemnitee was wholly or partly successful; provided that Indemnitee shall only be entitled to indemnification for Expenses with respect to unsuccessful claims under this Article 4 to the extent Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that such conduct was unlawful. For purposes of this Article 4 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, or by settlement, shall be deemed to be a successful result as to such claim, issue or matter.

## ARTICLE 5

## INDEMNIFICATION FOR EXPENSES OF A WITNESS

Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

## ARTICLE 6

## ADDITIONAL INDEMNIFICATION, HOLD HARMLESS AND EXONERATION RIGHTS

In addition to and notwithstanding any limitations in Articles 2, 3 or 4, but subject to Article 8, the Company shall indemnify, hold harmless and exonerate Indemnitee to the fullest extent not prohibited by (and not merely to the extent affirmatively permitted by) law if Indemnitee is, was or is threatened to be made a party to or a participant in, any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and, subject to Section 10.3, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with the Proceeding. No indemnity shall be available under this Article 6 on account of Indemnitee's conduct that constitutes a breach of Indemnitee's duty of loyalty to the Company or its stockholders or is an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law.

## ARTICLE 7

## CONTRIBUTION IN THE EVENT OF JOINT LIABILITY

7.1. To the fullest extent not prohibited by (and not merely to the extent affirmatively permitted by) law, if the indemnification rights provided for in this Agreement are unavailable to Indemnitee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall pay, in the first instance, the entire amount incurred by Indemnitee, whether for judgments, liabilities, fines, penalties, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding without requiring Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.

7.2. The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

7.3. The Company hereby agrees to fully indemnify, hold harmless and exonerate Indemnitee from any claims for contribution which may be brought by officers, directors or employees of the Company (other than Indemnitee) who may be jointly liable with Indemnitee subject to the other terms and provisions of the Agreement.

## ARTICLE 8

## EXCLUSIONS

8.1. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity, contribution or advancement of Expenses in connection with any claim made against Indemnitee:

(a) except [as provided in Section 15.4, for which payment has actually been made to or on behalf of Indemnitee under any insurance policy of the Company or its Subsidiaries or other indemnity provision of the Company or its Subsidiaries,] except with respect to any excess beyond the amount paid under any insurance policy, contract, agreement, other indemnity provision or otherwise; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (or any similar successor statute) or similar provisions of state statutory law or common law; or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated or brought voluntarily by Indemnitee, including, without limitation, any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, managers, managing members, employees or other indemnitees, other than a Proceeding initiated by Indemnitee to enforce its rights under this Agreement, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) or (ii) the Company provides the indemnification payment, in its sole discretion, pursuant to the powers vested in the Company under applicable law; or

(d) for the payment of amounts required to be reimbursed to the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002, as amended, or any similar successor statute; or

(e) for any payment to Indemnitee that is determined to be unlawful by a final judgment or other adjudication of a court or arbitration, arbitral or administrative body of competent jurisdiction as to which there is no further right or option of appeal or the time within which an appeal must be filed has expired without such filing and under the procedures and subject to the presumptions of this Agreement; or

(f) in connection with any Proceeding initiated by Indemnitee to enforce its rights under this Agreement if a court or arbitration, arbitral or administrative body of competent jurisdiction determines by final judicial decision that each of the material assertions made by Indemnitee in such Proceeding was not made in good faith or was frivolous.

The exclusions in this Article 8 shall not apply to counterclaims or affirmative defenses asserted by Indemnitee in an action brought against Indemnitee.

## ARTICLE 9

## ADVANCES OF EXPENSES; SELECTION OF LAW FIRM

9.1. Subject to Article 8, the Company shall, unless prohibited by applicable law, advance the Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding within ten business days after the receipt by the Company of a statement or statements requesting such advances, together with a reasonably detailed written explanation of the basis therefor and an itemization of legal fees and disbursements in reasonable detail, from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Indemnitee shall qualify for advances, to the fullest extent permitted by this Agreement, solely upon the execution and delivery to the Company of an undertaking providing that Indemnitee undertakes to repay the advance to the extent that it is ultimately determined, by final judicial decision of a court or arbitration, arbitral or administrative body of competent jurisdiction from which there is no further right to appeal, that Indemnitee is not entitled to be indemnified by the Company under the provisions of this Agreement or pursuant to applicable law. This Section 9.1 shall not apply to any claim made by Indemnitee for which an indemnification payment is excluded pursuant to Article 8.

9.2. If the Company shall be obligated under Section 9.1 hereof to pay the Expenses of any Proceeding against Indemnitee, then the Company shall be entitled to assume the defense of such Proceeding upon the delivery to Indemnitee of written notice of its election to do so. If the Company elects to assume the defense of such Proceeding, then unless the plaintiff or plaintiffs in such Proceeding include one or more Persons holding, together with his, her or its Affiliates, in the aggregate, a majority of the combined voting power of the Company's then outstanding Voting Securities, the Company shall assume such defense using a single law firm (in addition to local counsel) selected by the Company representing Indemnitee and other present and former directors or officers of the Company. The retention of such law firm by the Company shall be subject to prior written approval by Indemnitee, which approval shall not be unreasonably withheld, delayed or conditioned. If the Company elects to assume the defense of such Proceeding and the plaintiff or plaintiffs in such Proceeding include one or more Persons holding, together with his, her or its Affiliates, in the aggregate, a majority of the combined voting power of the Company's then outstanding Voting Securities, then the Company shall assume such defense using a single law firm (in addition to local counsel) selected by Indemnitee and any other present or former directors or officers of the Company who are parties to such Proceeding. After (x) in the case of retention of any such law firm selected by the Company, delivery of the required notice to Indemnitee, approval of such law firm by Indemnitee and the retention of such law firm by the Company, or (y) in the case of retention of any such law firm selected by Indemnitee, the completion of such retention, the Company will not be liable to Indemnitee under this Agreement for any Expenses of any other law firm incurred by Indemnitee after the date that such first law firm is retained by the Company with respect to the same Proceeding; provided, that in the case of retention of any such law firm selected by the Company (a) Indemnitee shall have the right to retain a separate law firm in any such Proceeding at Indemnitee's sole expense; and (b) if (i) the retention of a law firm by Indemnitee has been previously authorized by the Company in writing, (ii) Indemnitee shall have reasonably concluded that (1) there may be a conflict of interest between either (x) the Company and Indemnitee or (y) Indemnitee and another present or former director or officer of the Company also represented by such law firm in the conduct of any such defense, or (2) there may be defenses available to Indemnitee that are incompatible or inconsistent with those available to the Company or another present or former director represented by such law firm in the conduct of such defense, or (iii) the Company shall not, in fact, have retained a law firm to prosecute the defense of such Proceeding within thirty days, then the reasonable Expenses of a single law firm retained by Indemnitee shall be at the expense of the Company. Notwithstanding anything else to the contrary in this Section 9.2, the Company will not be entitled without the written consent of the Indemnitee to assume the defense of any Proceeding brought by or in the right of the Company.

## ARTICLE 10

## PROCEDURE FOR NOTIFICATION; DEFENSE OF CLAIM; SETTLEMENT

10.1. Indemnitee shall, as a condition precedent to Indemnitee's right to be indemnified under this Agreement, give the Company notice in writing promptly of any claim made against Indemnitee for which indemnification will or could be sought under this Agreement; provided, however, that a delay in giving such notice shall not deprive Indemnitee of any right to be indemnified under this Agreement unless, and then only to the extent that, such delay is materially prejudicial to the defense of such claim. The omission or delay to notify the Company will not relieve the Company from any liability for indemnification which it may have to Indemnitee otherwise than under this Agreement. The General Counsel of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

10.2. The Company will be entitled to participate in the Proceeding at its own expense.

10.3. The Company shall have no obligation to indemnify Indemnitee under this Agreement for any amounts paid in settlement of any claim effected without the Company's prior written consent, provided the Company has not breached its obligations hereunder. The Company shall not settle any claim, including, without limitation, any claim in which it takes the position that Indemnitee is not entitled to indemnification in connection with such settlement, nor shall the Company settle any claim which would impose any fine or obligation on Indemnitee or attribute to Indemnitee any admission of liability, without Indemnitee's prior written consent. Neither the Company nor Indemnitee shall unreasonably withhold, delay or condition their consent to any proposed settlement.

**ARTICLE 11**

**PROCEDURE UPON APPLICATION FOR INDEMNIFICATION**

11.1. Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 10.1, a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case: (a) by a majority of the Company's stockholders, (b) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (c) if a Change in Control shall not have occurred, (i) by a majority vote of the Disinterested Directors (provided there is a minimum of three Disinterested Directors), even though less than a quorum of the Board, (ii) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (provided there is a minimum of three Disinterested Directors), even though less than a quorum of the Board, or (iii) if there are less than three Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten business days after such determination and any future amounts due to Indemnitee shall be paid in accordance with this Agreement. Indemnitee shall cooperate with the Persons making such determination with respect to Indemnitee's entitlement to indemnification, including, without limitation, providing to such Persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination, provided, that nothing contained in this Agreement shall require Indemnitee to waive any privilege Indemnitee may have. Any costs or Expenses (including, without limitation, reasonable and documented attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the Persons making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification), and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

11.2. If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 11.1 hereof, the Independent Counsel shall be selected as provided in this Section 11.2. If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within thirty days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court or arbitration, arbitral or administrative body has determined that such objection is without merit. If, within thirty days after submission by Indemnitee of a written request for indemnification pursuant to Section 10.1 hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may seek arbitration for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the arbitrator or by such other person as the arbitrator shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 11.1 hereof. Such arbitration referred to in the previous sentence shall be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association, and Article 13 hereof shall apply in respect of such arbitration and the Company and Indemnitee. Upon the due commencement of any arbitration pursuant to Section 13.1 of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

## ARTICLE 12

## PRESUMPTIONS AND EFFECT OF CERTAIN PROCEEDINGS

12.1. In making a determination with respect to entitlement to indemnification hereunder, the Person making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 10.1 of this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its Board, its Independent Counsel and its stockholders) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification or advancement of expenses is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its Board, its Independent Counsel and its stockholders) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

12.2. If the Person empowered or selected under Article 11 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (a) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (b) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; provided, however, that such sixty-day period may be extended for a reasonable time, not to exceed an additional thirty days, if the Person making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto, provided further that, if final selection of Independent Counsel has not occurred within thirty days after receipt by the Company of the request for indemnification, such sixty-day period may be after the final selection of Independent Counsel pursuant to Section 11.2.

12.3. The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement (with or without court approval), conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

12.4. For purposes of any determination of good faith pursuant to this Agreement, Indemnitee shall be deemed to have acted in good faith if, among other things, Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its board of directors, any committee of the board of directors or any director, or on information or records given or reports made to the Enterprise, its board of directors, any committee of the board of directors or any director, by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise, its board of directors, any committee of the board of directors or any director. The provisions of this Section 12.4 shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement. In any event, it shall be presumed that Indemnitee has at all times acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

12.5. The knowledge and/or actions, or failure to act, of any other director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

12.6. The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

**ARTICLE 13**

**REMEDIES OF INDEMNITEE**

13.1. In the event that (a) a determination is made pursuant to Article 11 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (b) advancement of Expenses, to the fullest extent permitted by applicable law, is not timely made pursuant to Article 9 of this Agreement, (c) no determination of entitlement to indemnification shall have been made pursuant to Section 11.1 of this Agreement within thirty days after receipt by the Company of the request for indemnification and of reasonable documentation and information which Indemnitee may be called upon to provide pursuant to Section 11.1, (d) payment of indemnification is not made pursuant to Articles 4, 5, 6 or the last sentence of Section 11.1 of this Agreement within ten business days after receipt by the Company of a written request therefor, (e) a contribution payment is not made in a timely manner pursuant to Article 7 of this Agreement, (f) payment of indemnification pursuant to Article 3 or 6 of this Agreement is not made within thirty days after a determination has been made that Indemnitee is entitled to indemnification or (g) the Company or any representative thereof takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any Proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee may either (a) be entitled to an adjudication by a court of competent jurisdiction of Indemnitee's entitlement to such indemnification, contribution or advancement of Expenses or (b) seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration. The award rendered by such arbitration will be final and binding upon the parties hereto, and final judgment on the arbitration award may be entered in any court of competent jurisdiction.

13.2. In the event that a determination shall have been made pursuant to Section 11.1 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Article 13 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Article 13, Indemnitee shall be presumed to be entitled to receive advances of Expenses under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 11.1 of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Article 13, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Article 9 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal shall have been exhausted or lapsed).

13.3. If a determination shall have been made pursuant to Section 11.1 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Article 13, absent (a) a misstatement by Indemnitee of a material fact or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification or (b) a prohibition of such indemnification under applicable law.

13.4. The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Article 13 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

13.5. The Company shall indemnify and hold harmless Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten business days after the Company's receipt of such written request) pay to Indemnitee, to the fullest extent permitted by applicable law, such Expenses which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee (a) to enforce his or her rights under, or to recover damages for breach of, this Agreement or any other indemnification, advancement or contribution agreement or provision of the Certificate of Incorporation, or the Bylaws now or hereafter in effect; or (b) for recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of the outcome and whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement, contribution or insurance recovery, as the case may be (unless such judicial proceeding or arbitration was not brought by Indemnitee in good faith).

13.6. Interest shall be paid by the Company to Indemnitee at the legal rate under Delaware law for amounts which the Company indemnifies, or is obliged to indemnify, for the period commencing with the date on which Indemnitee requests indemnification, contribution, reimbursement or advancement of any Expenses and ending with the date on which such payment is made to Indemnitee by the Company.

## ARTICLE 14

## SECURITY

Notwithstanding anything herein to the contrary, to the extent requested by Indemnitee and approved by the Board, the Company may, as permitted by applicable securities laws, at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

**ARTICLE 15**

**NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; INSURANCE; PRIMACY OF INDEMNIFICATION; SUBROGATION**

15.1. The rights of Indemnitee as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Certificate of Incorporation, the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

15.2. The DGCL, the Certificate of Incorporation and the Bylaws permit the Company to purchase and maintain insurance or furnish similar protection or make other arrangements, including, but not limited to, providing a trust fund, letter of credit or surety bond ("Indemnification Arrangements") on behalf of Indemnitee against any liability asserted against Indemnitee or incurred by or on behalf of Indemnitee or in such capacity as a director, officer, employee or agent of the Company, or arising out of his or her status as such, whether or not the Company would have the power to indemnify Indemnitee against such liability under the provisions of this Agreement or under the DGCL, as it may then be in effect. The purchase, establishment and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.

15.3. To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managers, managing members, fiduciaries, employees or agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies and Indemnitee shall promptly cooperate with any request by the Company or insurers in connection with such action.

15.4. [The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of Expenses and/or insurance provided by the Indemnitee-Related Entities. The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Indemnitee-Related Entities to advance Expenses or to provide indemnification for the same Expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent not prohibited by (and not merely to the extent affirmatively permitted by) applicable law and as required by the terms of this Agreement and the Certificate of Incorporation or the Bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Indemnitee-Related Entities and (iii) that it irrevocably waives, relinquishes and releases the Indemnitee-Related Entities from any and all claims against the Indemnitee-Related Entities for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Indemnitee-Related Entities on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall reduce or otherwise alter the rights of Indemnitee or the obligations of the Company hereunder. Under no circumstance shall the Company be entitled to any right of subrogation or contribution by the Indemnitee-Related Entities. In the event that any of the Indemnitee-Related Entities shall make any advancement or payment on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company, the Indemnitee-Related Entity making such payment shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company, and Indemnitee shall execute all papers reasonably required and take all action reasonably necessary to secure such rights, including, without limitation, execution of such documents as are necessary to enable the Indemnitee-Related Entities to bring suit to enforce such rights. The Company and Indemnitee agree that the Indemnitee-Related Entities are express third party beneficiaries of the terms of this Section 15.4, entitled to enforce this Section 15.4 as though each of the Indemnitee-Related Entities were a party to this Agreement.]

15.5. [Except as provided in Section 15.4,] in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee [(other than against the Indemnitee-Related Entities)], who shall execute all papers reasonably required and take all action reasonably necessary to secure such rights, including, without limitation, execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

15.6. [Except as provided in Section 15.4,] the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

15.7. [Except as provided in Section 15.4,] the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, fiduciary, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification payments or advancement of Expenses from such Enterprise. Notwithstanding any other provision of this Agreement to the contrary, (a) Indemnitee shall have no obligation to reduce, offset, allocate, pursue or apportion any indemnification advancement, contribution or insurance coverage among multiple parties possessing such duties to Indemnitee prior to the Company's satisfaction and performance of all its obligations under this Agreement, and (b) the Company shall perform fully its obligations under this Agreement without regard to whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, contribution or insurance coverage rights against any person or entity other than the Company.

**ARTICLE 16**

**ENFORCEMENT AND BINDING EFFECT**

16.1. The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve or continue to serve as a director, officer or key employee of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as a director, officer or key employee of the Company.

16.2. This Agreement shall be effective as of the date set forth on the first page and may apply to acts or omissions of Indemnitee which occurred prior to such date if Indemnitee was an officer, director, employee or other agent of the Company, or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, at the time such act or omission occurred.

16.3. The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult to prove, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may enforce this Agreement by seeking, among other things, injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which he may be entitled. The Company and Indemnitee further agree that Indemnitee shall be entitled to such specific performance and injunctive relief, including, without limitation, temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by the Court, and the Company hereby waives any such requirement of such a bond or undertaking.

**ARTICLE 17**

**MISCELLANEOUS**

17.1. Successors and Assigns. This Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee's assigns, heirs, executors and administrators. The Company shall require and cause any successor (whether direct or indirect successor by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

17.2. Section 409A. It is intended that any indemnification payment or advancement of Expenses made hereunder shall be exempt from Section 409A of the Internal Revenue Code of 1986, as amended, and the guidance issued thereunder ("Section 409A") pursuant to Treasury Regulation Section 1.409A-1(b)(10). Notwithstanding the foregoing, if any indemnification payment or advancement of Expenses made hereunder shall be determined to be "nonqualified deferred compensation" within the meaning of Section 409A, then (i) the amount of the indemnification payment or advancement of Expenses during one taxable year shall not affect the amount of the indemnification payments or advancement of Expenses during any other taxable year, (ii) the indemnification payments or advancement of Expenses must be made on or before the last day of the Indemnitee's taxable year following the year in which the expense was incurred and (iii) the right to indemnification payments or advancement of Expenses hereunder is not subject to liquidation or exchange for another benefit.

17.3. Severability. In the event that any provision of this Agreement is determined by a court to require the Company to do or to fail to do an act which is in violation of applicable law, such provision (including, without limitation, any provision within a single Article, Section, paragraph or sentence) shall be limited or modified in its application to the minimum extent necessary to avoid a violation of law, and, as so limited or modified, such provision and the balance of this Agreement shall be enforceable in accordance with their terms to the fullest extent permitted by law.

17.4. Entire Agreement. Without limiting any of the rights of Indemnitee under the Certificate of Incorporation or Bylaws, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

17.5. Modification, Waiver and Termination. No supplement, modification, termination, cancellation or amendment of this Agreement shall be binding unless executed in writing by each of the parties hereto. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

17.6. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) if delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed or (b) mailed by certified or registered mail with postage prepaid on the third business day after the date on which it is so mailed:

(i) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide in writing to the Company.

(ii) If to the Company, to:

Latham Group, Inc.
787 Watervliet Shaker Road
Latham, New York 12110
Attention: General Counsel
E-mail:

or to any other address as may have been furnished to Indemnitee in writing by the Company.

17.7. Applicable Law. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. If, notwithstanding the foregoing sentence, a court of competent jurisdiction shall make a final determination that the provisions of the law of any state other than Delaware govern indemnification by the Company of Indemnitee, then the indemnification provided under this Agreement shall in all instances be enforceable to the fullest extent permitted under such law, notwithstanding any provision of this Agreement to the contrary.

17.8. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

17.9. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

17.10. Representation by Counsel. Each of the parties has been represented by and has had an opportunity to consult legal counsel in connection with the negotiation and execution of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or arbitrator or any governmental authority by reason of such party having drafted or being deemed to have drafted such provision.

17.11. Period of Limitations. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company, the Indemnitee, or Indemnitee's spouse, heirs, executors or personal or legal representatives against the Company, Indemnitee, or Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company, the Indemnitee, or Indemnitee's spouse, heirs, executors or personal or legal representatives, shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

17.12. Additional Acts. If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfill its obligations under this Agreement.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed as of the day and year first above written.

**COMPANY:**

**LATHAM GROUP, INC.**

By: _____
Name:
Title:

**INDEMNITEE:**

By: _____
Name:

Address:

*[Signature page to Indemnification Agreement]*

**Exhibit 23.1**

**Consent of Independent Registered Public Accounting Firm**

We consent to the use in this Registration Statement on Form S-1 of Latham Group, Inc. (f/k/a Latham Topco, Inc.) of our report dated December 15, 2020, except for the segment information described in Note 20, as to which the date is March 10, 2021, and except for the effects of the stock split described in Note 22, as to which the date is April 14, 2021, relating to the consolidated financial statements of Latham Group, Inc. as of and for the year ended December 31, 2019, appearing in the Registration Statement.

We also consent to the reference to our firm under the heading "Experts" and “Change in Auditors” in such Registration Statement.

/s/ RSM US LLP

Blue Bell, Pennsylvania
April 14, 2021

**Exhibit 23.2**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the use in this Registration Statement on Form S-1 of our report dated March 10, 2021 (April 14, 2021 as to the effects of the stock split described in Note 22), relating to the financial statements of Latham Group, Inc. (formerly, Latham Topco, Inc.). We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ Deloitte & Touche LLP

Hartford, Connecticut
April 14, 2021